

## **ANNUAL REPORT OF THE JUDICIARY OF THE KINGDOM OF BHUTAN, 2004**

His Majesty the King has always reiterated that judicial reforms be geared towards providing inexpensive, swift, and accurate justice. To achieve this noble goal, the Judiciary has consistently initiated reforms in pursuit of improving the delivery of judicial services that addresses judicial inefficiency despite inadequate resources, excessive access, complex procedures, lack of infrastructure and inadequate legal awareness.

With the introduction of both legal and procedural reforms, the Judiciary experiences appreciable improvements in the dispensation and administration of justice. However, the system cannot be complacent and needs further reforms initiatives to meet the changing aspirations of the people due to overall socio-economic development in the Kingdom.

1. Bhutan has easy access to Courts, indicated by the fact that there is an average annual increase of 2.98% cases over the last ten years in the whole country. Whilst the national average is 2.98%, Thimphu Courts have the maximum increase of cases with 15.47% annually.

The Judiciary is trying to narrow those barriers that limit access to court services, because limiting access to any public service for the sake of efficiency may have a net negative social impact. A judicial system that denies people the right to sue will leave many wrongs un-remedied and create a perverse incentive for people to take justice into their own hands and endanger the very basis of civil society.

Appeal is necessary because this process is an indispensable component of natural justice. Appeals bring about vertical check and balance. Bhutan has easy access to appeal to the higher courts.

The Dzongkhag courts had an opening balance of 4,144 cases from the previous year. In the year 2004 alone, there were altogether 8,118 new registered cases. The dzongkhag courts decided a total of 9,884 cases. Only 123 cases decided by the Dzongkhag courts appealed to the High Court and out of 133 cases decided by the High Court including those with original jurisdiction, only 10 appealed to His Majesty the King. The percentage of appeal in 2004 for commutation of sentence and pardon was 1.45. The statistics also indicate that there are just 78 cases pending beyond 18 months in the whole country.

Against all cases appealed to the High Court from different Dzongkhag Courts, 78 were affirmed, 9 were settled through mutual compromise, 25 were reversed by different benches of the High Court and the remaining 21 cases were either remanded, dismissed or disallowed from filing a subsequent suit in accordance with the principle of Res-judicata as there was a valid and final judgment on that cause.

2. The Judiciary has introduced several reforms to increase accountability, responsibility, transparency and competition. Such transformation is expected to bring about better improvements and shall be addressed by institutional supervision through:

- (a) Enforced Judicial databases will make cases easy to track and hard to manipulate or mislay. It also helps to guard against sloppy procedures and corrupt behavior.
  - (b) Maintaining of individual calendars, explicitly linking the management of a case to a particular judge, making judges accountable to the public. Daily hearing can be downloaded from the computer.
  - (c) Providing of statistics on judicial performance, thereby reducing delay, even without enforcement mechanisms. Statistics are most effective when information on clearance rates and time to disposition is generated for each judge.
  - (d) Distribution of yearly national case report to all Courts in Bhutan in the first week of January for their comments and corrections, thus creating competition among the Courts and cautions the poor performers.
  - (e) Monitoring and evaluating the hearing stages, time aggregates with cases decided within 108 days and more than 108 days. This report reflects performance and apprehension.
  - (f) Submission of Report of the individual legal staff assisting the Judge, who has cases not decided beyond 18 months reflect individual performance, responsibility and accountability. The Inspection team from the High Court inspects annually.
3. The Judiciary has introduced appropriate stages in trial so as to ensure exhaustive submissions through systematic hearing and reduce repetition and delay. By streamlining procedures, the overall efficiency of a system has improved. The shift of the judicial system from relying excessively on written procedures toward oral hearings tends to make trials simpler, faster, and cheaper. Further, it improves accuracy since the judges have direct contact with the evidence and there wouldn't be any piecemeal trial.
  4. The Judiciary encourages refining procedures to create efficiency and enhance the system by allowing people to prepare a case without relying on the expensive services of the legal monopoly. Access and download legal forms and other necessary provisions without dependence through self-help and also enable people to structure their behavior so as to reduce their chances of ever having to use the legal system.
  5. Wherever warranted, the Judiciary gives priority to alternative dispute resolution. However, since psychological pressure often create problems, it doesn't support mandatory alternative dispute resolution. For the same reason, it does not advocate establishment of separate and different tribunals. Having many such bodies may create bottlenecks in the delivery of justice and hinder development. Time would be consumed in adjudicating jurisdiction thereby, undermining

justice with procedural wrangles. It may also affect the separation of powers between the three organs of the State.

6. Believing that wider education of the general public is imperative to dispense Justice, the Judiciary has undertaken initiatives to bring about awareness of the general public as under:
  - (a) Conducted a nation-wide series of awareness workshops on the Civil and Criminal Procedure Code for DYT and GYT members in August 2002.
  - (b) Dissemination of information about the various Acts twice a week through the Bhutan Broadcasting Service and of legal knowledge under the title, “Know the Law - To Protect Your Rights.”
7. The Judiciary would ensure security to the law-abiding citizen thereby promoting tranquility and happiness in the Kingdom. To safeguard Justice, ignorance shall not be exploited. Thus, wherein it has played a pivotal role in their enactment, such as the Court Procedure, Jabmi Act and the Penal Code, the Judiciary would ensure the availability for sale of those Acts through Kuensel.
8. In order to minimize the numbers of stages in a trial, the Judiciary is working on a system within the courts to address small claims or petty cases, through ‘summary trial’ when there is no dispute on fact or law and accepting payment of fines in cases where there is no dispute (ticketing). This would save time for the courts by allowing most cases to be resolved swiftly and inexpensively.
9. The Judiciary is planning to build separate Court buildings to symbolize the separation of powers, so that justice is not only done but is shown to be done. The physical structure of the Courts is designed to command reverence. Buildings with imposing structures reflect architectural splendors and the embodiment of the majesty of the law, dignified, impartial, above the mundane turmoil.
10. The Judiciary is for dynamism, continuous reform and simple procedures. While advocating flexible procedures and reduction of the number of stages in trial, to the extent that streamlining procedures may undermine important procedural rights, caution is warranted.

The quest for faster, better and inexpensive delivery of justice by the Judiciary is to promote and strengthen Gross National Happiness.

Wednesday, January 19, 2005