

# ANNUAL REPORT FOR THE JUDICIARY OF THE KINGDOM OF BHUTAN, 2011

## **Introduction**

The release of the Annual report is an event to reflect and learn from the past and to prepare and embrace the future. Without reflection, an organization may ossify and it is often relegated to historic relic of past.

Report is a measuring jar. Besides performance evaluation, reports are also for the administration, information and the motivation purpose. Reports help in strategy planning to provide solution to problems and in operating a control system to provide guidance in administering services. Furthermore, the informative purpose is to encourage learning about the performance of an individual and motivating them to take greater interest in his or her work. Therefore, annual report has an inbuilt system to reduce wastage and to maintain the quality of work. It has consultative and participatory system to improve service to the consumer of justice, enhance individual and collective efforts to aspire for the delivery of justice without undue delay. Delay is curse. Independent mind is an exalted constitutional value and impartiality is transcendental merit.

The Judiciary started releasing the annual report from 1991 onward. The annual report for the year 2011 is encouraging. The judges and judicial personnel have done well to deliver timely justice.

### **1. Access to Justice**

The courts are user friendly and easily accessible to the people. The Supreme Court has established the following principles to enhance access to justice:

- (a) Appeal is a part of natural justice to correct errors and offer opportunities to submit certain facts. Therefore, it is the right of the appellants to appeal to the higher courts. Generally, the High Court does not award litigation cost.
- (b) The party aggrieved by the High Court has the right to appeal before the Supreme Court. Appeal petition to the Supreme Court is heard by a single Bench. The presiding justice gives his opinion on the petition in the weekly conference. During the conference, a preliminary voting is taken to either admit or dismiss the petition. It ensures right to be heard.
- (c) If the petition is dismissed, the order is signed by minimum of two justices without awarding cost of litigation. If the petition is admitted, the cost of litigation has to be deposited. Thereafter, the Full Bench conducts opening statements, rebuttal and closing statements.
- (d) The Supreme Court either affirms or reverses the judgment of the subordinate Court. It is expeditious. The litigation cost is awarded to the respondent if the lower court's judgment is affirmed. In few cases, the Supreme Court remands case with instruction for *de-novo* hearing by the lower court.

## **2. Quality of Justice**

Quality is an ongoing journey towards perfection. Thus, it provides management of change and quality assurance by harnessing technology and expanding knowledge. During the preceding years, the Judiciary has endeavoured to improve quality of justice through due process, fair trial and rule of law. These cardinal principles are incorporated in the Case Information System. The Case Information system evaluates due process and fair trial process through the stages of hearings comprising of miscellaneous hearing, production before judge, preliminary hearing, opening statement, rebuttal, evidence, judicial investigation, cross examination and closing argument.

## **3. Statistics**

The workload of the Courts in 2011 was as follows:

- (a) 1,650 cases were brought forward from 2010;
- (b) 13,215 new cases were registered. The highest number of cases were recorded in Thimphu with 1,345 cases and the second highest was recorded in Paro with 886 cases;
- (c) 13,637 cases were decided. Out of which, 9,695 cases were decided within 108 days while 1,860 cases were decided in more than 108 days but within 365 days;
- (d) 224 cases were appealed to the High Court; out of the 41 cases appealed from the Larger Bench of the High Court to the Supreme Court, 10 cases were admitted;
- (e) Out of the 1,228 pending cases, 93 cases have been pending beyond 365 days. The Thimphu and Phuentsholing Courts has done well to decide 1,345 and 863 cases respectively.

## **4. Comparative Statistics of 2010 and 2011**

- (a) There was an increase of 7.3 % registered cases in 2011.
- (b) The Courts rendered 13,637 decisions, an increase by 8.2%.
- (c) There were 3,479 matrimonial cases not including the application for marriage certificates and 1,875 monetary matters.

## **5. Accountability of the Judges**

It is in public interest to have fair and independent judges. The judge enjoys security of tenure as long as he or she conducts himself or herself appropriately.

According to Section 15 of Article 21 of the Constitution, “the independence of the Drangpons of the Supreme Court and the High Court shall be guaranteed. However, the Druk Gyalpo may censure or suspend a Drangpon for proven misbehavior, which does not deserve impeachment on the recommendation of the National Judicial Commission.” Similarly, Section 130 of the Judicial Service Act, 2007 mandates the Royal Judicial Service Council “...to execute and enforce disciplinary action...” for wide range of

offences enshrined under Section 140 of the Act. Thus, Drangpons are accountable through appeals to higher court, annual reports and under the law.

**6. Court Settings**

Court settings are subject of public debates around the world. The Courts are designed to command reverence. Court room settings personify the cardinal virtues (prudence, justice, temperance and fortitude), the theological virtues (faith, hope and charity). These have figures with symbolic objects that serve to identify them. Beyond the level of symbolism, the court rooms serve as broader, more abstruse, mythical and civic symbols expressing some of mankind's deepest spiritual insights, beliefs and feelings. Symbols are of people's identity, which are communicative, an act of respect, representative of values, organisational individuality and promoter of tranquillity.

**7. Contempt of Court**

Courts should not be a "fish market". Order must be maintained as there have been unpleasant incidents in the past. Judges are bestowed with certain authority to deal with offenders. However, the power is not without a remedy against a judge exercising his jurisdiction wrongly. An appeal lies to appellate courts.

**8. Infrastructure**

The construction of the Supreme Court is under progress. The architecture must resonate and reflect the grandeur of the Bhutanese culture, regal splendour and traditional elegance. The new courts are structurally strong. Similarly, four Dzongkhags and five Dungkhags have new courts. The Mongar and Tashigang courts were inaugurated in May. Courts in four Dzongkhags (Bumthang, Trongsa, Lhuentse and Pema Gatshel) and two Dungkhags (Thrimshing and Sibsoo) are under construction. In addition, the Judiciary unexpectedly received funding for three Dzongkhags (Zhemgang, Tsirang and Dagana) and two Dungkhag courts (Panbang and Wamrong) from the Austrian Development Agency and the Government of India through the Gross National Happiness Commission.

**9. Continuing Legal Education**

Besides the infrastructural developments, human resource development is progressing. Continuing legal education is getting more impetus and strengthened with the establishment of the Bhutan National Legal Institute. Almost all the Drangpons have LLM degrees from foreign universities. The remaining few will be going for their studies under the financial assistance of the Austrian Development Agency, Swiss Development Co-operation and the Representative Office of Denmark.

Many Bench clerks and judges were sent to Thailand. The training strengthened their convictions of our strong legal system and gained knowledge to improve our system. In-country training for three batches of Bench Clerks was carried out. Training of lawyers and judges on Alternative Dispute resolutions and many other important subjects were conducted through 2011.

#### **10. Visit by Eminent Jurists**

To complement the academic qualification and to enhance delivery of justice, the Judiciary is endeavouring to build judicial temperament, ethical standards and philosophical basis. Among many, Lord Phillips, President of the Supreme Court of United Kingdom; Professor Gerhard Casper, Ex-President Emeritus, Stanford Law University; Dr. Venkat Rao, the Vice Chancellor of the Bangalore Law College delivered lectures to the Judges and legal fraternity on various topics. Mr. Sobchok Sukharomna, the President of the Supreme Court of Thailand visited Bhutan enhancing the relationship between the two Judiciaries.

#### **11. Noteworthy Mention**

The Chief Justice of Bhutan was unanimously nominated by SAARCLAW as the President of the SAARCLAW organization. To add to the laurel of the Judiciary, the Chief Justice was awarded the International Jurist Award in June.

#### **12. Acknowledgement**

We acknowledge the continued support from the Royal Government and the contribution made by the Government of India, Denmark, Austria and Switzerland for the funding of various courts and toward the human resource development. We also acknowledge the unprecedented support and co-operation rendered by the Gross National Happiness Commission.

#### **Conclusion**

The Judiciary has a constitutional responsibility under the separation of powers and must not yield to public clamour and legislative critique. Public clamour and media trial will lead to plethora of laws without justice. Every person has right to make fair comment on matters of public interest. To support the losers is denial of the winners and their rights. Public must hear both sides. *Zhu-log* is denounced by the erstwhile National Assembly and moaned by public. The Judiciary must be objective. It cannot reply to their criticisms. Its conduct itself must be its own vindication and gain public confidence. Laws must guide them, conscience must be free, judicial arrogance must yield to humility and graciousness. Truth is sublime and justice harmony. The Judiciary must interpret the laws made by Parliament. The Judiciary is on its move. With constitutional protection, academic qualification and constant nurturing of the judicial and ethical values, the Judiciary must remember self-restraint and the constitutional mandate 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.”

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