

THE JUDICIARY OF THE KINGDOM OF BHUTAN

INTRODUCTION

In all societies, the law gives form and direction to the social world. It represents the solemn will of the state pronounced through legislature for the common good. *Nagarjuna*¹ wrote "As the earth is to living and non-living entities, law is to human beings." Bhutanese laws can be classified into two categories, which are natural laws² and positive laws.³ Natural laws (*jus naturale*) denote a system of rules and principles for the guidance of human conduct, which is independent of enacted or positive laws (*jus positivum*). Under Bhutanese law, positive laws are based on the principles enshrined by *Mipham Wangpo* in his *Punakha kathrim*.⁴

CHAPTER I

HISTORICAL BACKGROUND

The Bhutanese legal system has a long traditional background,⁵ primarily based on Buddhist natural law and on *Zhabdrung Ngawang Namgyal's*⁶ Code. The Code was based on the fundamental teachings of Buddhism and addressed the violation of secular and temporal laws⁷ alike, which serves as the foundation of the contemporary Bhutanese legal system.⁸ These laws

¹ *Nagarjuna* or *Pelgoen Phagpa Lhuedrup* was a famous Buddhist philosopher of the second century A.D.

² *Rangzhin gi thrim*.

³ *Chay pai thrim*.

⁴ *Mipham Wangpo* is the 10th Desi (temporal ruler) of Bhutan (1729-1735). In the *Kathrim* the following principles were enshrined:

- Thri Tse Bum Zher (separation of power and responsibility);
- Gyalkhab Paer Lang Ki thrim (obedience to laws);
- Do laen Zhi Chi Gi thrim (fair trial);
- Wangchen Chay ki Chathrim (adjudication by due process);
- Khabso Lang Pai thrim (equal justice without discrimination); and
- Bum Ser Thog Shawa Chen gi thrim (weights and measures - fair trade).

⁵ In 1636, a Tibetan writer had referred to the "Laws of *Lhomoen*", at pages 17, 26 and 37 of *Zhalchay Chudue*.

⁶ *Zhabdrung Ngawang Namgyal* was the first theocratic ruler of Bhutan, who unified the country and established the foundations for national governance and the Bhutanese identity.

⁷ It is said that the spiritual laws resemble a silken knot (*dargye duephue*). The silken knot is light and loose at first but gradually tightens with the accumulation of negative deeds. Similarly, secular laws are compared to a golden yoke (*sergyi nyashing*) that grows heavier and heavier with the degree of the crimes committed.

⁸ *Zhabdrung* promulgated the first set of Bhutanese laws and codifications of these laws were completed in 1652 during the reign of the first temporal ruler *Deb Umzed Tenzin Drugyel*.

enshrine the ten pious acts referred to as *Lhachoe Gyewa Chu*⁹ and the sixteen virtuous acts of social piety referred to as the *Michoe Tsangma Chudru*.¹⁰ The Code was amended several times over the centuries, but it continued to uphold the principles of Buddhism and natural justice set out by *Zhabdrung*.

The 10th *Desi*¹¹ *Mipham Wangpo* consolidated and amended certain parts of the Code of *Zhabdrung* and in mid-eighteenth century, the 13th *Desi Choegyal Sherab Wangchuk* incorporated amendments. Thereafter, the First and the Second Druk Gyalpo made further modifications and during the reign of the Third Druk Gyalpo, His late Majesty Jigme Dorji Wangchuck, the National Assembly¹² enacted the first comprehensive codified laws known as the *Thrimzhung Chhenmo*¹³ or the Supreme Law. His Majesty the Fourth Druk Gyalpo Jigme Singye Wangchuck initiated various amendments and enactments of laws to respond fully and effectively to the changing needs of our nation.

As the Bhutanese legal system has evolved over the period, it continued to reflect the culture and tradition of the Bhutanese. It has ensured that the stream of justice remained clear and pure.

⁹ *Lhachoe Gyewa Chu* includes refraining from; taking life (*pranatighatad virati*), taking that which is not given (*adattadanad virati*), engaging in sexual misconduct (*kamamithyacarad virati*), lying (*mrsavadat pravivirati*), speaking harshly (*parusat pravivirati*), slandering (*paishunayate pravivirati*), engaging in worthless chatter (*sambhinnapralapat pravivirati*), being covetous (*abhidhyayah pravivirati*), being malicious (*vyapadat pravivirati*) and holding wrong views (*mithyadrsti pravivirati*). These ten pious acts can broadly be divided into three categories of non-virtuous actions to be avoided and they are three non-virtuous actions of body - *truni kayaduscaritani*, four non-virtuous actions of speech - *catva vagduscaritani* and three non-virtuous actions of mind - *trini manoduscaritani*.

¹⁰ *Michoe Tsangma Chudru* includes not to kill or steal; not to hold wrong views; not to go against the wishes of one's parents; not to be disrespectful to elders, learned persons and leaders; not to harbour evil or ill thoughts towards family or friends; not to refrain from helping neighbours; not to be dishonest; not to follow bad examples; not to be greedy or selfish; not to inspire evil thoughts in others; not to be late in repaying debts; not to cheat; not to act differently towards rich and poor, or those of high or low status; not to listen to evil advice; not to be deceitful; and not to be short-tempered or lose one's patience.

¹¹ Bhutan had a dual system of government till the beginning of the 20th century with temporal ruler known as *Desi* and a religious head known as *Je Khenpo*.

¹² The National Assembly was established in 1953.

¹³ *Thrimzhung Chhenmo* was enacted in 1959. It enshrined both the civil and criminal matters such as land, marriage, inheritance, weights and measures, loans, murder, theft, cheating, defamation, procedure, alternative dispute resolution mechanisms, etc. Although many of its provisions have been amended through subsequent legislations by the National Assembly, it is still considered to be the basis for all the subsequent laws enacted in Bhutan.

CHAPTER II

MISSION, POLICIES & OBJECTIVES

The constant and perpetual desire of every legal system is to uphold the rule of law and to render each and every person his rights in accordance with the laws. Consequently, the mission, policies & objectives of the Judiciary of Bhutan are to:

- (a) Safeguard the sovereignty, maintain peace and tranquility in the Kingdom by rendering effective justice;
- (b) Create reliable, fair and efficient justice system;
- (c) Administer justice impartially¹⁴ and fairly irrespective of language, religion, race or social status;
- (d) Administer justice independently in accordance with the law;
- (e) Improve accessibility to Justice by making Courts user friendly;¹⁵
- (f) Uphold and protect Due Process of Law, Fair Trial, Rule of Law and review the judicial system;
- (g) Inspire and build public confidence and trust through continuing legal professionalism;
- (h) Improve legal language and promote Bhutanese terminologies¹⁶ that reflect and preserve the Bhutanese values;
- (i) Harness technology for efficiency and cost effectiveness;
- (j) Improve infrastructures and capacity building;
- (k) Make judicial process responsive, effective, faster, better and easier through continuous reforms and management principles; and
- (l) Impart legal education and legal awareness.

The Independence of the Judiciary

The independence of the Judiciary is one of the cornerstones for the national domestic policy. The Judiciary, as one of the main institutions on which the rule of law rests, is independent from

¹⁴ Buddha “Impartiality to all, as the case demands.”

¹⁵ Buddha “Who is hospitable, and friendly, liberal and unselfish, A guide, an instructor, a leader, such a one to honour may attain.”

¹⁶ Legal dictionary Kuensel dated 1st October 2007.

the other branches of the government.¹⁷ Separation of judicial power¹⁸ from the apex to the lowest court is the required mandate of the Constitution. The independent administration of justice also includes personnel independence such as security of tenure,¹⁹ impartial selection process,²⁰ guarantee of adequate facilities²¹ and adequate finance.²²

Decentralization²³

Every court enjoys operational independence. All personal administration and financial operations are decentralized to the Dzongkhag and Dungkhag courts to respond to the ground realities and to provide for independent administration of justice.

Infrastructure Development

The construction of court buildings²⁴ are an integral part of the structural reforms within the Judiciary. The architectural²⁵ magnificence and modern facilities endow the majesty of law and elevates justice. The court building manifest physical separation of power affirming the principle of independence cardinal to the doctrine of equal protection as enshrined under the Constitution. A well planned court structure provides for certain human needs conducive working environment²⁶ and dignity to the litigants. To this end, the Judiciary endeavours to preserve traditional landscaping as well as promote modern one.

¹⁷The principles of the separation of powers were originally enunciated in *Zhabdrung's* Code. In the Code, the responsibility of adjudication was assigned to *Drangpons* (law lords – judges). The separation of powers was then affirmed in the *Thrimzhung Chhenmo* in 1959 and reaffirmed by the resolutions of the 12th, 16th and 73rd sessions of the National Assembly. Moreover, His Majesty in the *Kadyon* (Royal Edict) empowered the High Court to appoint judges thereby establishing a separate judicial cadre. Under Section 2 of the *Civil and Criminal Procedure Code*, the Judiciary is separate from the legislature and executive and is fully independent in the exercise of its functions. Eventually, the separation of powers is also guaranteed under Article 1 Section 13 of the Constitution.

¹⁸See Kuensel issue of 15th February 1969.

¹⁹ Civil and Criminal Procedure Code of 2001, Section 15

²⁰ While the Royal Judicial Service Council is responsible for determining and administering the organizational structure, budgetary and personnel requirements of the Judiciary, the National Judicial Commission is responsible for judicial appointments.

²¹ Free residence and free transportation for the justices and judges were allotted under the Royal edicts dated First day of the Tenth Month of the Pig year, and the Fifth day of the Twelfth Month of the Sheep year of the Bhutanese calendar.

²² Constitution of the Kingdom of Bhutan, Article 14 Section 13 [hereinafter CONSTITUTION]

²³ The Judicial Service Act of 2007, Section 45

²⁴ See Kuensel issue of 19th October 2006.

²⁵ Research paper Traditional Architecture issued on 15th January 1994

²⁶ Frank Gilbreth (1868-1924) expressed that the productivity of an individual depends upon his personality and his working environment. He listed fifteen characteristics of a worker such as anatomy, experience, fatigue, health, temperament, nutrition and education. The working environment was classified into nineteen elements such as clothes, entertainment, lighting, quality of materials, reward and punishment and union rules. See, C. Northcote Parkinson, M.K. Rustomji & S.A. Sapre, *Great Ideas in Management*. n. 14

Clearing Backlog Cases

The Judiciary sets short term objectives and goals during the National Judicial Conferences. One of the first objectives was to endeavour to make zero case.²⁷ Every court in the Kingdom was directed to clear all the pending cases and to reduce the number of cases to the minimum.

Friendly Court²⁸

In obedience to the Royal Command of 1997, the Judiciary adjudicates cases expeditiously, fairly and inexpensively through the established judicial processes as stated under:

- (a) Where to seek justice? The familiar and distinctive site of the court building with visual landmark depicting the house of justice and distinct *kabney*²⁹ as the identity of a judge.
- (b) How accessible is the Court? A complaint can be filed by either an aggrieved person or his family member.
- (c) Who to contact? One stop window of the registry of the court is the first contact point. Every Court has a Registrar³⁰ specifically dealing with complaints and the registration of cases.
- (d) When to contact the court? The parties can contact the Registrar of the Court at any time during the office hour.
- (e) What is the process of hearing? Once the case is instituted, hearing is set in motion uninterruptedly. The litigants know in advance the date and time for every hearing thereby knowing the day and time when to attend the court. Hearing calendar³¹ is made available and timing is announced to the parties to avoid harassment and wastage of time. The stages of hearing are systematically observed to provide check list for timely submission of arguments and necessary evidence, and to avoid omission of important legal issues. The parties are given adequate time and opportunity to prepare their submissions. It eliminates unnecessary delay, anxiety and manipulation through vested

²⁷ See Kuensel “Judiciary clears all pending cases” of 6th February 1993.

²⁸ The litigants were allowed to sit vide (Ka-33)2002/1329 dated 7th January 2002.

²⁹ See Kuensel “Judiciary goes green” of 2nd June 2005.

³⁰ “Thoedep” was changed to “Tshoezin” vide order number Chhetho(Ka-39)98 dated 9th December 1998.

³¹ Hearing Calendar was improved by Dasho KB Ghalay and Dasho Karma Sherpa in 22nd November, 1991.

interests. Therefore, the system itself controls evasive and delay tactics and prevents harassment.

Undue Delays

The judicial process is intended towards eliminating undue delay. The process has enhanced submission of facts and issues methodologically, systematically and exhaustively. The court does not consider a motion for adjournment or stay of proceedings *sine die* except in accordance with the Civil and Criminal Procedure Code to avoid frequent and unwarranted adjournments, to deliver timely justice, and to make the process inexpensive.³² The judge manages the court docket by setting a schedule for the various filing of submissions, hearings, and other necessary events, and authorizes adjournments only on merits when good cause is shown. In criminal cases, the court is mandated to convene the preliminary hearing within 10 days of registration and within 108 days in civil cases.³³ Consequently, unwarranted delays by the parties to the case have been substantially curtailed.

Time Limitation

Individual bench clerk³⁴ is responsible for processing the cases, so that the cases are decided within eighteen months.³⁵ The duration was further reduced to 12 months.³⁶ The case information report segregates the decided cases into two parts, cases that are decided within 108 days and beyond 108 days. The pending cases are monitored by the Chief Justice of Bhutan.

Quality of Justice

It is the perpetual quest of the Judiciary to deliver the best quality judgment and to make courts user-friendly to enable the people to have equal and unimpeded access to legal services and dispense justice swiftly, fairly and transparently. In its desire for transparency, the Judiciary has started posting its decisions on the Judiciary website.³⁷ Publication of judgments on the website will deter rulings based on considerations other than the facts and the provisions of law. By publishing the decisions of the respective courts, the Judiciary aspires to achieve consistency in

³² Civil and Criminal Procedure Code of 2001, Sections 76 & 76.1.

³³ *Id.* Section 81.2

³⁴ Resolutions of the 14th National Judicial Conference (1998) Designation of Tsoedrung or Bench Clerk for professionalism and independence.

³⁵ Refer the Order issued by the Chief Justice of Bhutan vide Chaythrim (ADM-15)2004/2482 dated 23rd April, 2004

³⁶ Resolutions of the 18th National Judicial Conference (30th April – 3rd May 2007).

³⁷ www.judiciary.gov.bt

law and enhance public understanding. Moreover, mentioning the names of the judges along with their decisions will serve as an incentive to judges, who take pride in thoughtful legal analysis and create a healthy sense of competition and desire to maintain excellent track record. Quality of justice is ensured through an inbuilt mechanism of fair process.

CHAPTER III

THE COURT CREST AND THE COURT SEAL³⁸

The Court Crest and the Court Seal, enclosed in a circle is composed of a *Khorlo* placed over a lotus. It is surmounted by a jewel and framed by two dragons. The King, the Country and the People are based on the Rule of Law symbolized by the Golden Yoke (*sergyi nyashing*) and a Silken Knot (*dargye duephue*). The Golden Yoke represents the temporal laws and the Silken Knot represents the secular laws. His Majesty the Druk Gyalpo, symbolized by the wheel is the supreme head of this Dual System (*Lug Nye*).

The *Chakra* or wheel symbolizes the power and wisdom of His Majesty the Druk Gyalpo and His Majesty's victory over all outer, inner and secret adversaries. "The spokes of the wheel are the rules of pure conduct; justice is uniform of their length; wisdom is the tyre; modesty and thoughtfulness is the hub in which the immovable axle of truth is fixed."³⁹

The wheel is placed within a mirror⁴⁰ representing transparency and clarity with three types of calculating pebbles (*Deu Kar, ngag and thra Sum*) representing the evidentiary principles of proved, disproved and not proved. The mirror is encompassed by two dragons facing each other. The two dragons (male and female) denote method and wisdom. The male dragon facing left means defending external aggression and female dragon facing right depicts ensuring domestic tranquillity. The dragons signify the name of the Kingdom (*Druk*).⁴¹

³⁸ Before the adoption of the present Court Crest, the High Court and the Royal Bhutan Police had a similar crest, which comprised of the sword with the silk. The last usage of the said crest in the Judiciary was on the High Court Judgment No. HC(74)80-0802-04 dated 2nd February 1982. Similarly, the last usage of the Court Seal was on Judgment No. 05/92 dated 23rd March 1992. The new Court Seal was used vide Thrimgon zhi tse(7)91/2486 dated 12th December 1991.

³⁹ Refer *Dharma Chakra Pravartana*.

⁴⁰ The mirror represents the goddess of light, *Prabhavati* or 'circle of light,' who presented *Shakyamuni* with a stainless mirror, symbolizing the clear Karmic vision of all his previous lives.

⁴¹ Bhutan is referred to, as 'the dragon Kingdom.'

The parasol (*gDugs*)⁴² protects from the blazing heat of the sun, and the coolness of its shade symbolizes protection from the pain of suffering, desire, obstacles, illnesses, harmful forces and other malevolent influences.⁴³ It also symbolizes victory.⁴⁴ The wheel, and the mirror are placed upon a lotus,⁴⁵ which blossoms unstained from the watery mire. The Court crest and the seal are encircled by *vajras*,⁴⁶ signifying indestructibility and the principle of *res-judicata*.⁴⁷

CHAPTER IV

THE ROYAL COURT OF JUSTICE AND ITS JURISDICTION

The Royal Court of Justice

The courts in Bhutan includes the Supreme Court, the High Court⁴⁸, the Dzongkhag Courts, the Dungkhag Courts, and any other Courts that may be established from time to time by His Majesty the Druk Gyalpo on the recommendation of the National Judicial Commission.⁴⁹

(a) The Supreme Court

The Supreme Court is the highest Court of Law in the Kingdom and will be presided over by the Chief Justice of Bhutan. It exercises appellate, advisory and extra-territorial jurisdiction. The jurisdiction of the Supreme Court extend to the whole of Bhutan, all person therein, and all person with an established legal relationship to Bhutan. Where a particular case is not covered or is only partially covered by any law in force and is not otherwise excluded from adjudication, the Supreme Court shall have original jurisdiction

⁴² In early Indian Buddhism, the emblem of thirteen royal umbrellas is the symbol of the sovereignty of the Buddha as *chakravartin* or universal monarch. As the umbrella is held above the head, it symbolizes honour and respect. Its function is to protect all beings from all fears. The parasol dome symbolizes wisdom, and the hanging fringes depicts compassion. The octagonal or square parasols are common, which symbolizes the Noble Eightfold Path and the four directional quarters. ("The Encyclopedia of Tibetan Symbols and Motifs", Text and Illustrations by Robert Beer).

⁴³ See, Robert Beer, *The Encyclopedia of Tibetan Symbols and Motifs: Text and Illustration*, Serindia Publications, London.

⁴⁴ *Ibid*.

⁴⁵ The lotus denotes purity.

⁴⁶ *Vajra* means thunderbolt.

⁴⁷ Civil and Criminal Procedure Code of 2001, Section 115

⁴⁸ Resolutions of the 13th National Judicial Conference (1993) The nomenclature of *Thrimkhag Gongma* was renamed as *Chhay tho*.

⁴⁹ CONSTITUTION, Article 21 Section 2

over it. It is a court of record and the guardian of the Constitution and the final authority on its interpretation.⁵⁰

(b) The High Court

The High Court was established in 1967.⁵¹ It consists of different Benches.⁵² Each Bench comprises of a minimum of two justices and maximum of three justices. It exercises original jurisdiction as well as appellate and extra-territorial jurisdiction. The jurisdiction of the High Court extends to the whole of Bhutan. It has original jurisdiction over the cases:

- (a) Arising out of or under international treaties, conventions and covenants;
- (b) Where the lower court does not otherwise have original jurisdiction;
- (c) Between two or more Dzongkhags;
- (d) In which Bhutan or the Government of Bhutan is a party; and
- (e) Involving the rights of habeas corpus.

It admits appeal against judgment and orders including interlocutory orders⁵³ of a Dzongkhag Court or a Dungkhag Court.

(c) The Dzongkhag Court

Bhutan is geographically divided into twenty Dzongkhags or districts. Each Dzongkhag has a Dzongkhag Court.⁵⁴ Usually, the Dzongkhag Court is made up of one Bench, though there are few Dzongkhag Courts that have more Benches. The Dzongkhag Court is presided over by a Dzongkhag Drangpon.⁵⁵ Every Dzongkhag Drangpon is assisted by one or more Drangpon Rabjam(s) or registrar(s). The Dzongkhag Court has original

⁵⁰ *Id.* Article 1 Section 11

⁵¹ See Kuensel dated 5th November 1967.

⁵² Bench system was established in 1984 and it was further strengthened vide Order No. SC(ADM-8)-94/5284 dated 24th June 1994.

⁵³ A court passes an interlocutory order during the course of a trial to prevent any harm or injury that may be suffered by the petitioner owing to any action or inaction of a person or authority incase a preliminary injunction or temporary restraining order is not issued.

⁵⁴ The first Dzongkhag Court was established in 1960. Appointment of the Judges of the Dzongkhag courts dates back to 1960. Refer the Record of the Judges.

⁵⁵ The nomenclature of Drangpon from Thrimpon was renamed vide order No. (Ka-33)2002/1329 dated 7th January 2002. Dzongkhag Drangpon refers to a District Judge. A district may have one or more Drangpons or judges depending on number of benches.

jurisdiction in all cases where venue exists in its territorial jurisdiction and where original jurisdiction of the High Court does not apply. It also has an appellate jurisdiction against the cases or orders rendered by a Dungkhag Court.

(d) The Dungkhag Court⁵⁶

The Dungkhag or Sub-District Court is the lowest formal court in Bhutan. The first Dungkhag Court was established in 1978.⁵⁷ They exercise original jurisdiction in all cases where venue exists in its territorial jurisdiction and where the original jurisdiction of the High Court and Dzongkhag Court does not apply. The Dungkhag Court is presided over by a Dungkhag Drangpon.⁵⁸

Advisory Jurisdiction

Where a question of law or fact is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court or the High Court, His Majesty the Druk Gyalpo may refer the question to the Supreme Court or the High Court for its consideration. The Court will hear the reference and submit its opinion thereon to His Majesty.⁵⁹

Judicial Review

The principle of Natural Justice and Rule of Law require that justice be dispensed impartially and promptly. The hallmark of good governance is the existence of Judiciary as an independent institution to decide cases without fear or favour, and power of the courts to judiciously review any acts that are contrary to the provisions of the law. Therefore, the Supreme Court and High Court has the power to review any official act that are contrary to the provisions of the Constitution or any other laws of the land.⁶⁰

⁵⁶ On 17th December 2007, upon the command of His Majesty the Druk Gyalpo, Dungkhag courts were established in all Dungkhags namely Samdrupcholing, Jomotschangkha, Nanglam, Lhamoizingkha, Thrimshing, Sakteng, Lingshi, Weringla, Panbang, Dorokha, Sipsoo and Sambeykha. In obedience to the command, the Chief Justice issued an Order No. CJ-15-1661 dated 18.12.2007. See *Kuensel issue of 19th December 2007*, “Justice comes nearer to people,” page 13.

⁵⁷ The first Dungkhag Court was established in Bangtar under Samdrup Jongkhar Dzongkhag.

⁵⁸ Like Dzongkhag Court, a Dungkhag Court may also have one or more judges depending on number of benches.

⁵⁹ CONSTITUTION, Article 21 Section 8

⁶⁰ Provision *Cha 4 of the Kadyon* provides that if the High Court reviews and finds the allegation by an individual, organization or department to be untrue and false, then such individual, organization or department has to be made liable in accordance with the law.

Appellate Authority

His Majesty, in exercise of His Royal Prerogatives may grant amnesty and reduction of sentences.⁶¹ The Supreme Court shall be the highest appellate authority to review, reverse and overrule any order, decision or judgment of any court or tribunal.⁶² The Supreme Court and the High Court have the power to issue *suo moto* or to be moved by an appropriate proceedings for the enforcement of the rights conferred by the Constitution in the form of directions, orders or writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate.⁶³

CHAPTER V

JUSTICES AND JUDGES OF THE ROYAL COURT OF JUSTICE

The Justices of the Supreme Court

The Supreme Court comprise of the Chief Justice of Bhutan⁶⁴ and four other Justices. The Chief Justice of Bhutan is appointed from among the justices of the Supreme Court or from the eminent jurists by His Majesty the Druk Gyalpo, by warrant under His hand and seal, in consultation with the National Judicial Commission. The person to be appointed as the Chief Justice of Bhutan should at least have eighteen months of service remaining subsequent to appointment.⁶⁵ Similarly, the justices of the Supreme Court are appointed from among the justices of the High Court or from the eminent jurists by His Majesty the Druk Gyalpo, by warrant under His hand and seal, in consultation with the National Judicial Commission.⁶⁶

The term of office for the Chief Justice of Bhutan is five years or until attaining the age of sixty-five years, whichever is earlier and for the Justices of the Supreme Court is ten years or until attaining the age of sixty-five years, whichever is earlier.⁶⁷

⁶¹ CONSTITUTION, Article 2 Section 16(c)

⁶² *Id.* Article 21 Section 7

⁶³ *Id.* Article 21 Section 10

⁶⁴ His Majesty the King appointed the first Chief Justice of Bhutan in 1985. The Chief Justice presides over all the cases as *primus inter pares* (First among equals). The power to appoint and transfer judges of Dzongkhag and Dungkhag courts are vested in the Chief Justice of Bhutan upon the assent of His Majesty the King.

⁶⁵ The Judicial Service Act of Bhutan of 2007, Section 64

⁶⁶ *Id.* Section 65

⁶⁷ *Id.* Section 70(a) & (b)

The Justices of the High Court

The High Court comprises of a Chief Justice and eight other justices.⁶⁸ The justices of the High Court are appointed from among the judges of the Dzongkhag or from among eminent jurists by His Majesty, by warrant under His hand and seal, on the recommendation of the National Judicial Commission.⁶⁹

The term of office for the Chief Justice and the justices of the High Court is ten years or until attaining the age of sixty years, whichever is earlier.⁷⁰

The Judges of the Dzongkhag Court

A Dzongkhag court comprises of one judge or more depending upon the number of Benches. The judges of the Dzongkhag courts are appointed by His Majesty by warrant under His hand and seal on the recommendation of the Chief Justice of Bhutan as per the nomination by the Royal Judicial Service Council from among persons having Bachelors of Law degree and Post Graduate Diploma in National Law who have served as a judge of a Dungkhag Court or as Drangpon Rabjam.⁷¹

The Judges of the Dungkhag Court

A Dungkhag court comprises of one judge or more depending upon the number of Benches. The judges of the Dungkhag courts are appointed by the Chief Justice of Bhutan from among the person having Bachelors of law degree and Post Graduate Diploma in National Law, provided that the person has served as a Registrar of a Court for four or more years in succession or seven or more years as an advocate in succession.⁷²

⁶⁸ CONSTITUTION, Article 21 Section 14

⁶⁹The Judicial Service Act of Bhutan of 2007, Section 66 & 67 His Majesty the Druk Gyalpo Jigme Singye Wangchuck promulgated Kadyon (Royal Edict) Nga in 1976, which delegated the appointment of the Judges to the High Court.

⁷⁰*Id.* Section 71

⁷¹*Id.* Section 73

⁷²*Id.* Section 74

CHAPTER VI

JUDICIAL PROCESS

Trial System

The Bhutanese legal system is based on the adversarial principle of procedure with some elements of the inquisitorial system. The courts take no sides and judges act as an umpire to the case.⁷³ The judges allow uninterrupted hearing to the litigants or their *jabmis*. The parties are given opportunity to make presentation to the Court and answer questions asked by the judges. The plaintiff and the defendant or their *jabmis* can submit evidence to substantiate their legal contentions. The *onus probandi* or the burden to prove beyond reasonable doubt⁷⁴ lies upon the prosecutor in a criminal case. In civil cases, the plaintiff has to prove his case by a fair preponderance⁷⁵ of the credible evidence. The adversarial principle of our legal system is well enshrined in the *Bardo Thoedrel* (The judgment of the Dead - *Garun Puran*).⁷⁶

⁷³ Lord Buddha said “Deliberate well and lean not to either side.”

⁷⁴ Civil and Criminal Procedure Code of 2001, Section 96.2

⁷⁵ *Id.* Section 96.1

⁷⁶ *Bardo Thoedrel* is the fourteen century text discovered by Karma Lingpa (1327-1387). He was a great tertön (treasure discover) who revealed the treasure texts including Bardo Thoedrol. The drama form of Bardo Thoedrel is still performed in Bhutan on the third day of the *Tshechu* every year all over the country. The trial performance begins with production of the accused (a dead person by name of *Nyalbum*) before the King of Purgatory, whereby the principle of habeas corpus is upheld. The fair and public trial is demonstrated by the fact that the accused is heard in presence of all the *Shingye Lakhen*. The proceeding is presided over by the Lord of Purgatory. The accused is represented by his defence counsel *Lha Karpo* and the prosecutor represented by *Dre Nagchung* invoking the right to legal counsel. In this particular proceeding, the accused is alleged of the commission of various offences (sins) such as offence against person, property, cultural heritage, wild life, environment, fraud and defamation etc. The Lord of Purgatory grants the opportunity to plead innocence or guilt. Consequently, the accused pleads guilty invoking the doctrine of necessity and extenuating circumstances. He also pleads that although he was made aware of the commission of sins being bad, he was never aware of the consequences of such action after death. The defence counsel submits that the accused is ignorant. He has committed the sins in dullness of mind and not having the knowledge of consequences. He pleads that the punishment may be mitigated under the mitigating circumstances of necessity and compassion. However, *in contra* the prosecutor (*Dre Nagchung*) invokes the doctrine of *actus reus* and *mens rea* and submits that the accused is guilty of mass destruction of wild life and environment. He submits that the accused has used slanderous words, injured and killed many innocent animals, assaulted the poor and innocent people, has condemned the saints and their religion, burnt down the shrines and temples, polluted the ocean and injured marine life. Moreover, *Dre Nagchung* submits that the accused has tormented his parents and demolished many stupas and monasteries. The presentation of facts and evidences by the *Shingye lakhen* guarantees the right of the accused not to be condemned unheard or without proof beyond reasonable doubts. The prosecutor submit his evidences proving the accused as a ruthless sinner of the evil acts during his life time as the Red-Handed Murderer, *Nyalbum* the sinner, the Black Low Caste Murderer, and the Black killer. The King of Purgatory after having heard the submission of the parties and based on the facts and issues submitted before him by the parties render the judgment. Therefore, the Bhutanese trial system has all the elements of fair trial incorporating the principle of natural justice, the right of *habeas corpus*, right to be represented by a legal counsel, uninterrupted hearing, informed charges, right to defence, production of evidences and witnesses and the delivery of a reasoned decision (*ratio decidendi*).

Due Process

The stages of the judicial process encompasses registration of a complaint in the Registry => Production before Judge => Show Cause => Miscellaneous Hearing => Preliminary Hearing => Opening Statement => Defence Reply => Rebuttals => Evidence => Witnesses=> Independent testimony => Exhibit => Cross Examinations =>Judicial Investigation => Closing Statement => Judgment. This process ensures discipline in arguments, exhaustiveness of hearing, time of reflection, documentary records and serves as a self-check list. This system eliminates repetitive arguments, psychological intimidation and delaying tactics. It has both static and dynamic impact of information. The exhaustive stages of hearing are essential but cases may be stopped at any stage on a motion for a summary judgment,⁷⁷ out of court settlement (negotiated settlement)⁷⁸ and withdrawal of cases.⁷⁹ The process is in pursuit of the truth and facts, which strengthen due process, fair trial and the rule of law.

Registry

The Registry of the court is the first contact point. It is headed by a Registrar who is accountable and responsible to enhance access to justice and render judicial services arising out of miscellaneous matter. Any complaint can be filed in the Registry of the Court.⁸⁰ The complaints are registered in the miscellaneous register in the order of precedence between 9:30 AM to 10:30 AM.

The introduction of the Registry of the Court was one of the major reforms in the Judiciary.⁸¹ This introduction of the registry division helped both the litigants and the staff of the Court. The litigants did not have to wait for long time before their petitions were registered. On the other hand, it became very convenient for the court staff to streamline and prepare the hearing calendar and accordingly issue summons orders.

⁷⁷Civil and Criminal Procedure Code of 2001, Section 151

⁷⁸*Id.* Section 150

⁷⁹*Id.* Section 153

⁸⁰The practice of sending case documents to the Court through posts by various Ministry and Department was done away after the enactment of Civil and Criminal Procedure Code in 2001.

⁸¹ The registry of a court was established in 1994 vide Order No. SC (ADM-8)-94/5284 dated 24th June 1994. The nomenclature for Registry was renamed from Thokay to *Tsoe Zin* during the 14th National Judicial Conference in 1998.

A person filing a case before the Court must do so in writing and it has to be filed with the registry of the Court.⁸² The petition must be properly signed and a legal stamp affixed.⁸³ It may be submitted to the Court by the petitioner in person, by a *jabmi*, by an adult member of the household, by a representative of the State, a prosecutor, a victim or a victim's next-of-kin or an aggrieved person.⁸⁴ Any complaint in the petition has to be in good faith and not for harassment or personnel vindictiveness.⁸⁵ A petitioner must have "legal standing" and the petition must involve a concrete case or controversy.⁸⁶

Effective Hearing and Trial System

The Judiciary initiated procedural reforms to provide for an effective hearing and trial system corresponding to the contemporary values and emerging needs of the society. In criminal cases the procedural reforms advocated prompt and professional investigation, fair trial and dispensation of the criminal cases expeditiously (fast-track). The cross examination of witnesses, open trial, plea bargaining and the reasoned judgments were designed to protect the rights of accused, as well as that of the victims ensuring impartiality and effectiveness of the legal procedural system. Similarly, in civil cases, systematic and exhaustive hearing processes are initiated under the judicial process. It encourages and inculcates judicial temperament of all judges and staff to be organized and disciplined with trust and diligence in the application of the laws.

Miscellaneous Hearing

The Court conducts miscellaneous hearing⁸⁷ expeditiously after a case has been registered with the Registry of the Court.⁸⁸ During the miscellaneous hearing, a complainant can make submission either in writing or orally. The Bench hears the miscellaneous matters before the case is actually registered for legal adjudication.

⁸²Civil and Criminal Procedure Code of 2001, Section 31

⁸³*Id.* Section 132.2

⁸⁴*Id.* Section 31.1

⁸⁵*Id.* Section 116.1(b)

⁸⁶*Id.* Section 31.2

⁸⁷The Miscellaneous Register was introduced from 3rd January 1995. Hearing of the miscellaneous matters before the registration of the case in the High Court was done by the Chief Justice of Bhutan from 23rd March 1993 but it was assigned to the Benches on 20th June 2006 vide Circular No. HC(Ka-45)2005/6469.

⁸⁸Civil and Criminal Procedure Code of 2001, Section 32

The Court during miscellaneous hearing makes initial determination whether sufficient legal cause exists to admit the case for proceeding according to the law. If no factual grounds exist for the contention, the petition may be dismissed with written reasons for such dismissal. If the complaints are admitted they are assigned to the Bench.

After the miscellaneous hearing, the Court conducts preliminary hearing followed by other stages of hearings. The purpose of preliminary hearing is to enable the Court to entertain challenges to pleadings based on cause, procedure and jurisdiction, and also to clarify substantive or procedural legal issues.⁸⁹

Court Fees

The Court fee at the Supreme Court and High Court is Nu. 100/- and at the Dzongkhag and Dungkhag Courts is Nu. 50/- for each party.

Hearing Procedure

Hearing⁹⁰ is conducted strictly in accordance with the Civil and Criminal Procedure Code.⁹¹ Each bench clerk maintains a Bench book.⁹² The Civil and Criminal Procedure Code enumerates the hearing process for a case to proceed in a chronological manner.⁹³ Hearing procedure is a series of logical steps that requires chronological sequence and its implementation translates into results and actions. A logical and systematic hearing stage ensures efficient, exhaustive and systemic pursuit of the truth and facts.

Hearing Calendar

The Court has adopted the practice of preparing hearing calendar.⁹⁴ In accordance with the hearing calendar, a maximum of five hearing is scheduled in a day. Consequently, the judges and

⁸⁹ Civil and Criminal Procedure Code of 2001, Section 81.1

⁹⁰ The nomenclature of *Nyen syen* in Dzongkha was introduced vide (7)91/2486 dated 12 December 1991.

⁹¹ Refer Kuensel issue of 12th January 2002.

⁹² The Bench book enumerates the order as to how the hearing should proceed. The first Bench book was circulated vide order No. HC(ADM-8)91/2747 dated 11th June 1991. It was revised in 1997 by a circular in pursuant to the Royal Command was issued regarding the roles and responsibilities of the High Court and its functions including the due process, organization and method, and powers. It also mentions the duties and responsibilities of the Chief Justice and other judicial staff.

⁹³ Civil and Criminal Procedure Code of 2001, Section 72

⁹⁴ *Id.* Section 79 it was developed after the Eleventh National Judicial Conference convened from 4th to 8th November 1991.

the bench clerks are not overburdened with too many cases in a day and at the same time ensure proper time management.

Individual hearing calendar ensures the accountability of the judge and the concerned bench clerk to the public. Daily hearing calendar can be downloaded from the computer.

Argument Transcription & Legal Brief

When the Court admits a case, the parties or representatives can submit depositions. A deposition includes a written statement of the facts of the case and a prayer to be granted in favour of the party by the Court.

Court Orders

The Court issues a number of orders in the form of direction, writs, injunction and compliance as per the Civil and Criminal Procedure Code.⁹⁵

The Court also issues summon order to the litigants to appear before the Court on a specific date. Failing to honour the summon order may entail the dismissal of a case, passing of a default judgment⁹⁶ or be liable for contempt.⁹⁷

Judgment

The judgment⁹⁸ rendered by a Court is divided into various parts, which endeavours to make the judicial process cost and time effective to cater to the needs of the consumers of justice. A judgment encompasses the detailed information of the parties, background of the case, detailed charges in the criminal cases, date and number of hearings conducted, court findings⁹⁹ including evidences and detail arguments of the parties, summary of the court findings, *ratio decidendi* and the court order. In Lord Denning's words, "By so doing, the reader was able to go at once to the heading in which he was interested and then to the passage material to him."

⁹⁵ Civil and Criminal Procedure Code of 2001, Chapter 6

⁹⁶ *Id.* Section 152

⁹⁷ *Id.* Section 102.1(b) and Penal Code of 2004, Section 367

⁹⁸ *Id.* Section 96.3 - The judgment should be in conformity with "*Yig kur Namzhag*." It should be in writing, be reasoned, dated, sealed, signed and placed in the Court record. Before January 2002, the parties had to affirm the acceptance of the judgment by signing on the judgment but however, the signing on the judgment by the parties was discontinued vide notification No. HC(Ka-33)2002/1329 dated 7th January 2002.

⁹⁹ It was introduced by Dasho K B Ghalay and Dasho Karma Sherpa (Justices of the High Court) in 1993.

In determination of any case, everyone is entitled to minimum guarantees in full equality¹⁰⁰ as listed in the index of the judgment. The objective of the index is to provide mechanical, logical and systematic submission of arguments and facts to avoid digression from the main issues. Further, the index eliminates harassment and delay. It also indicates the right to defense with a written defence or statements in writing, written testimonies, relevant documents, evidences, etc. The results of such system are the reduction of delay through timely submissions of facts and documents, non-deviation with irrelevant issues and acrimony against non-admission and non-cognizance of issues by the court.

Appeal

Miscarriage of justice is a broad term and may result from many factors such as misinterpretation of law, bribery, biasness and partiality, etc. It is for this purpose that the appeal system is established and incorporated as fundamental constitutional right.¹⁰¹ The system of appeal to the higher court from the decisions of a subordinate court in any legal system is a method by which the system checks injustice, ensuring that justice is accorded to the aggrieved party in accordance with the provisions of the laws. It is also a means to ensure that justice is not to conceal human errors nor to be trampled by the powerful, so as to uphold the law and justice for all.

¹⁰⁰ The Law is equal for all beings. For low or middle or high the law cares nothing. So I must make my thought like the Law. The Law has no regard for the pleasant. Impartial is the Law...The Law does not seek refuge. The refuge of all the world is the Law...The Law has no preferences. Without preference is the Law. So I must make my thought like the Law.” *Dharmasangiti Sutra*.

¹⁰¹ The noble objective of appeal system for justice must be exalted and misuse of such process should be deplored. At the time of appeal, the court in order to avoid unnecessary appeal and undue delays has to consider the following:-

- (a) *Personal grievances*:- In some instances, the parties file appeal on frivolous ground or to misuse the appeal process to settle personal scores by delaying cases and exhausting the resources of the other party. The appeal process should not be allowed to be misused to unduly harass the other party.
- (b) *Ego*:- In some sections of the society, mere reputation of who wins or who loses the legal battle is more important than the beneficial outcome to the parties. Therefore, an appeal should not be allowed to be used as a device to augment ones ego.
- (c) *Buying time*:- In many cases, it is not uncommon to witness that the losing party is buying time to delay payment to the winning party. This also includes deliberate attempt to deprive the other party of the benefits of an early settlement or handing over or disposal of a common property. For instance, in many matrimonial cases, the wife has to wait for a fairly long time before she can get what is entitled to her although, there is no reason at all for going on appeal.
- (d) *Hoping to influence a judge in the higher court to alter the judgment of the subordinate court*:- As human being, judges are not free of human bias and may tend to alter the outcome of a case through every possible means without necessarily infringing the law. This could be through a different interpretation of the law, by undermining an ambiguity or conflict in the law to the advantage of the favoring party, by a reduction of fines, sentence, compensation, etc. Therefore, any indication from a higher court will result in an instant appeal by the aggrieved party.

In Bhutan, after a competent Court has awarded the judgment, the parties have ten days time during which they may appeal to the next higher court.¹⁰² If, for any reason, the appeal could not be filed within the limitation period provided under the law, an application of delay must be filed, setting forth the facts on which the appellant relies to satisfy the court that he had sufficient cause for not preferring the appeal within such period. If the reasons detailed out for condoning the delay fails to satisfy the court, the appeal petition is dismissed as time barred.

CHAPTER VII

PUBLIC SERVICE

Public Notary Office and Additional Benches

Public service is the duty of the Judiciary. The Constitution mandates the Judiciary to "safeguard, uphold, and administer Justice fairly and independently without fear, favour or undue delay in accordance with the rule of law to inspire trust and confidence and to enhance access to Justice."¹⁰³ Therefore, in order to render effective public service, the Judiciary has established a Public Notary Office in Thimphu to specifically deal with and expedite the process of registration of property transactions and issuance of certificates and notaries.¹⁰⁴ Similarly, taking cognizance of expeditious dispensation of justice, additional Benches were also established.¹⁰⁵

¹⁰²Civil and Criminal Procedure Code of 2001, Section 109.1(c)

¹⁰³ CONSTITUTION, Article 21 Section 1

¹⁰⁴See Kuensel dated 22nd August 2007.

OFFICE OF THE NOTARY PUBLIC - In obedience to the Royal Command of 1997, the Judiciary endeavours to render prompt delivery of service. It is an relentless effort to provide services expeditiously, fairly and inexpensively to the people.

The Office of Notary Public was established on the 20th of August 2007 vide order no. HC(KA-39)-2997/450 of the Hon'ble Chief Justice of Bhutan as a specialized division for notary related matters. The Office is construed as an equivalent to a Bench in the Thimphu Dzongkhag Court. The Office looks into non contentious matters, which leads to an automatic reduction of pressure on the docket, affording the Courts more time to deal with the cases under adjudication.

The signature and official seal renders the documents processed by the Office acceptable, as proof of the matter attested by the Notary, to the judicial or other public authorities. With increased contact and dealing with the outside world, and as Bhutan moves towards becoming a part of the globalized world, people often require notarial services. The office acts as an impartial and official witness with legal expertise to authenticate and certify the execution of documents required or intended for use within and outside the country. Unlike Notary offices in other part of the world, the Office of the Notary Public in Thimphu is managed by a senior Registrar of the Judiciary, a legal professional with a minimum of five years legal and judicial experience.

FUNCTIONS

1. Verify and legalize facts presented before the court based on documentary evidence and physical inspection.
2. Determine the party to an agreement is the party they claim to be - the Office identifies the signatories.
3. Obtain acknowledgment of the party to an agreement that they have signed the agreement and that they are aware of its contents - the Office corroborates the signatories willing consent.
4. Apply and affix a distinguishing mark or seal to ensure that the original agreement cannot be altered.
5. Ensure that the particular document contains the particular agreement intended to be in full force and effect - the Office establishes document authenticity.
6. Execute documents for abroad that requires a notary stamp or endorsement.
7. Take deposition and declaration upon administering oath or affirmation.
8. Attest, validate, authenticate and certify deeds and other documents.

The different types of certification are as follows:

- Confirming marriage;
- No objection for purposes of marriage certificate;
- Marriage certificate translation;
- Declaration of the rightful claimant or legal heir of the deceased especially in monetary cases;
- Verification as the true parents;
- Adoption certificate;
- Certifying lost documents;
- Attesting true copies of documents;
- Verification of people having double names;
- Verification of change of names;
- Donor/ Patient and Dependent's Affidavit for the medical purposes(transplant);
- Affidavit of the contestants;
- Confirming single status of a person;
- Agreement verification;
- Authorization to travel for a minor;
- Verification of legal guardianship;
- Relocation certificate;
- Relationship certificate;
- Mortgage jointly owned properties;
- Verification of signature;
- Certification of successor;
- Authorization of share transfer;
- Verification of identity card;
- Verification of personal details;
- Authorization for welfare loan; and
- Any other matters not enumerated above related to the Notary.

By virtue of the importance of the Office, the signature and seal of the Office is recognized as evidence of a responsible legal officer in most countries of the world. Notarial acts require a high standard of care, as reliance on such acts is made by clients, third parties and foreign governments and officials. The Office has a responsibility to protect against error, omission, alterations, fraud, and forgery. Notarial acts are not a rubber stamping exercise, the requirements of accuracy and validity cannot be overridden by urgency or expense. Unless otherwise agreed in writing, notarial responsibility is limited to the notarial formalities and does not extend to providing advice on or drafting of documents or on the matter under consideration.

¹⁰⁵Three benches in the High Court were established in the year 1983. Similarly, five benches in the Thimphu Court were established in the year 1985, two benches in Phuentsholing in 2005 and two benches in Paro in 2007.

Legal Aid

In the interest of justice, the indigent accused is guaranteed with legal aid from the State.¹⁰⁶ The Advocate's Act also provides for legal aid to an indigent person (*Pro Bono*) in prescribed manner.

Public education and Legal Empowerment

Legal empowerment encompasses access to justice, knowledge and information of basic legal matter, information on procedure to hold public office accountable and to participate in the governance processes. For legal empowerment and to make every Bhutanese responsible and be informed of the legal provisions, the Judiciary in 2001 initiated a nationwide briefing on the rule of law and the judicial process with special focus on the Civil and Criminal Procedure Code.¹⁰⁷ Further, to make the individual accountable and responsive, many seminars and workshops on legal subjects for the judicial and police officials, bench clerks, and legal representatives of various government agencies and financial institutions were conducted. Legal education facilitates self development and liberation. Under the theme "Know the Law - To Protect Your Rights," the Royal Court of Justice in early August 2005, initiated dissemination of legal information including the Penal Code of Bhutan to all the Dzongkhag Yargye Tshogdu and Gewog Yargye Tshogchung members, school children and the youths of Bhutan. Moreover, every Tuesday and Wednesday, the Research Division of the High Court airs radio programme disseminating important laws and legal issues. It is intended to empower every citizen of Bhutan with information on the judicial processes, their rights and duties and the rule of law, making them responsible and informed citizens. The Judiciary conducted workshops in every Dzongkhag¹⁰⁸ for the community leaders in 2002.¹⁰⁹ Also, many lawyers were sent on deputation to different Ministries and Departments as legal officers.

The Judiciary is making every effort to render justice in a fair, accountable and transparent manner without fear, favour or prejudice. Every person should get what is due in accordance

¹⁰⁶Civil and Criminal Procedure Code of 2001, Section 34

¹⁰⁷More than 1500 community leaders including the Dzongkhag Yargye Tshogdu and Gewog Yargye Tshogchung members and the sector heads of twenty Dzongkhags were briefed on the rule of law and the judicial process.

¹⁰⁸ *Dzongkhag* refers to district. There are twenty dzongkhags or districts in Bhutan.

¹⁰⁹See Kuensel "*Legal awareness for those at the grassroots*" dated 12th August 2002.

with the law. Let the aggrieved be empowered to seek their rights and perpetrators be perturbed for their misdeeds.¹¹⁰

Legal Firm

Legal firms were established in 2000¹¹¹ for the interest and benefit of public. All legal firms are authorized to sell the approved legal forms, assist in writing petition, legal briefs, etc.

Public Interest

In the interest of justice and for the benefit of the public and in obedience to the command of His Majesty the Druk Gyalpo, the Judiciary waived off the 5 % tax deduction on the land transaction, 10% tax deduction on the recovery of the loans and 10% on the payment in matrimonial cases.¹¹²

CHAPTER VIII REFORMS AND OTHER ACTIVITIES

Judicial Reforms

The judicial reforms in Bhutan were initiated in 1991 aimed at developing a dynamic approach in Judicial Administration to ensure uninterrupted and effective functioning of the courts.¹¹³ The reforms include institutional¹¹⁴ and structural developments, enhancement of professionalism and human resources, introduction of user-friendly technologies making the judicial process efficient and courts accessible to all. The judicial reforms must be meaningful and need to serve the public interest.

The judicial reforms in Bhutan addressed various challenges from internationalization, political and economic transformation and new technologies in this modern era, ensuring the effective management and delivery of justice. The Bhutanese legal system must promote simplified

¹¹⁰ Quote from *Mipham*

¹¹¹ Refer directions No. HC(ADM)-15(2000/594 dated 29th August 2000 and HC(Ka-33) 2002/2150 dated 13th May 2002.

¹¹² Royal edict dated 1998 *in re* the changes of the survey and exemption of tax deduction during the land transaction. Also refer order no. HC(KA-33) 402 dated 30.8.2002.

¹¹³ Refer Chief Justice Directives issued on 12th December 1991.

¹¹⁴ Institution must inculcate, trust and confidence, balanced view, formal and informal contact and reduce interference.

procedure that is less time consuming and develop positive habit to set standards for faster, better and easier delivery of justice.

The reform endeavours to enhance the confidence of the people in the justice delivery system. The complex rules, unnecessary and prolonged arguments were avoided. The procedures for filing complaints or petitions were simplified.¹¹⁵ Further, the process of negotiations, mediation and other forms of alternative dispute resolution were encouraged.¹¹⁶

Access to Justice

Access to justice is vital in redressing the grievances of victims of illegal acts such as fraud, theft, sexual or economic exploitation, violence, torture or murder. Justice systems can provide remedies, which will minimize or redress the impact or the misfortune. Fair and effective justice system eliminates and deters people from committing further injustice or from taking justice into their own hands through illegal or violent means with impunity. Through unhindered access, victims would be comforted and the offenders be made accountable. The Judiciary has made progress in refining a just and efficient legal system, enhancing greater transparency and strengthening the rule of law, while keeping the cost of litigation inexpensive. These reforms have addressed the complaints that litigants had to wait for a long time before their complaints were registered in the court and avoided the allegation that the court officials were indifferent, hostile or arrogant.

Procedural Reforms

In order to make justice accessible, prevent undue delays, ensure efficient and effective delivery of justice and to make the courts user friendly, the Judiciary has introduced many procedural reforms. With the enactment of Civil and Criminal Procedure Code, 2001 the following procedural reforms were made:

- The miscellaneous hearing calendar was further modified;
- The registration procedure and hearing process were simplified and made systematic;

¹¹⁵Gilbreth mentions about obsession for doing a task in a simplified manner and eliminating all wasteful effort. See, Parkinson, *Supra*, n.14.

¹¹⁶ Civil and Criminal Procedure Code of 2001, Section 150

- The adjudication process through the introduction of various management principles were adopted;
- The legal language and Bhutanese terminology were improved;
- Professionalism strengthened and reduced time consumption with the introduction of Seventy-Six judicial forms;¹¹⁷
- Elimination of wasteful effort through single entry;
- Unproductive and unnecessary efforts were avoided;
- Rendering of summary and default judgments were introduced;¹¹⁸ and
- Inexpensive litigation with nominal court fees was initiated.

Judicial Performance

The judicial reforms and monitoring resulted in creating an inbuilt system of healthy competition in terms of both the quantity of trials conducted and the quality of decisions rendered thereof by every court in the Kingdom. Further, the introduction of yearly statistical report¹¹⁹ of cases created awareness and competition among courts and judges. It also advocated prompt and professional investigation, fair trial and dispensation of justice. As one of the Buddhist saint had said, "Satisfy both loser and the winner through impartial and due process," the judicial process has enhanced satisfaction.

Remedial Measure

If serious and common errors are observed, workshops and seminars are conducted for remedial measures. Many short term and long term remedial measures were initiated.

Institutional Reforms

His Majesty the Fourth Druk Gyalpo has introduced many institutional reforms which include, *inter alia*:

¹¹⁷ Forms were first circulated in 1991, and then on 10th March 1993, (an additional of 33 forms) and subsequently on 5th April 1993.

¹¹⁸ Civil and Criminal Procedure Code of 2001, Section 151 provides that the summary judgment is rendered when the matters are not disputed or when there is no real legal or factual dispute.

¹¹⁹ Refer Kuensel issue of 6th February 1993.

- Introduction of the Annual National Judicial Conference in 1976;¹²⁰
- Appointment of efficient and professional Drangpons;
- Abolition of the post of Thrim-tsap (acting Drangpon);
- Decentralization of financial and administrative powers from the High Court to the lower Courts;
- Establishment of Dungkhag Courts;
- Introduction of a series of workshops, seminars and other trainings;
- Introduction of National Legal Course;
- Establishment of a separate judicial cadre in 1990;
- Establishment of the Royal Judicial Service Council and National Judicial Commission in 2003 under a Royal Decree; and
- Establishment of the Office of the Attorney General.

Legislative Reforms

Under the Royal Command of His Majesty the Druk Gyalpo, the Judiciary initiated and drafted various laws including the Civil and Criminal Procedure Code, Evidence Act, the Judicial Service Act, the Jabmi Act, the Religious Organizations Act and the Civil Society Organizations Act.

Penal Reforms

In obedience to the Royal Command of His Majesty the Druk Gyalpo in 1995, the High Court started drafting the Penal Code of Bhutan, which was enacted by the National Assembly in the year 2004. The Penal Code is the consolidation of provisions from the existing laws dealing with criminal offences and addition of new offences in keeping with the changing time and need. It is intended to reinstate dignity¹²¹ to the victims of crime and increase the possibilities for rehabilitation of offenders. The content of the Code reflects both the descriptive and normative functions. On 20th March 2004, His Majesty the Druk Gyalpo by a Royal Decree abolished capital punishment.

¹²⁰ Kuensel issue November 21, 1976.

¹²¹ Prohibition of restraint through the Royal edict dated 17th December 1992.

Further, under the penal reforms, His Majesty the Druk Gyalpo commanded the establishment of the Youth Development and Rehabilitation Centre for juveniles on 26th March 1997. The centre provides assistance and support programmes, particularly with regard to nutrition, clothing and housing and skill development. It aims at reinstating the child back into the society as a reformed and responsible citizen.

The Rights of Women and Children

The Judiciary has been steadily and progressively active in recognizing and protecting the interest of women and children in Bhutan. The Judiciary under the Royal Command tabled the amendment to certain provisions of the Marriage Act to empower women to enforce their rights by seeking conviction and compensation.¹²²

Judiciary and Legal Text

The laws are first drafted in Dzongkha or in English and then translated accordingly. Therefore, recognizing the significance of legal translation to express concise idea and convey precise meaning, the Judiciary has been playing an active role in the translation of various laws. While translating, the Judiciary takes cognizance of every word,¹²³ sentence, phrase and grammar keeping the legal language simple and understandable.¹²⁴

***Jabmi* (legal counsel)**

Recognizing the importance of the assistance of a *jabmi* or legal counsel to protect and establish rights in all stages of proceedings, the Civil and Criminal Procedure Code permits a person to be represented by a Bhutanese *jabmi* of his or her choosing. Therefore, in the year 1996, His Majesty commanded the High Court to formally train the *jabmis*,¹²⁵ which have always been included, along with *barmi* and *ngotsap* in the traditional right to legal counsel. The right to legal counsel was further strengthened with the enactment of Jabmi Act of 2003.

¹²² The Royal edict of 1992 raised the compensation for women.

¹²³ The Judiciary made changes in the usage of words and phrases such as: from Court to Royal Court of Justice in 1984, Thrimkhang to Thrim gi Duensa (Ka-5)94 dated 30th September 1994, Drangthrim as justice during the thirteenth Judicial Conference in 1995, Thrimpon to Drangpon vide HC(Ka-33)2002/1329 dated 7th January 2002. In addition, administrative term of clerks were changed to Bench Clerk, (*Tsoe Drung*) vide (Ka-33)-93/403 dated 15th July 1993, Zhug Thri to Thrim Thri during the fourteenth Judicial Conference in 1998, etc.

¹²⁴ Refer Judiciary and Legal Translation (www.judiciary.gov.bt).

¹²⁵ About 160 *jabmis* were trained. The *jabmis*, along with *barmi* and *ngotsap* had always been included and formed part of the traditional right to legal counsel.

CHAPTER IX

INFORMATION TECHNOLOGY

Harnessing Technology

Information and Communication Technology (ICT) was introduced in the Judiciary in 1991.¹²⁶ All the courts are computerized.¹²⁷ The technology helped the Judiciary to thrive on flexible choice to keep the options open and improve quality. Technology, specifically the computers has helped in adjudicating and dispensing the cases faster, easier and better. His Majesty the King said "Information Technology should be applied in the Judiciary to facilitate the communication between the court system and further the cause of fairness and due process of law."¹²⁸

Information Technology & Case Information System

The Judiciary is maximizing the use of information technology¹²⁹ to expedite the drafting of judgments and furthering the objectives of justice. The computerization of the courts has enabled procedural and managerial reforms in the Judiciary. The Judiciary developed the Case Information System keeping the following objectives in mind:

- To facilitate retrieval of precedents for enhancing a uniform sentencing system through computerization of case data;
- Expediting the drafting of the judgments and furthering the objectives of justice through computerization of qualitative and quantitative information for analysis; and
- To study the trend of the cases in the various courts with the submission of Case Statistic Report to the Chief Justice by the respective courts on a monthly basis.

¹²⁶ The Judiciary conducted workshop on "Efficient Judicial Process and Information Technology."

¹²⁷ Refer the article on "Courts computerized" in Kuensel dated 4th April 1998.

¹²⁸ The Fifteenth Judicial Conference in 2000.

¹²⁹ Case Information System was started in 1991. The High Court designed and developed Case Information System, Case Management System, Judgment Information System, Personnel Information System, etc. Case Information System generates reports of total number of cases registered, decided, pending, types, nature, stages of hearing, decided within 108 days, decided within 365 days, count by gender, count by clients, etc. Judgment Information System has pdf format with all the judgments rendered by all the Courts in Bhutan in the Web Server. The Library of the High Court maintains the printed form of the information of all the cases in the whole country.

The use of ICT must continue to help and guide the Judiciary by maximizing the use of data storage and retrieval system, statistical and quantitative methodology for comprehensive analysis, and qualitative results through comparative reports and case monitoring.

CHAPTER X

HUMAN RESOURCE DEVELOPMENT

Legal Professionalism

Many candidates were sent abroad to study law since 1991.¹³⁰ Further, as a part of continuing legal education, law graduates are being sent abroad for LL.M. Isolation insulates sharing of knowledge and stifles contact with other legal professions. Judiciary enhances professionalism through:

- (a) Human resource development, pre-service, in-service and continuing legal education;
- (b) Recruiting and training of the bench clerks¹³¹ in relevant subjects; and
- (c) Establishment of a judicial institute with normative function.

Legal Education

Under the Royal Command, the National Legal Course¹³² was started for pre-service and in-service training¹³³ of the Judicial Service Personnel so as to meet the human resource requirements of the Judiciary. The course ensures pre-service and continuing legal education with special emphasis on ethics, morality and traditional values. This training includes courses in Bhutanese laws as well as Buddhist literature such as Ngag-doen¹³⁴ (Terminology), Sumtag¹³⁵ (Grammar),

¹³⁰ Justice Kuenlay Tshering and Judge Damchho were the first batch to study law at the Government Law College Bombay. Refer HC(CJ-2)91 dated 5th June 1991.

¹³¹ Kuensel dated 11th March 1997 reported "A two year administrative assistant course for bench clerks of the judiciary system was declared open by the Chief Justice... at the Royal Institute of Management in Semtokha, on March 11."

¹³² Kuensel dated 26th November 1994 reported that "The High Court is introducing an 18 months legal course, which involves studies in the fields of Bhutanese and International Law and Dzongkha from February 6."

¹³³ The first in-vice training was conducted in Toby

¹³⁴ Pelgang Chhhoetse Lotsawa, a Buddhist scholar of 16th century learned in the ten sciences, wrote Ngag-doen around 1530s. This book falls under the Five Higher Sciences and deals with the science of words and sounds. "Ngag-doen" enumerates the different words and their spellings that go with the alphabets of Dzongkha. Besides, this subject also deals with the study of the meaning, spelling and the usage of important words that are used in the Ten Sciences and the religious and secular philosophy.

¹³⁵ King Srongtsen Gampo, 627-649, a spiritual and temporal head of Tibet, during his reign wanted to establish Buddhism as the state religion. But to do so it was essential to invent the scripts, for which he sent his own scholar-minister Sambota to India to learn Buddhist literature. In India, Sambota met two famous Buddhist scholars viz. Lewe Kara and Lharigpy Singay, and mastered Kala, Pani and Chandra. Based on Kala, Pani and Chandra, and out

Choenjug¹³⁶ (A Guide to Boddhisattva's way of Life), Uma¹³⁷ (Madhyamaka), Dha Zhung¹³⁸ (Dzongkha Grammar), Tsema¹³⁹ (Science of debate) and others.

Post Graduate Diploma in National Law training is an inevitable necessity for those practicing law in Bhutan. The course is designed to provide the graduates with a thorough understanding of the general legal system of Bhutan. It is designed to present legal concepts and principles in the context of Bhutanese culture and society. The study of the subjects during the training has resulted in a dramatic improvement in the usage of Dzongkha¹⁴⁰ in the Courts.

Legal education has been institutionalized under the National Judicial Service Act, 2007 which mandates the establishment of the National Legal Institute to:

- (a) Assist in upgrading the quality and scope of training in the institution according to needs and demands;
- (b) Plan to further enrich induction training by introducing a foundation course containing certain nationally relevant subjects;
- (c) Conduct refresher course on a range of subjects which will have a set of core modules relating to management, E-governance, globalization etc., and another set of variable

of many alphabets (scripts) in Sanskrit in India, Sambota chose 30 alphabets to form script. Eight parts of speech, noun, pronoun, verbs, tenses, etc. were formed. Thus, Sumtag was composed. The successive scholars after Sambota translated Sanskrit text into Chhokey.

¹³⁶ The philosophy of Boddhisattva's way of life stresses and teaches people, how to develop the selfless Bodhisattva attitude in our mind, speech and action. The text had been composed and written in Nalanda University by the Great Indian scholar prince Shanta Deva. He was one of the six great gems of the world of scholars.

¹³⁷ Madhyamaka was first composed by Pelgoen Lhagpa Lhuedrup. It was one of the analyzed versions of Lord Buddha's Second Teaching. The epitome of madhyamaka philosophy is that confirmation of the fact that the phenomenal existence is neither an illusion nor reality; nor both but is beyond all these.

¹³⁸ The word "Da Zhung" literally means, "common medium of communication." The text seeks to lay down minimum standards for spoken and written Dzongkha so that the Dzongkha spoken and written in a region of the country will be exactly similar to the one spoken and written in another region.

¹³⁹ Tsema or Hitu-Vidya is one of the five classes of science. It is the science of syllogism, logic and philosophy. It is this science that gives people the wisdom of perfect meaning. Tsema is a critical or analytical science, which questions the validity or authenticity of statements or arguments by asking proof and reasons keeping prejudices and guesswork at bay. Hence, Tsema becomes a facilitating tool for judges and lawyers in scrutinizing and analyzing the substance of litigation. Throughout history, our ancestors had applied Tsema in dispelling ignorance and convincing the heretics and pagans. The three categories of Tsema are: "Lung Tsema" or the doctrinal proof which can not be debated and which is universally accepted law; "Ngoensuum Tsema" or the concrete and tangible proof, seen and felt by the senses; and "Jaypaag Tsema" or the deductive or the conclusive proof, for instance, from the smoke the presence of fire can be concluded. The study of Tsema will enable lawyers and Judges that 'falsehood does not triumph over truth, that injustice does not eclipse justice.' The knowledge of Tsema will also facilitate the fast disposal of cases and prompt judicial remedies thereby, fulfilling the profound age old dictum of "Justice for All."

¹⁴⁰ Dzongkha was adopted as the Court Language during the Eleventh National Judicial Conference as reflected in the Twelfth National Judicial Conference in 17th November 1993.

modules on different subjects focusing on upgradation of knowledge, skills, attitudes and accountability;

- (d) Endeavour to design and execute its programmes in a scientific and systematic manner with a view to maximize the scope of learning and to influence judicial behaviour for greater efficiency and productivity;
- (e) Enhance efficiency, access to justice, delay reduction strategies, enhanced accountability systems and appropriate legal development schemes;
- (f) Develop and deliver educational programs, in order to make them available to the Judiciary as widely as possible;
- (g) Keep the Judiciary informed about new legislations and other developments of particular interest to the Judiciary, and to develop programs like researches, study courses, conferences, seminars, lectures etc. to achieve the objectives; and
- (h) Provide continuing legal education.

As a vibrant judiciary is the basis of a flourishing country, the establishment of the Bhutan National Legal Institute would provide an opportunity to all the legal fraternity to develop their personality, which would enhance their performance and thereby improve the quality of dispensation of justice.

Continuing Legal Education

To improve the professional competence of the judges and judicial staff, continuing legal education is imparted through the division of Research and Development. This division is placed under the Judicial Reform Branch. The Judiciary has on-going judicial education for the judges and judicial staff both within and outside the country.

CHAPTER XI

IMPLEMENTATION OF REFORMS

Implementation of Policies and Reforms

The Judiciary used certain management principles¹⁴¹ to implement its policies and reforms. The policies were extensively discussed at various levels of the Judiciary to ensure cooperation and participation.¹⁴² Thereafter, the policies were referred to another group for strategic planning, implementation¹⁴³ and execution. The implementation of the policies and reforms in the Judiciary were carried out as follows:-

- (a) **Organizational Structure:-**¹⁴⁴ The organizational structure of the Judiciary was simplified and hierarchy of staff was eliminated. The professionally trained¹⁴⁵ bench clerks were made accountable and responsible¹⁴⁶ by directly reporting to the judge of the respective Court.
- (b) **Direction:-** The High Court has issued directions or orders to avoid delays and to render efficient and effective judicial services. The first measure was to assign the cases to individual bench clerks and make them responsible in processing the cases. A Bench Book¹⁴⁷ is maintained to guide the bench clerks. The bench clerks are responsible for their timeliness and quality for processing and drafting of the court findings.
- (c) **Division of Labour:-** Considering the division of labour in the case management, the daily hearing is divided into maximum of five hearings a day with approximately one hour for

¹⁴¹ Refer management principle *POSDCORB* by Col. L. Urwick. A short seminar on management was conducted in 1999 for the Justices of the High Court.

¹⁴² According to Elton Mayo (1880-1949), participation leads to the involvement of every person and success in the programme. See, Elton Mayo, "Participation and Involvement." in Parkinson, *Supra*, n.14.

¹⁴³ Peter mentioned that to start with, some basic questions such as what is our real business today and what it should be tomorrow will have to be thoroughly examined. This analysis demands thorough critical study, foresight and imagination. The next stage is to prepare a long term plan of strategic plan to achieve these objectives. It is also necessary to prepare more detailed plan for the next year with a specific target. See Peter Ducker, "Strategic and Tactical Plans and a Job Improvement Plan", in Parkinson, *Supra*, n.14.

¹⁴⁴ Col. L. Urwick mentioned that an organization should be like a well-designed machine in which every part i.e. a gear or a lever, has a specific function and fits appropriately in the machine. Organizations must be designed in the same scientific spirit and every person must be allotted a specific duty for which he is well-suited. See Col.L. Urwick, "Fitting people to Structure", in Parkinson, *Supra*, n.14.

¹⁴⁵ The High Court conducted two workshop and training of the judicial personnel on Judicial Process in 1991.

¹⁴⁶ According to Urwick, "at all levels authority and responsibility should be coterminous and coequal." *Supra*, n.130.

¹⁴⁷ Gilbreth postulated the view that all operations are interconnected and they should be done in a most systematic manner. See Frank Gilbreth, "System Management" in Parkinson, *Supra*, n.14.

every hearing and each hearing is assigned to a bench clerk.¹⁴⁸ With division of work, the volumes of the cases are reduced significantly.

- (d) **Job Description, Responsibilities and Assignments**¹⁴⁹:- Specific job description with individual job responsibilities and assignments for every judicial personnel are clearly specified to aid in enhancing the efficiency and effectiveness of the judicial system.
- (e) **Co-ordination**:-¹⁵⁰ Co-ordination at the macro and micro level had been established. The macro level co-ordination is carried out by the Chief Justice of Bhutan and at the micro level, a respective justice or judge of the Bench co-ordinates the case management through the Case Information System. The system of co-ordination¹⁵¹ improves and correct errors, avoids duplication and discovers new ideas¹⁵² through the shared knowledge and experiences.
- (f) **Reporting of Cases**: - Initially, the cases were reported monthly. However, the reporting has been made bi-annually and yearly.¹⁵³ Reporting creates awareness of the performance and helps in self-appraisal.¹⁵⁴ Annual reports are released through media and posted on the website. Statistics on judicial performance have reduced delay¹⁵⁵ even without enforcement mechanisms. It helped on clearance rates, time to disposition, foster accountability and creating competition. Simultaneously, statistical and quantitative methodology generated comprehensive analysis.¹⁵⁶ The reports were discussed with the concerned judges and bench clerks.

¹⁴⁸ It is a type of *Functional principle* as discussed by Henri Fayol (1841-1925). He said that an organization should be divided into various departments with department looking after specific functions such as accounting, production and marketing. This is the functional principle of organization. It facilitates identification of activities and promotes specialization. See Parkinson, *Supra*, n.14.

¹⁴⁹ It was introduced vide (7)91/2486 dated 12th December 1991.

¹⁵⁰ Henri Fayol (1841-1925) stressed the need for unity of command and control in organization. He said that Co-ordination across the organization should be affected by periodic meeting of departmental heads. See, Henri Fayol, “Command and Co-ordination”, in Parkinson, *Supra*, n.14.

¹⁵¹ Douglas mentioned that the normal pattern of management control may be described as follows: Performance standards are prescribed for all departments and sub-sections of departments. The staff measures performance against the prescribed standards and reports variances to higher management. In a refined system only exceptional variations, particularly cases of marked failures, may be reported to higher management. This is often called “management by exception”. See Col. Douglas McGregor (1906-1964), “System of control”, in Parkinson, *Supra*, n.14.

¹⁵² Ideas of strengthening the system are assessed, planned, implemented and evaluated to fulfill the objective.

¹⁵³ Presently, the reports are generated from the case information system.

¹⁵⁴ McGregor said that Self-development is the prime objective of every normal human being. He wants to explore his potentialities. An individual is often unaware of what he can do. When he is given an opportunity to do some important work and when he finds that he can do it competently, he is very happy. *Supra*, n. 139.

¹⁵⁵ Flanders said that “There is no virtue in delay”. See Allan Flanders, “Blue Book”, in Parkinson, *Supra*, n.14.

¹⁵⁶ Its aim is to follow the management principle of simplicity, clarity and brevity consistent with the requirement of accuracy to improve its performance.

- (g) **Monitoring and Inspection:-** The Judiciary conducted workshops in 1991 with all the judges and court officials to create awareness and participation. Thereafter, the Chief Justice and other justices of the High Court visited every court and inspected¹⁵⁷ the court records to monitor the implementation¹⁵⁸ of various resolutions made during the workshop. The report of the inspection was reviewed and analyzed during the 1992 workshops. Further, teams led by the Justices of the High Court inspected on the judicial process and use of the judicial forms in 2000. The subsequent inspections were conducted in 2003 and 2005. The cases that were delayed for more than 18 months were inspected.¹⁵⁹ For effective monitoring and inspection, a printed form is attached to every case file to record the date and the number of hearings conducted during legal proceedings. This information is loaded in the Case Information System (CIS) maintained with the IT section. The judicial process taken by every court are compared and cross checked with the stages of hearings generated from the report in the CIS at the High Court.
- (h) **Time Management:-** Time management was introduced by adopting hearing calendar and allocating specific hearing time to each litigant. The avoidable and unnecessary administrative procedures of approving, supervising, and management system etc. were reviewed and corrected. Manipulation and harassment through prolonged delay is eliminated with proper time management. Moreover, it gives right to a litigant to appeal, if the hearing schedule or timing is not carried out accordingly.
- (i) **Judicial Forms:-** To complement and supplement the quality and exhaustiveness of hearing, enhance transparency and accountability in the judicial mechanism, seventy-six judicial forms¹⁶⁰ were introduced with relevant instructions and sections of laws. This has resulted in a high degree of standardization in the form and content of documents. Forms

¹⁵⁷ Inspection by the Chief Justice in 1992 was to secure acceptance, compliance of the ideas and record keeping. In 1995, Registrar of the High Court inspected for compliance with the regulations. Justice Pasang Tobgye's field inspections in 2000 and 2005 were for implementing forms and stages of hearing. Refer Kuensel issue 2nd May 1992.

¹⁵⁸ According to Henri, a periodic management audit should also be undertaken in order to see how executives are developing, how they are taking initiative and exercising their judgment, and how far they are innovative. Further, Peter Drucker mentioned that innovation is the key to growth and development. It is a sure sign of the vitality of management. See Henri Fayol (1841-1925), "Management Audit", and Peter Drucker, in Parkinson, *Supra*, n.14.

¹⁵⁹The inspection report submitted on 20th July 2003 by Justice Pasang Tobgye reported that there were 1557 (including six cases of 1993) pending cases that were of more than 18 months. With constant monitoring and inspection, there were only 27 cases as of April 2007, which are pending for more than 18 months.

¹⁶⁰The forms are available on the judicial website (www.judiciary.gov.bt) and can be downloaded free of cost. According to Simon, programmed decisions, which are routine and repetitive, have Forms and Formats. Non-programmed decisions are non-repetitive. See Herbert Simon, "Classifications of Decisions", in Parkinson, *Supra*, n.14.

perform simple and repetitive tasks faster with greater accuracy at a lower cost than doing them manually. Standardization of forms avoids omissions of relevant facts and facilitates speedier case processing. It enhances transparency, accountability and provides faster, easier and better methods with inherent check list, avoiding omission, exhaustiveness, unnecessary issues and repetitive arguments. The Judiciary tries to make work more interesting and less tiring.¹⁶¹

- (j) **Quality of Justice:-** Quality of justice is being ensured through professional human resource development and intervention from the higher court through the reports of hearing stages in every case on appeal.¹⁶²
- (k) **Evaluation:-** Evaluation is conducted annually on the statistics of yearly cases, duration and timeliness of the cases (number of cases decided within 108 days and within 12 months and cases that took more than 12 months), stages of the hearings, quality of the judgments, denial of justice through dismissal of cases and coercion leading to withdrawal of cases.

CHAPTER XII

ADMINISTRATION OF THE JUDICIARY

The Registrar General

The Registrar General¹⁶³ is the overall head of the Administrative, Finance, Policy and Planning division of the Judiciary. He is supported by other administrative staff, and is responsible for the overall administrative work in the Supreme Court and the subordinate courts. He facilitates the appointment, transfer, supervision and Human Resource Development in the courts in the country. He is appointed by the Chief Justice of Bhutan for a period of three years. He serves at the pleasure of the Chief Justice and may only serve for one term.¹⁶⁴

In the Dzongkhags and the Dungkhags, the respective judges supported by other administrative and financial staff carry out the administration of the respective Court.

¹⁶¹Refer Ergonomics principle of scientific management by Taylor in Parkinson, *Supra*, n.14.

¹⁶² Frank Gilbreth mentioned that all operations are interconnected and they should be done in a most systematic manner. *Supra*, n.135.

¹⁶³ It was established vide order ADM(-8)94/5284 dated 24th June 1994 and No. CJ-6/031 dated 10th July 2000.

¹⁶⁴ Judicial Service Act of 2007, Sections 76 and 77

National Judicial Commission

In accordance with the Constitution, the Druk Gyalpo shall appoint members of the National Judicial Commission¹⁶⁵ by warrant under His hand and seal. The National Judicial Commission comprises of:

- (a) The Chief Justice of Bhutan as Chairperson;
- (b) The senior most Drangpon of the Supreme Court;
- (c) The Chairperson of the Legislative Committee of the National Assembly; and
- (d) The Attorney General.

The Royal Judicial Service Council

In accordance with the Judicial Service Act, 2007, the Chief Justice of Bhutan shall appoint members of the Council by warrant under his hand and seal.¹⁶⁶ The Council is constituted of seven members consisting of:¹⁶⁷

- (a) One sitting Drangpon of the Supreme Court on a two-year rotational basis, provided that no Drangpon shall simultaneously be a member of both the Commission and the Council;
- (b) The Chief Justice of the High Court;
- (c) The Registrar General of the Supreme Court;
- (d) The Registrar General of the High Court;
- (e) Two Drangpons of the Dzongkhag Courts on a two-year rotational basis; and
- (f) One Drangpon of the Dungkhag Courts on a two-year rotational basis.

The Council shall formulate personnel policies for the judicial bodies, institutions and Courts concerning:¹⁶⁸

- (a) Organization, administration, staffing pattern and strength, classification and gradation of services;
- (b) Creation and abolition of posts other than that of the Supreme Court and the High Court

¹⁶⁵ Royal decree for the formation of the National Judicial Commission was issued in 2003.

¹⁶⁶ Judicial Service Act of 2007, Section 21

¹⁶⁷ *Id.* Section 22

¹⁶⁸ *Id.*, Section 27

- Drangpons;
- (c) Higher or continuing legal education;
 - (d) Performance evaluation and appraisal;
 - (e) Reward and incentive for meritorious and exemplary service;
 - (f) Improvement of efficient judicial process through Court management and material management;
 - (g) Judicial Service Selection Examinations; and
 - (h) Any other matters which may be prescribed.

Research and Development Division

Under the Royal Command, the Research¹⁶⁹ and Training Bureau of the Judiciary was established in 1994. The Research Bureau conducts important research on the sources of Bhutanese laws, court etiquette¹⁷⁰ and manners, formal address and titles¹⁷¹, legal terminology¹⁷², the interior design and symbolism of the courtroom¹⁷³ etc. Further, the Research and Training Bureau conducts in-service legal education, including sessions on procedural code, Information Technology, and Bhutanese literature.

Conclusion

The Judiciary of the Kingdom of Bhutan has been relentless in its pursuit to dispense justice expeditiously, fairly and inexpensively¹⁷⁴. With access to justice, identified stages of hearing¹⁷⁵, determination to decide cases within twelve months¹⁷⁶ and transparency provided by public knowledge through the website and the media, the Judiciary endeavours to create a more reliable, fair, efficient and transparent justice system and will continue to respond to the challenges shaped by the unfolding democracy and the changes dictated by socio-economic development.

¹⁶⁹ Refer order no. SC(ADM-8)-94/5284 dated 24th June 1994.

¹⁷⁰ Drig Lam Namzhag or Court etiquette was introduced vide HC(ADM-15)95/1685 dated 11th February 1995.

¹⁷¹ Address and Title was introduced vide HC(ADM-15)95/1685 dated 11th February 1995.

¹⁷² Legal Dictionary published 2007.

¹⁷³ Thri or throne for the Bench was introduced in 1982 with technical advice from Dasho Shingkar Lam. The nomenclature for Bench was renamed from Zhug thri to Thrim thri during the 14th National Judicial Conference in 1998.

¹⁷⁴ In 1996, His Majesty the Fourth Druk Gyalpo commanded that justice be dispensed expeditiously, fairly and inexpensively.

¹⁷⁵ Alexander Cosmo De Koros, Logical and dialectical terms by Sanskrit-Tibetan-English Vocabulary, Sl. No 28,29,30 and 31, Baptist Press, (1910).

¹⁷⁶ According to the annual report of 2008, throughout the courts in Bhutan there were only 17 cases which were pending beyond 12 months.

His Majesty said "Bhutan must have laws that serve the people."¹⁷⁷ Efficient legal system and prompt action will redress the wrong and deter the perpetrators of crime.

¹⁷⁷ The Fifteenth Judicial Conference in 2000.