

JUDICIAL REFORMS AND ACCESS TO JUSTICE THROUGH THE USE OF INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) IN BHUTAN

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1. INTRODUCTION

The Judiciary of Bhutan, from late eighties realized that access to courts and judicial efficiency are normally positive when associated with long-term institutional, structural, professional and procedural reforms of the system. Therefore, the Judiciary of Bhutan on the command of His Majesty the King and spear headed by Hon'ble Chief Justice, Lyonpo Sonam Tobgye streamlined and strengthened judicial reform initiatives. The judicial reform particularly in the past two decades was geared towards establishing independent courts in recognition of the separation of powers, developing the long term policy of training judicial service personals and providing pre and in-service training programs. The Judiciary also initiated procedural reforms aimed at simplifying court procedures by introducing hearing calendar and time management of the court hearings through the introduction of simple forms. These reforms have reduced the time taken in the disposition of cases and increased the efficiency of the Royal courts. Efficiency of the courts also increased because of the simplification of the legal requirements of filing of petition and complaints.

Enhancing unimpeded access to justice and dispensing quality and speedy justice through accountability, transparency and fairness have continued to be the main and the core objectives of the judiciary. Legal and judicial reforms, over the past years also included the enactment and amendment of many laws. Harmonizing these laws for internal consistency, coherence or adapting these laws to cater to the changing times and contemporary need of the society continues to be the challenges of the day.

The strategy document “Bhutan 2020 – A Vision for Peace, Prosperity and Happiness” has outlined four main principles regarding the evolution of law and jurisprudence in the Kingdom. The outline and the vision includes that -all Bhutanese have equal and unimpeded access to the law and legal process; the legal system is able to dispense justice swiftly and efficiently; the judiciary is able to perform its tasks and execute its responsibilities with highest degree of professionalism; and that law must be accepted by all Bhutanese as being fair, responsive and relevant. Besides the above four principles

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outlined in the Vision 2020, the realization of the objective of Component 2 under the Good Governance and Public Administrative Reforms Programmed Phase II, also endorses and states that the enabling legislation and the rule of law must be established and sustained at all levels. Based on the above main principles, the Judiciary strives towards the fulfilment of the following mission:

- a) Create reliable, fair and efficient justice system;
- b) Administer justice impartially and fairly irrespective of language, religion, race or social class;
- c) Enhance judicial independence and administer justice independently in accordance with the law;
- d) Improve accessibility to justice by making courts user friendly;
- e) Uphold and protect due process of law, fair trial, rule of law and review system;
- f) Build public confidence and respect through continuing professionalism;
- g) Harness Information and Communication Technology (ICT) through the use of web based judicial management system for courts' efficiency, accessibility to justice, improve better quality justice, judicial transparency through the sharing of case information and cost effectiveness;
- h) Improve infrastructures and capacity building to enhance reverence for justice and strengthen structural and institutional independence;
- i) Make judicial process responsive, effective, faster, better, and easier; and
- j) Impart legal education to the general public.

Among all these objectives, the computerization of the courts and the dissemination of information about judicial and legal reforms have been given paramount importance. An effective and efficient legal system with public confidence is intrinsically valuable and promotes development by protecting persons and their properties, allowing peaceful resolution of disputes, facilitating economic exchange, and letting citizens know their rights and obligations. The constitutional reforms initiated by His Majesty the King has further strengthened the rule of law and made participatory governance the order of the day. With the adoption of the written constitution, further reform initiatives and capacity building in terms of both institutional and human resource development may be crucial towards promoting His Majesty's desire to uphold the spirit and intent of the constitution that ensures a dynamic system of governance and principles of democracy. The draft constitution envisages that the judiciary safeguard, uphold and administer justice fairly and judiciously without fear, favour or undue delay in accordance with the rule of law to inspire trust, confidence and enhance access to justice.

2. INSTITUTIONAL STRENGTHENING, CAPACITY BUILDING, AND THE DISSEMINATION OF JUDICIAL INFORMATION

The strengthening of Institutional and human resource capacity building for the judiciary has become an important component of judicial reforms through the construction of independent court buildings and providing training for the judges, judicial officials and

the Bench Clerks. The High Court has also initiated disseminating law and legal information on judicial process to the general public, school children and the concerned organizations. Besides the regular annual National Judicial Conference, the High Court also conducts number of conferences, seminars, workshops, study tours and training for the judges of the High Court and District Courts, Judicial officials, Royal Bhutan Police, bench clerks, legal representatives of various government agencies and financial institutions with a view to disseminate legal information. The High Court has also trained about 200 Legal Counsels (*Jabmi*) with the objective to enhance peoples' access to justice. The bulk consumers of the legal services are people from the grass root level; though litigants are free either to present case by themselves or through *Jabmis*. Most litigants are from rural areas and may prefer to have the service of legal counsel as the level of legal knowledge of the general public is comparatively low on the one hand and the fees for the *Jabmis* are easily affordable on the other hand. The Advocate Act 2003 has been passed by the 81st National Assembly and is already in force. The establishment of the Office of Legal Affairs or the Attorney General's Office in 2001 has also strengthened the institutional capacity in providing legal services which has now the prosecution division, human rights division, legal aid and legislative drafting division.

3. COMPREHENSIVE IT STRATEGY POLICY FOR THE JUDICIARY

The Royal Court of Justice with the support from UNDP has formulated the Royal Court of Justice Strategic IT Plan (2000). The plan envisaged the development of communication infrastructure and website development and the development of an integrated web-based judicial management system as the way forward. Amongst others, it included the establishment of LAN in the courts, website for the judiciary, e-mail and Internet access in district courts, enhance data collection and reporting of case flow and fully automating the judiciary's procedures using web-based technologies and the Internet architecture.

Based on the above Strategic IT Plan, the judiciary adored the induction of ICT as a powerful medium, important tools and its resourcefulness in the management of justice in a transition and transformed judiciary. As the core and basic objectives of the judiciary is to provide effective and efficient judicial services, this demands that our justice system is responsive towards ever increasing public access, fairness, accountability, transparency, and timeliness in the judicial administration.

4. E-SOLUTION TO CASE MANAGEMENT

E-solution to case system is managed through the use of two applications - Case Information System (CIS) and the Case Management System (CMS). The CIS generates database and overall information related to cases, and the overall case information by case by case and court by court. The case information includes the details of the petitioners, defendants, types of case, numbers of the hearings and the rulings of the courts with the quoted section(s) of the laws. Through the submission of the overall case

information to the High Court by individual courts – one can get information as to the numbers of pending cases, numbers of new registration and the decision passed in a month. Based on CIS, the High Court is able to generate overall case report and enable to access individual performance of the judges and the court thereby enabling the overall management, supervision and control of cases and the working of the court. CMS enables the improve performance of the cases, judicial accountability, yet the CMS is restricted to the Internet based information sharing. Through e-solution to case management the followings objectives are able to cater for:

Efficient judiciary. With the inception of ICT in the judiciary, it has enabled the judiciary to carry out its judicial functions or judicial services in a timely and efficient ways:-

- ***The judiciary has been able to address the long-term goal of reducing repetitive tasks and the duplication of efforts.*** For instance, as the court has an automated system of recording case information, a clerk or the bench clerk enters certain data into the computer system say for example the details of the parties to the case. This entry of data into the computer system enables to store, retrieve and reuse the information for many purposes. The tracking of the case information, generating reports and the case compilation become easier.
- ***Provides enhanced case statistics, evaluation and monitoring:*** With reports generated by case information system in an automated form, the judiciary is able to conduct sophisticated case monitoring, compilation of reports and statistical analysis. The judges use this analysis to improve their performance and address their lapses.

Access to justice. ICT also helps to make our court system more accessible to the court users, litigants and the general public by making the judgments, hearing calendar, court procedures and case information available over the Internet.

Effectiveness and Efficiency. ICT enables the judiciary to execute the court functions in much faster and in efficient ways. For example, the recording and the entry of the case information by the bench clerks and the writing of judicial orders and judgments becomes much faster with improved efficiency and effectiveness.

Quality of justice. ICT also help the judiciary to deliver highest quality of justice - by promoting accountability, transparency, and non-arbitrary decision making under the rule of law. ICT can do this by giving judges better access to the law and to tools that can make them more effective. ICT can also achieve the objectives of accountability and transparency by giving the public access to the court's judgments, procedures, and case information.

Functionality and applicability. ICT or e-Solutions is intended to allow the judiciary to meet the objectives of the court system (increasing the efficiency of the judiciary, enhancing the access to justice and enhancing the quality of justice), and the solutions

must be easy to use, functional and practicable. Therefore, the CIS, which has been introduced in our justice system are user-friendly and compatible.

The use of open standard technologies. As per ICT strategy plan, we have adopted open standard technologies, which allowed the judiciary to develop integrated and cost effective solutions. This approach has not only allowed the judiciary to capture, organize, and retrieve a wide range of information across many locations (www -World Wide Web), but it is also intended to exchange data effectively with the general public and court users.

Realistic expectations. Therefore, the provision of ICT or e-Solutions in the judiciary is developed and implemented with realistic expectations of court officials and the end users-general public/litigants. While ICT definitely has helped the judiciary to enhance its efficiencies and service, technology may not substitute for training and sound management. Therefore, it is necessary to equip our judicial staff with necessary training in the filed of ICT. With external funding, we have able to train all the bench clerks of all the courts. Similarly, the provision of ICT training of our judges may also enhance competency and performance of judicial tasks.

Judicial Website:

The launching of judicial website www.judiciary.gov.bt achieves the objectives of the judicial **Efficiency, Access to justice** and **Quality of justice**.

The judicial website caters the judicial staff to more quickly locate up-to-date forms, judgments, and other information. The litigants and other court users can also gain access to information on laws, court procedure and access to forms and judgments. As we update our judicial website it is also expected to link with other judicial websites of the world to enhance access and promote research tools for our judges to be more efficient and effective in their decision-making. Another valuable source of information on a judiciary website would be the laws of Bhutan once linked with the legal resources of the National Assembly.

5. PROVIDING RESEARCH TOOLS

An access to the Internet makes legal research easier, faster and cheap. Electronic research methodology out weighs any source of information and knowledge management. Information and Communication Technology is a powerful means and medium to help judges to be more effective through searchable access to laws and cases. An access to services such as to LEXIS-NEXIS would be most valuable for our court officials. Specially, the commercial Internet access to LEXIS has very up-to-date, comprehensive collections of laws from almost all jurisdictions in the world, and features very sophisticated search capabilities. However, LEXIS is extremely expensive but Judges can always get access to other tools of searches that are available free on-line such as an access to ICJ website and other Supreme Court websites.

As the Internet has quickly developed into a significant and inexpensive source of information, accessing to laws and cases from other jurisdictions is critical for quality improvements of the judicial decisions.

6. REPORT AND CASE INFORMATION

Currently, data entries of each case are made by the bench clerks into the computers through “Case Information System” (CIS) and sent to the High Court through the e-mail every month. The ICT division of the High Court then manages the tracking and compilation of the case flows from the courts through independent and powerful servers in the High Court. The collection of data and case flow with tracking system with easy-to-use access enable the High Court to generate monthly, bi-annual and annual case report such as the registered cases, pending and decisions passed by the concerned courts or the by the courts in the Kingdom. The digitized case tabulation, monitoring and analyzing of statistics have helped to track the caseload of each court.

7. AUTOMATE THE WORK OF THE JUDICIARY WITH A JUDICIAL MANAGEMENT SYSTEM

The use of ICT in the judiciary has automated the information system and enhanced the management of judicial system. The improvised “judicial management system” collects, organizes, processes, stores, and distributes essential case information within the courts and makes the related information available to the public. The system enables to do away with repetitive tasks in a faster and with greater accuracy at a lower cost than doing them manually. The system facilitates sophisticated case flow management techniques, and can summarize case, party, and financial activity across large numbers of cases. The numbers of cases pending nation wide has been able to reduce with the reduction of case processing time.

Web based judicial management systems are cost effective, much easier to support, easy for users and result in information being easily accessible to a wide audience. The judiciary of Bhutan today is ever than before ready to move to fully automated procedures. Our ICT officers have developed the CIS and CMS using web-based technologies and Internet architecture. This approach would in the near future allow the judiciary to ultimately migrate court services onto the web. Users of the court system are not only expected to find information about a case or procedure, but would enable them to interact with the system – when at point of time enable the users to fill application, deposition, statements etc., through on-line. Allowing on-line transactions will be our key feature of the next generation of the use of IT to improve the provision of judicial services.

An important aspect of judicial management system in case of Bhutanese Judiciary is thus far the success story with the evolution of the user friendly technology underlying them. In the 1990s, the technology evolved to client server based technology, using relational database concepts, and providing end users with a graphical user interface. More recently, web-based technologies and Internet architecture have been used to develop judicial management systems, with considerable success. Web-based systems are cost effective, easier to develop (as the development is done by using open, non-

proprietary tools), much easier to support (as administration is centralized), easy for users, and result in information being seamlessly available to a wide audience through web browsers.

There are however, some limitations in developing a judicial management system in Bhutan:

- **Cost factor:** The cost of a full judicial management system through the use of ICT is huge and it was done only by phase wise over past one decade. Technology needs continuous up gradation. Technology and especially computers becomes outdated sooner than one can expect.
- **User capacity enhancement:** We have not only geared towards facilitation of technology, but also the capacity enhancement of the users. The staff of Judiciary has to be proficient at using the system as part of their daily work. Therefore, considerable training opportunities to the entire judicial staff through in country and out-country trainings have been provided through internal and external funding. Today, one can be proud that all the judicial staff or the bench clerks can easily use computers.
- **Backend support – ICT Division:** To maintain a judicial management system, there must be considerable in-house expertise in supporting the system and training and supporting users of the system. This has been enabled through the recruitment of National ICT officers and overseas experts.
- **Usage of Dzongkha:** The Courts in the day to day administration transacts through the usage of Dzongkha font. Till now the Dzongkha fonts used by the Courts varied from a software like “Dr. Kuenzang”, “Gelong Rinchen” “Pema Tshewang” etc. Now with the availability of a standardized Dzongkha font “Unicode” may enable our Courts for an effective judicial management system in Dzongkha. Our website is in the process of including a Dzongkha version of weblink.
- **Connectivity and bandwidth:** Connectivity and bandwidth are the two key limitations to developing a web-based judicial management system. For effective functioning of a web-based system, all courts are now effectively connected to the Internet through the use of lease line and dial up connections. With the initiative of the Royal Government under the aegis of the Department of Information & Technology (DIT), all the District Courts are connected or in the process of getting connection through a lease line and a server system maintained in each of the District headquarters. Wherever in the Courts (especially Sub-division Courts) where bandwidth connectivity has been not provided, it is done through the Project management of the High Court or through the securing of government funds. The bandwidth must able to be sufficient enough to carry large amounts of data back and forth across the system. Over recently, there are two Internet Service Providers (ISP) namely, the Druknet and Drukcom and their bandwidth and transmission hardware are slowly improving and getting cheaper day by day.

8. PROVIDE A SEARCHABLE CATALOGUE OF THE JUDICIARY'S LAW BOOKS

Most challenging aspects of the Court officials and its users are access to Laws and Information. Still the digitalized forms of materials on-line are restrictive. The development of web-based e-Library and a searchable catalogue of the court's library is the ongoing process and still under development. Once the on-line e-library is established, all who works in the Judiciary and those who use the services of the Courts can get easy access to all sorts of information relating to the administration of justice.

9. VIDEO ENABLED CASE CONFERENCEING

As Video conferencing is gaining prominence in our Judicial Reform agenda, it must be looked as one of the most viable source of managing and the administration of justice in terms of its cost effectiveness, time saving and for convenience. Especially, in context of Bhutan inhibited by unforgivable mountainous terrain, the introduction of Video Conference will enable the litigants, witness and the parties related to the case to file testimonies or cross examine through video conferencing. This is expected to address some of the malaises of case delays due to the late or non appearance of witnesses and the parties. It will also further save time and reduce the overall per capita cost of each case.

10. CONCLUSION:

The computerization of the courts and the dissemination of information about legal reforms, which are aimed at improving the performance of legal institutions, is the continuing effort of the judiciary of Bhutan. An effective and efficient legal system with public confidence is intrinsically valuable and promotes development by protecting persons and their property, allowing peaceful resolution of disputes, facilitating economic exchange, and letting citizens know their rights and obligations. The constitutional reforms initiated by His Majesty the King has further strengthened the rule of law and made participatory governance the order of the day. With the adoption of the written constitution, further reform initiatives and capacity building in terms of both institutional and human resource development may be crucial towards promoting His Majesty's desire to uphold the spirit and intent of the Constitution that ensures a dynamic system of governance and principles of democracy.

Therefore, the judiciary of Bhutan has consistently focused to the changing needs and aspiration through the following vision or the adoption of the long-term strategy:

- To safeguard, uphold and administer Justice fairly and independently without fear, favor or undue delay, in accordance with the Rule of Law to inspire trust and confidence and enhance access to Justice.

- To achieve unimpeded access to justice, the need to redress the commonly talked of judicial inefficiency resulting from inadequate resources, excessive access, poor incentives, case delays, and complex procedures.
- Provision of affordable judicial services to the people by avoiding complex procedure and strengthening institutional capacity and human resource development.
- Judicial transparency and access to our justice system must continue to play an important role and curtailing accessibility should not be looked as cost cutting measure for the sake of efficiency which may have a net negative impact to the civil society. The judicial system must continue to address the people's right and choice to sue and litigate in the courts while alternative means for dispute settlement will continue to play effective roles through mediation and out of court settlement.
- Monitoring of cases information system, judicial transparency and accountability will continue to play an important role in the effective and efficient management of judicial services in the Kingdom.
- Alternative dispute resolution and reforms for nonexclusive small claims will enable litigants to escape slow and expensive court processes and save time for the courts as similar in the case of criminal plea bargaining.
- Professionalism through in country and out-country, regular pre and in-service training must continue as a means to achieve and update knowledge and skills of the court officials and legal practitioners. Incentive-oriented reforms for the Judges and the lawyers, which seek to increase independency, accountability, competition, and choice, will improve performance and strengthen accountability, transparency and increase judicial efficiency.
- Structural and institutional reforms of establishing Supreme Court and strengthening of legal framework with the amendment and passing of the Judicial Service Act in place will enhance judicial independency and accountability. Other reform initiatives of establishing special courts as the complexity of law and disputes emerges due to changing times may have to be considered as long-term strategic policy for enhancing access to justice.
- Continuous update of Information and Communication Technology will play crucial roles for improving effective administration of justice and sharing of knowledge and information with the general public. ICT as an effective tool for the court official must continue to apply to further the core objectives of the judiciary to improve accessibility, accountability, transparency, and timely administration of justice under the due process of law. The use of ICT should also help to make the court system accessible to all who require court services by making the court's judgments, procedures, and case information available over the Internet to litigants and other interested parties like police, Office of Legal Affairs, and other agencies.

- The up-gradation and the establishment of law library particularly in the form of electronic law library through web based management of knowledge is also crucial to back up the challenges posed by the use of ICT over the past decades in the judiciary. E-library will facilitate and enhance judicial competency and provide concrete base for research, sharing of information, judicial transparency and the Rule of Law. The development of e-library is further expected to support the consistent and continuous reproach adopted by the courts under the coordination of the Registry division and the data analysis and monitoring done by the ICT and Research Division of the High Court. The Registry of each of the courts in the Kingdom maintains weekly case information and the report submitted to the High Court on monthly basis are of enormous information which needs urgent back ups not only through compatible equipments but through library back up facilities.
- Research and its application must continue to support and act as a knowledge bank for the judges and the lawyers. The dissemination of judicial information through publication of law related issues through media and law journals could play an important role for enhancing competency, knowledge and share information with the public.
- Regular publication of case statistics on the judicial web site and in the media with back up database on case information system of the performance of the courts on weekly or monthly basis will prong judicial performance and curtail excessive delays and check judicial temperament. Publication of statistical report on judicial performance is also expected to provide a legal culture and build judicial consciousness and a means for self-correction, self-restraint, create awareness and analysis of case management.
- To curtail legal monopoly, the option to prepare a case and represent without relying on the expensive services of professional legal service as in practice should continue to sustain as one of the best alternative mechanism and access to justice. This option to represent the case by litigants themselves in the long run is expected to avoid compulsory imposition on the Bhutanese litigants to hire lawyers. This mechanism will also benefit the people to structure their behavior.
- The recognition of judicial independence is essential for judicial reforms to have a favorable economic impact for a rapidly modernizing state. Independent judges are the watch guards of economic freedom for investment and growth. Better system or responsive system of justice is surely a best form of government.

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