Review of Judicial reforms in Bhutan

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I. Introduction

This paper highlights some of the important judicial reforms initiated in Bhutan. It outlines briefly the process of Bhutanese judicial reform and its modern evolution. It discusses the practical ways by which the performance of courts has been enhanced and its pragmatic approach towards ensuring that the courts are both efficient and user-friendly. Many of the reforms of the Judiciary were directed from the throne and His Majesty the King has consistently sought to ensure that Bhutan has an efficient and progressive judicial system. In obedience to the Royal Commands, the judicial system and judicial process in Bhutan has been streamlined and strengthened. The Judiciary is continuously undergoing change: courts modernized, judicial quality improved through training, court procedures simplified and accountability enhanced. Consequently, court cases in Bhutan are now being efficiently dealt with as a result of the structural and institutional reforms.

II. Procedural Reforms

In the modern era of judicial mechanism and management, the Bhutanese judicial system recognised the significance of having a simplified procedure in both civil and criminal cases. In the absence of any specific external influences on the Bhutanese legal system, we have been able to introduce a system appropriate to both the courts and its users. It reflects the ability of the judiciary to mould the system to correspond with the contemporary values and the emerging needs of the Bhutanese society based on our rich heritage of dispute resolution. Bhutanese courts maintain and uphold the law in what is called a "serviceable state" keeping in view the community aspirations.

In addressing the procedural reforms I will not focus on the Civil and Criminal Procedure Code, which undoubtedly established the formal foundation of contemporary procedural law. Rather, I will highlight the procedural simplification and its impact on resolving cases much faster and more efficiently for the litigants. Simplified procedure enables the courts to address time management and introduce reformatory hearing calendars for judges. Although the cost of litigation has never been a substantial issue in Bhutan, procedural reforms result in improving public confidence, accessibility and help in the reduction of the overall cost of each case.

a) Simplifying procedures for Litigants

Complex rules, unnecessary and prolonged arguments are avoidable and the Judiciary has tried to encourage simplified actions. The Judiciary is continuously reviewing the hearing system in light of public requirements. The Judiciary is also actively encouraging mediation and other forms of alternate dispute resolution, which are very result oriented. Recent trend shows that as our courts have become more user-friendly and efficient, most people deem it appropriate to turn to the courts to settle their cases.

The procedure for filing complaints or applications have been simplified. Most applications are lodged through the use of simple forms. The litigants are entitled to represent themselves in court and have the option of preparing a case without relying on the services of a jabmi (legal counsel). This provision has brought our users much closer to understanding the judicial process. Retaining an option for the litigants to waive the right of the services of a legal counsel has proven effective and less expensive.

Introducing simple forms avoids unnecessary issues and repetitive arguments. They aid both the parties to the case and the Court to identify the key issues of each case. It enhances transparency and accountability in the judicial mechanism. While forms for civil cases can be obtained from the Legal Units at a very reasonable price, the forms associated with criminal trial for the time being are provided free of cost by the concerned courts. The public will soon be able to download forms from
b) Simplifying procedures for the court

The procedural reforms in the courts are directly linked to preventing delays and ensuring the efficient and effective delivery of justice. In setting up the standard of performance, trials or hearing processes have been streamlined in line with the new Procedure Code. It encompasses thirteen stages of hearing in full trial or hearing proceedings. The exhaustive hearing process is geared to address the potential danger that an oversimplified or a short abrupt hearing does not override the minimum requirement of the standard of justice.

The Bhutanese court believes in the efficient use of time by guiding the litigants but without unnecessary interruption in the hearing process. The judges play an active role in the hearing rather than just being a mere spectator and refereeing the case. The judges before the trial commences have to inform the litigants that questions may be asked for determining certain facts or evidence presented by them. This allows the litigants to prepare for any questions asked and avoid surprises by the court in the proceedings. From the commencement of the case litigants are aware of their legal rights to settle their case at any stages of the proceedings. Settlement and withdrawal of the litigation may be made even at the last minute but before the case is settled by the court. This process, although it does not restrain the court from passing judgments, helps the parties to reach a settlement once they are aware of the strengths and weaknesses of their case.

Another important aspects of the procedural reforms are summary cases and rendering summary judgments when the matters are not disputed but for the want of compliance supported by judicial sanction. Default and ex parte judgments also address the prolonged issues of judicial non-compliance. Other simplified substantive rules are explored and updated with the aim to enable people to structure their behaviour in reducing their chances of using the formal legal system as the ultimate destination particularly in light of Bhutan's long tradition of non-judicial dispute resolution.

While the Judiciary consistently seeks to introduce and maintain simple rules and procedures that are easy to enforce, a balanced approach has to be maintained to avoid any overt procedural rigidity.

III. Hearing and case management

Hearing calendars explicitly link the management of a case to a particular judge, making judges accountable to adhering to the dates of the hearing. The Judicial System has broadly stipulated stages of hearing so that the manner by which the hearing will be conducted, awareness of submissions during the hearings and reminder of necessities of submissions and elimination of repetition are maintained. The hearing calendar permits the litigants and the jabmis to proceed with their case prepared, with a fair opportunity to present evidence, and allows the hearings to be held as scheduled. The existence and the need for sound procedures allows for upholding important procedural rights of the litigants.

The hearing process and the management of the cases in the courts have the following implications:

(a) Time taken in the courts is reasonable. If the present trend continues, people will be happy and public confidence in the judicial system will be enhanced.

(b) The hearings process is transparent. In each stage of the hearing, the court allows parties to exchange copies of statements or deposition, determine discovery requests, lists of witnesses and request for judicial investigation.

(c) The courts in Bhutan have sought to eliminate cases that were sub-judice (pending) for eighteen months or more by the end of June 2003.

(d) The hearing system is effective and efficient. Repetitive and time-consuming arguments have
been significantly reduced. Conversely, hearings are systematic, exhaustive and satisfying.

(e) With the introduction of 75 forms, professionalism and consistency have been enhanced.

(f) The forms along with the checklist have improved the system. Every court has Bench Books with instructions, functions, responsibilities and job description of the judicial staffs. The forms and the maintenance of the Bench Books allow accountability and transparency of judicial proceeding when all the records of hearings are reflected in the judgement.

IV. The formulation of Judgments

There is no exception in the Bhutanese courts from passing a written reasoned judgment. The existence of the forms of almost all types of judgments enables the courts to follow uniform processes in rendering judgment whilst ensuring the wisdom and experience of each individual judge is maintained through the passing of reasoned judgments supported by law and evidence.

Handing down a written judgment is a means and tool for communicating effectively with the public what the judge has to say in a particular case. Reasoned judgment enables both winning and losing parties to comprehend the reasoning of the courts as well as the public at large specially when the judgments are reported through media. The handing down of the copies of judgments makes the court accountable and will promote greater transparency in the judicial system. Finally, written reasons for judgement allow for parties to appeal the judgement, and for that appeal to be heard expeditiously.

V. Judicial Evaluation and Accountability

Judicial evaluation is a consistent and continuous approach adopted by the present Chief Justice. The evaluation is coordinated by the Registry division and the data analysis and monitoring done by the IT and Research divisions of the High Court. Records of performance of each bench clerk are compiled on a weekly basis and the report submitted to the High Court. Case status reports of the individual courts are submitted on a monthly basis and bi-annual case reports compiled and generated. An annual inspection of each court is conducted under the guidance of a senior judge from the High Court which assesses performance and seeks to ensure consistency and uniformity in the application of forms and hearing process. The inspection team also carries elaborate but simple forms and questionnaires for the evaluation process to encourage improvement and to inspect the standard. This transparent system helps to maintain good relationship between the courts. The cross tabulation from the Case Information System has exposed various lapses for fairness and due process. Most lapses were observed on the non-recording of hearing dates in the case docket by the bench clerks thereby exposing the average case hearing of only 2.5% of the cases decided in year 2004.

The High Court conducts an annual judicial conference for all the judges of the courts. The annual conference provides a common forum for the judges to address and discuss issues. Annual case statistical reports are presented in the judicial conference, which monitors and evaluate both the individual and overall performance of the courts. The judiciary has initiated the regular publication of the case status report through Kuensel. Dissemination and publicity of this system encourages the court officials to maintain the procedural improvements and promotes public awareness.

The comparative assessment of each court has increased accountability and ushered in a strong desire by judges to ensure the ongoing improvement of their own performance. The resolution of the judicial conferences mandates the judges to curtail excessive and undue delay in cases. In terms of tracking the delay, the cases are broadly divided into two categories. The cases that are solved within 108 days and the cases those take more then 108 days. Almost all the criminal cases are solved within 108 days. This measuring yard stick in the courts have sensitised the judge in fact finding as to why the cases take more than 108 days and are able to address and give specific attention to the old and backlog cases. Further, the follow up of specific cases reduces times to disposition of cases not only because the judge in charge is more familiar with it but also because judges feel more accountable.
The ability of the Bhutanese court to generate accurate statistics has helped to reduce delay because judges care about the numbers. Statistical accountability for the judges' case-by-case basis has undoubtedly increased judicial efficiency. It has even helped the assessment and rating of judges relating to independence, legal ability, impartiality, case and staff management skills. The maintenance of judicial database also makes cases easy to be tracked, safeguard against loss, manipulation and curb "sloppy procedures" and corrupt practices.

VI. Introducing Information Technology and computerization

The computerisation of the courts which began in the early 1990s has enabled unparalleled procedural and managerial reforms to take place in the judiciary of Bhutan. The use of computers for judicial process has to be acknowledged for ensuring that judicial services are faster, better, easier and more efficient. The maintenance of forms and records enables the courts to store and share information and data.

With the judicial website, our courts will be linked with global networks and be able to share information and knowledge. It is expected to provide facilities to establish networks between the courts in Bhutan. The case information reports from the district and other courts are submitted through e-mail. The use of the Internet will mean that the courts will be more transparent, and we hope better able to communicate with the general public. Litigants, legal counsel and the general public alike will be able to browse case information and reports. It will provide a forum to disseminate information and educate people about the legal process and importantly, about current and new laws. Overall, electronic access to court records will further boost judicial professionalism, accountability and transparency.

VII. Professionalism and Legal Education

The Judiciary has over recent years through on-going judicial education of the judges and judicial staff sought to ensure judicial efficiency and professionalism. Appointment of judges with formal legal training and a higher knowledge of Dzongkha has both improved and enhanced the professional standard of judicial process. It is necessarily important for any legal system to safeguard public trust and confidence in the courts. However, legal education is not limited to court officials alone. The judiciary recognises the importance of disseminating information to the law enforcement agency and to general public. This is essential for, "...the public could not be expected to look to the courts with confidence if they did not know what the courts did".

The judiciary has adopted a two-prong strategy in a move towards ensuring judicial professionalism. One is the training of young lawyers by sending them for LL.B and LL.M programmes and the eighteen months post graduation in National Legal Course. Another is the in-service training programme offered to Judges and the judiciary staff by conducting regular training programmes, workshops, seminars as well as the annual judicial conferences.

VIII. Reforms through research

The research and training division of the High Court conducts research, which forms the basis for major judicial reform. For any organization in the contemporary context, research is crucial for development and progress. Analytical research enhances credibility for an institution and gains public confidence. The ability of a judiciary to control its own practice and procedure through research based upon sharing information is an important feature of judicial transparency and improvement.

Over the past decade the research has been particularly focused on a few key areas. Research in legal terminology and legal language, Court etiquette, the physical structure of court buildings, the design and symbolism of the courtroom, and Bhutanese legal sources have been carried out. Major research on legal terminology has been carried out and enshrined in our laws. There is a move by the scholars that the High Court should now publish a legal dictionary.
IX. Institutional Strengthening and Structural Reforms

With the initiation of the drafting of a written Constitution under the command of His Majesty the King, the need for structural reforms including; the establishment of the Supreme Court which is expected to be the highest appellate Court in the Kingdom. With the Supreme Court, the Judiciary may urgently need to strengthen its capacity in terms of human resources development and legal framework for further strengthening the Courts within the ambit of the Constitution. The establishment of the Supreme Court may further need to equip the highest Court with additional judges and judicial manpower with other components of facilities for the fulfilment of minimum standard of facilities to effect full functioning of the Court.

As projected under the Government of India assistance, the construction of the new High Court is long awaited due to the pressing need of land allocation and approval of the site resulting from the shift of original site plan above the Tashi Chhodzong. Once the new High Court building is completed, the Supreme Court may be retained at the historical building of the present High Court, which may further need to re-orient the present facilities.

Further institutional building of the Dungkhag Courts may need to be expanded resulting from the increased numbers of the cases filed in these Courts. The expansion of the Dungkhag Courts would facilitate the current quasi-judicial powers vested with the Drungpas to be vested with the formal Courts for which the need for human resources and structural set up would be a priority. The independent establishment of Dungkhag Courts wherever there is currently an established Dungkhag administration would further enhance access to justice, be convenient and save cost for the litigants. Currently there are only three Dungkhag Courts namely Phuntsholing, Gelegphug and Wamrong which were established on priority and need, based due to increased numbers of litigation and for the convenience of the public in those Dungkhags. The comprehensive structural reforms for the Judiciary in the Dungkhags may need to incorporate the establishment of independent Dungkhag Courts in the remaining Dungkhags.

Resulting from the increasing numbers of urban population and litigation, the Thimphu District Court had to expand from one to three benches and even proposed for further increasing to five-division bench by the National Judicial Commission. Other Courts in Phuntsholing, Samdrup Jongkhar, Gelegphug and other Districts on priority may have to recruit additional Judges and manpower which may further need to create infrastructure and facilities. The High Court of Bhutan has the approved strength of nine judges as the Chief Justice being the Primus among the equals.

Resulting from the Constitutional reforms, the High Court may further need to expand its capacity. Reform initiative for strengthening the institution and capacity building of the Supreme Court, High Court, District Courts and the Dungkhag Courts will be an area of concern and long-term goal of the Judiciary.

X. Conclusion

The onset of judicial reforms in Bhutan is the ability of the judiciary to address various challenges from internationalisation, political and economic transformation and new technologies. The opportunity to confront such challenges demonstrates the dynamism of leadership and willingness to adopt and accept changes. The moulding of the judiciary runs in parallel with the far-reaching political changes initiated by His Majesty the King for the democratisation of Bhutan and furtherance of the rule of law. Linking courts with the evolving democratic environment has been the basic and central approach to ensure the effective management of justice.

Initiating and instituting judicial reform is not a one-time crash program or a piecemeal adjustment; it is the consistent and sustained approach adopted over the past few decades. Any good system must ensure stability, continuity and adaptability to a changing environment. Progress and development are the dictates of the judiciary’s relentless efforts, to create a sound legal environment backed by public confidence. The courts in delivering judicial services have made the courts significantly more user-friendly, enabling the judiciary to deliver justice undiluted right down to the grass root level. In Bhutan, our strengthened and enhanced legal system is directly linked to the wider need to ensure an environment conducive to the economic growth and development of our country.

No system is without its shortfalls. However, recognising our weaknesses is an important foundation for reform. If anything would have helped to modernize and reform our courts, the credit
goes to those they believed that change doesn’t happen overnight. The choice between the status quo and reasoned reform is difficult. However, we have seen the transformation of the judiciary in Bhutan and the steady emergence of a strong, independent judiciary, which will continually review its performance to ensure that justice is efficient, impartial and timely.