

JUDICIAL REFORMS
BY
HIS MAJESTY JIGME SINGYE WANGCHUCK

The accession of His Majesty Jigme Singye Wangchuck to the Golden Throne of Druk Yuel as the Fourth Druk Gyalpo ushered in unprecedented reforms in economic, social, cultural, administrative, legislative, judicial and political spheres. His Majesty's vision was utilitarian for common good, with individual welfare. His inclusive vision with conclusive approach was unique and His contributions to the development of the country were enormous.

Judiciary of Bhutan

The Judiciary is the institution, on which rests the noble edifice of the Rule of Law, that aspires to operate with unremitting efforts to fulfill its commitment to justice. Socrates said, *Justice is virtue and wisdom and injustice is vice and ignorance*. Thus, Justice is a promise to humanity. The paramount duty of the Judiciary is to ensure that falsehood does not triumph over the truth, that injustice does not eclipse justice. The Judiciary must be the true custodian of justice. Thus, His Majesty said that:

Treatment for health and justice from the courts are indispensable to our public. Thus, justice can neither be denied nor delayed¹.

His Majesty reminded the judges that apart from transparency and credibility of the Judiciary, fair trial and justice was of paramount importance for the people and that the Judiciary was the most important organ of the State followed by the Health Services and Education. Therefore, His Majesty mentioned that:

During the adjudication of cases, as difficulties occur, it is essential to provide justice, and the justice should be provided as expeditiously as possible, inexpensively and fairly without prejudice.²

Role of the Judiciary

The Judiciary is a passive branch of the Government. With the adoption of the Constitution under the visionary leadership of His Majesty, the Judiciary has a major role to play, especially the Supreme Court, being the highest court of appeal, the guardian and the final interpreter³ of the Constitution. His Majesty elucidated that:

The Supreme Court is the Guardian of the Constitution and must ensure its credibility and relevance in perpetuity. As the Guardian, the Supreme Court must truly understand the significance and purpose of the Constitution as a guiding principle, interpret its content with incontestable clarity, and preserve it as a living document with unfailing vigilance.⁴

¹ The 17th National Judicial Conference (2005)

² The 16th National Judicial Conference

³ SPEECH TO THE AMERICAN LAW INSTITUTE 16 May 2011 by Lord Phillips, President of the Supreme Court of UK "The first thing that the new Supreme Court did was to strike down the Government's budget on the ground that it was based on legislation purporting to delegate the power to impose taxation, which was unconstitutional and void. Bhutan's Supreme Court really is supreme."

⁴ On 30th November 2009 during a private audience after His Majesty Fourth King's abdication.

The Judiciary also has an essential role in protecting the people from the wrong-doing of others, protecting the weak from the strong, and the powerless from the powerful as well as protecting individuals from the unwarranted or unlawful exercise of power by the State. Moreover, the Judiciary plays a crucial role in securing domestic tranquility by providing a structured and institutionalized forum for the resolution of discord and dispute and the vindication of civil and criminal wrongdoing. Therefore, the courts will be faced with the role of balancing, and it is often a difficult balance, between the rights of the individual on one hand and the interests of society as a whole on the other. Court decisions in the constitutional area are often controversial. In this difficult and controversial area, the challenge for the courts is to uphold the Constitution and the law, and maintain the enduring values of a civil society. Judges should act fearlessly, irrespective of popular acclaim or criticism. His Majesty said that:

*As the final authority on the interpretation, the Supreme Court must not allow the Constitution to be undermined through misinterpretation at any time, it must inspire the trust and confidence of the people in the Constitution by safeguarding its integrity as the font of legislative wisdom, and it must maintain the independent authority of the Constitution from all other power centres and institutions in the land*⁵.

Further, His Majesty reiterated that:

*As implementers and upholders of the law, judges are not only responsible for the credibility of the legal system but for the countries' ability to respond to the changing socio-economic and political realities.*⁶

Independence of the Judiciary

The Judiciary must be strong and independent to discharge its duties. Political or any other form of interference should not paralyze the legal system as it perverts justice. If the beacon of the Judiciary is to remain bright, the courts must be above reproach, free from coercion and political influence. The Bhutanese legal system must punish the criminals and protect the law-abiding citizens. Humanitarianism and mercy must be distinguished from miscarriage of justice. The rights of the people must be protected and legal means should be followed to render fairness. The Government and the public must have confidence in the Judiciary. Confidence in the Judiciary does not require a belief that all judicial decisions are wise, or all judicial behaviours impeccable. If the justice system is based upon values of independence, impartiality, integrity and professionalism, and if, within the limits of ordinary human frailty, the system pursues those values faithfully, people will be satisfied. The Judiciary of Bhutan must rise to the challenges and meet those expectations of the people in the administration of justice and enable the rule of law to continue to thrive. There are various aspects of judicial independence.

- (a) Institutional independence is guaranteed by the Constitution. It is independent from the other branches of Government, Executive and Parliament⁷.
- (b) Personnel independence to maintain independence of judgment, independence of mind to make an independent decision. A court has entrenched judicial independence as a result

⁵ On 30th November 2009 during a private audience after His Majesty Fourth King's abdication.

⁶ On 30th November 2009 during a private audience after His Majesty Fourth King's abdication.

⁷ Section 13 Article 1 of the Constitution of Bhutan provides that, 'There shall be separation of the Executive, the Legislature and the Judiciary and no encroachment of each other's powers is permissible except to the extent provided for by this Constitution.'

of having security of tenure⁸ where judges cannot be removed because the Government does not like the decision. Each judge must make up his/her own mind about how to dispose off the case. Judges should be impartially selected with guarantee of adequate facilities and remuneration.

- (c) Section 2 of Article 21 of the Constitution provides jurisdictional monopoly that states “the judicial authority of Bhutan shall be vested in the Royal Courts of Justice”⁹ and thus “the judiciary shall have jurisdiction over all issues of a judicial nature”¹⁰;
- (d) Under the constitution, the State shall make adequate financial provisions for the independent administration of constitutional bodies. It cannot be varied.
- (e) The independence of the Judiciary is strengthened with the enactment of the Judicial Service Act in 2007. His Majesty personally formulated the amendment section as under:

“The amendment of this Act by way of addition, variation or repeal may be effected only when the Commission or the Council submit a motion to Parliament, subject to the requirement that amendments shall not undermine the effectiveness of the Judicial Service.”¹¹

- (f) The Act guarantees both institutional and personnel independence. His Majesty said that *we have to enact the Judicial Service Act this year for the legal framework.*¹²
- (g) Further, the court building manifests physical separation of power affirming the principle of independence, cardinal to the doctrine of equal protection as enshrined under the Constitution.

Judicial Reforms

The judicial reforms in Bhutan were initiated in 1991 aiming at developing a dynamic approach in Judicial Administration to ensure uninterrupted and effective functioning of the courts. His Majesty commanded:

*Adjudicate cases expeditiously, fairly and inexpensively.*¹³

To execute the Royal Command, the reforms included institutional and structural developments, enhancement of professionalism and human resources, introduction of user-friendly technologies (Information and Communication Technology - ICT) making the judicial process efficient and courts accessible.

His Majesty in order to take *justice nearer to the people* with a clear delineation of responsibilities between the Executive and the Judiciary established the first Dungkhag Court in 1978. It was the culmination of the independence of Judiciary and the separation of powers from the apex to the lowest court.

⁸ Section 1 of Article 32 of the Constitution of Bhutan.

⁹ Section 2 of Article 21 of the Constitution of Bhutan and Article 3 of Basic Principles on the Independence of the Judiciary Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan. “3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.”

¹⁰ Article 3 of the Basic Principles of Basic Principles on the Independence of the Judiciary endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

¹¹ Section 230 of the Judicial Service Act, 2007

¹² The 16th National Judicial Conference

¹³ The 16th National Judicial Conference

Access to Justice

Accessibility was the prominent feature of His Majesty's reign. He met many officials and he personally heard grievances of people patiently and personally during His whole reign. The Judiciary followed this hallmark paradigm to enhance 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 system 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.

Institutional Reforms

Institution building in the Judiciary had to review internal structure, administrative and professional support and legal framework with vision and dynamism. His Majesty has introduced many institutional reforms which include, *inter alia*:

- Introduction of the National Judicial Conference in 1976;
- Appointment of efficient and professional Drangpons;
- Establishment of Dungkhag Courts;
- Introduction of National Legal Course;
- Establishment of a separate Judicial Cadre in 1990;
- Establishment of Post Graduate Diploma in National Law course; and
- Establishment of the Royal Judicial Service Council and National Judicial Commission in 2003 under a Royal Decree.

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, many procedural reforms were introduced. With the enactment of Civil and Criminal Procedure Code, 2001 under the guidance of His Majesty, the following procedural reforms were made:

- The miscellaneous hearing calendar was further modified and improved;
- The registration procedure and hearing process were simplified and made systematic;
- The adjudication process through the introduction of various management principles were adopted;
- The legal language and Bhutanese terminology were improved;
- Professionalism was strengthened and reduced time consumption with the introduction of Seventy-Six judicial forms;
- Elimination of wasteful effort through single entry;

- Unproductive and unnecessary efforts were avoided;
- Rendering of summary and default judgments were introduced; and
- Inexpensive litigation with nominal court fees was initiated.

Enhancement of professionalism and human resources

Human resource is a national treasure and an institutional necessity. The vitality of any organization depends upon the quality of its human resources. It must be supported by strategic planning, critical analysis and methodological implementation with personal perspectives and national objectives. Therefore, His Majesty bestowed tremendous emphasis on human resource development from 1980. The Judiciary was one of the greatest beneficiaries of His patronage. His Majesty enjoined that:

The quality of judicial service will determine the credibility and the performance of the governance and the stability of the country.¹⁴

Many candidates were sent abroad to study law since 1991. Further, as a part of continuing legal education, law graduates are being sent abroad for LL.M. Judiciary has sought to enhance professionalism through:

- (a) Human resource development in the form of pre-service, in-service and continuing legal education;
- (b) Recruiting and training of the bench clerks in relevant subjects; and
- (c) Establishment of the Bhutan National Legal Institute with normative function.

Under the Royal Command, the National Legal Course was started for pre-service and in-service training 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. Legal education has been institutionalized under the Judicial Service Act 2007. His Majesty conveyed that:

There will be the growth of a strong and independent Judiciary cadre with the emergence of a qualified generation of legal professionals in future¹⁵.

Harnessing Technology

ICT was introduced in the Judiciary in 1991. Technology, specifically the computers has helped in adjudicating and dispensing the cases in a faster, easier and better manner. His Majesty the King commanded that:

Information Technology should be applied in the Judiciary to facilitate the communication between the court systems and further the cause of fairness and due process of law.¹⁶

¹⁴ The 16th National Judicial Conference

¹⁵ The 16th National Judicial Conference

¹⁶ The 15th Judicial Conference in 2000

The Judiciary is maximizing the use of information technology 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 use of ICT (applied through the case information system – CIS) 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.

Infrastructural Development

The constructions of court buildings are an integral part of the structural reforms. The court building manifests physical separation of power affirming the principle of independence, cardinal to the doctrine of equal protection as enshrined under the Constitution. The construction of court building is an investment and service to justice. It will be recognition of the inherent dignity of the human person and keeping its promise to render justice according to the laws. Therefore, His Majesty said:

*Justice is of paramount importance for the people...and with the unveiling of the Constitution, the Judiciary of Bhutan would have a vital role to play in its implementation, so it is important that the Supreme Court building is constructed as early as possible.*¹⁷

Legislative Reforms

In obedience to His Majesty's command, the Judiciary initiated and drafted various laws including the Civil and Criminal Procedure Code, the Evidence Act, the Judicial Service Act, the Jabmi Act, the Religious Organization Act and the Civil Society Organizations Act.

Penal Reforms

In obedience to His Majesty in 1995, the High Court started drafting the Penal Code of Bhutan, which was enacted in 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 was intended to reinstate dignity to the victims of crime and increase the possibilities for rehabilitation of offenders. On 20th March 2004, His Majesty, by a Royal Decree abolished capital punishment.

Jabmi (legal counsel)

The Civil and Criminal Procedure Code permits a person to be represented by a Bhutanese *Jabmi* of his or her choice. Therefore, His Majesty commanded the High Court to formally train the *Jabmis*¹⁸ and enact necessary laws enshrining the duties and accountability to discharge their professional service based on Code of Conduct to gain public confidence.

The *Jabmis* have always been included along with *Barmi* and *Ngotsabs* in the traditional right to legal counsel.

¹⁷ The 16th National Judicial Conference.

¹⁸ During the Thirteenth Judicial Conference, His Majesty the King commanded the High Court to conduct the Jabmi training. The first training was conducted on 28th February 1999

Conclusion

His Majesty Jigme Singye Wangchuck is truly a unique person. He is a born leader, creator of institutions, reformer, simple, honest and a true patriot. Without His Majesty's wise and timely interventions, culture would have been destroyed, traditions would have been displaced, nature would have been ravaged, the people would have been fragmented by regionalism and sovereignty would have been compromised. Bhutan would have been melted in the crucible of global imperialism. Indeed, He leads by example and has inspired His nation through His words and deeds. His uncompromising patriotism and burning nationalism united us and inspired us to aspire for national greatness. To know Him is to admire Him.

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