

REPORT OF THE JUDICIARY OF BHUTAN FOR 2006

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, despite of the inadequate resources has consistently initiated reforms in pursuit of improving the delivery of judicial services that addresses judicial inefficiency, limited access, complex procedures, lack of infrastructure and inadequate legal awareness.

With the introduction of legal, judicial and procedural reforms, the Judiciary has experienced appreciable improvements in the dispensation and administration of justice. However, the system cannot be complacent and needs further reform initiatives consistently to meet the changing aspirations of the people owing to the overall socio-economic development and the impending change in the governance of the Kingdom.

1. Access to Justice

Bhutan has consistently endeavoured to strengthen accessibility to Justice by making user friendly Court. Thus, in the justice delivery system, the Registry is the first contact point for a litigant for filing a petition/case. A complaint/petition can be filed in the Registry of a Court between 9:30 A.M to 10:30 A.M.

The Judiciary has always strived to narrow the barriers that limit access to Court services, being aware that limiting access to any public service for the sake of efficiency will 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. There is an average annual increase of 12.08 % cases over the last thirteen years in the whole country. While the total number of cases registered in the whole of Bhutan in 2006 is 9,738 cases, Thimphu District Courts had the maximum of 2,078 cases followed by Paro District Court with 1171 cases.

2. Procedural Reform - Expeditious Hearing

The Judiciary has consistently initiated procedural reforms by devising a series of logical steps designed to eliminate repetitive actions, ensure necessary assignments are performed, time management is followed and improvements are initiated. Its essence is the application of a chronological sequence of hearings/investigations which has translated into results or actions as follows:

- (a) At the beginning of the year 2006, the opening balance in the Dzongkhag Courts was 3,016 cases. In the year 2006, there were altogether 9,738 new registered cases totaling to 12,754 cases. The Dzongkhag Courts decided a total of 10,376 cases. There are only 2,378 pending cases in whole Bhutan.
- (b) There are 22 cases pending beyond 18 months in the whole country.

3. Appeal

Appeal is necessary and an indispensable component of natural justice. Appeals bring vertical check and balance providing for an avenue whereby, errors if any committed by the lower courts are corrected ensuring proper delivery of justice. However, the system of

multiple appeals is being misused by unscrupulous people as means to beat the system resulting in a negative social impact and harassment of the other party involved. Most parties appeal in order to cause inconvenience to the other party based on hurt egos. The desire to teach the other party a lesson is so compelling that they appeal merely to drag on with the legal proceedings. Therefore, a balance must be achieved.

- (a) Out of 10,376 cases decided by the Dzongkhag Courts in 2006, only 173 cases were appealed to the High Court.
- (b) Out of 183 appealed cases decided by the High Court in 2006, only 4 cases were appealed to His Majesty the King.
- (c) Against all cases appealed to the High Court from different Dzongkhag Courts till 2006, 83 were affirmed, and the remaining 100 cases were compromised, remanded, dismissed, or disallowed from filing a subsequent suit in accordance with the principle of Res-judicata.

4. Exhaustive hearing versus Speedy Trial

The Judiciary has introduced relevant reforms with appropriate stages in the trial process to ensure adequate and exhaustive submissions through a systematic hearing with reduced repetition and unnecessary delay. The Judiciary is concerned and conscious to the need to expedite the adjudication process, without compromising the quality of justice by adhering to the established stages of the hearing, which include the hearing for Miscellaneous matter, Registration of the case, Preliminary hearing, Opening Statement, Rebuttal, Presentation of Evidence, Cross examination, Judicial Investigation if necessary, Closing Arguments and the handing down of the written reasoned Judgments.

By streamlining procedures, the overall efficiency of the system has improved greatly. The report of the stages of hearing generated using Information Technology is very encouraging and serves as a data base to implement remedial actions as and when necessary.

The Judiciary aspires for dynamism, initiate continuous reform and ensure simple user friendly procedures. While advocating flexible procedures and reduction of the number of stages in the trial process, the Judiciary is conscious to the need to ensure that streamlining procedures do not undermine important procedural rights.

5. Delay

The Judiciary has responded to the delay in the disposal of cases by improving the judicial process and appointing additional Judges. There are now five Benches in Thimphu Dzongkhag Court. One additional Bench each in Paro and Phuntsholing Courts will be established in 2007 to deal with the increase in the volume of cases registered.

6. Alternative Dispute Resolution

Wherever warranted, the Judiciary has always been proactive and given deference to alternative dispute resolution. It is mandatory for the Bench to remind the litigants in all civil matters to explore mutual settlement as opposed to litigation for which adequate leave is granted by the Court.

7. Law Reforms

Bhutan has witnessed unprecedented law reforms during the last few years. Under the command of His Majesty, the National Assembly has enacted inter-alia; the Civil and Criminal Procedure Code, the Advocates Act, the Penal Code, and the Evidence Act. These enactments have benefited the Judiciary and the users of the Court at large.

8. Judicial Infrastructure Development

The Judiciary is in the process of constructing separate Court buildings to symbolize the separation of powers, so that justice is not only done but is also seen to be done. The physical structures of the Courts are designed to command reverence. Buildings with imposing structures reflect architectural splendors and the embodiment of the majesty of the law, that is dignified, impartial, and above the mundane turmoil. Consequently, the Danish Government (DANIDA) has generously funded the constructions of the Courts in Phuntsholing and Samste, while construction of Courts in Samdrup Jongkhar, Gelephu and Mongar are in various stages of being completed.

Construction of the Supreme Court has started with the generous funding by the Government of India. Upon completion it would be the hallowed edifice for the guardian of the Constitution.

9. Legal Education

Professionalism is being strengthened at the various levels in the Judiciary.

- (a) The Judiciary of Bhutan has been recruiting lawyers graduating from the renowned Law Institutes in India after the selection Examinations.
- (b) The selected candidates must further undergo PGDNL course conducted under the aegis of RIM.
- (c) Once inducted into the judicial service, the officers are provided with opportunities for further studies (LLM) and in-service training in their chosen field of specialization.

10. Paralegal services

Paralegal services have always been an integral part of the Judiciary of Bhutan. It has served as a reliable system in the scheme of the Judiciary to enhance the policy and reform initiatives geared towards providing easy access to the justice delivery system. The Judiciary recruits paralegal service through competitive examination and imparts legal training for a period of two years. The paralegals have been inducted into the Judiciary to supplement the shortage of trained manpower in the category of Bench clerks.

The paralegals in their private capacity provide legal assistance to those who are illiterate by helping them draft complaints/petitions, filing up the requisite forms, mediating and preparing mutually agreed solution to a civil conflict in writing (alternative dispute resolution) and counseling people during the course of the case.

11. Legal Literacy

With the conviction that a wider legal understanding and education of the general public is imperative to dispensation of Justice, the Judiciary has undertaken initiatives to raise legal 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.
- (c) Dissemination of legal knowledge through pamphlets titled, “Know the Law - To Protect Your Rights” ensuring maximum distribution amongst students.
- (d) Annual lectures on the Bhutanese Legal System conducted in the High Schools by the Dzongkhag and Dungkhag Drangpons in their respective jurisdictions, engaging in question and answer sessions with the teachers and students.

The Civil and Criminal Procedure Code, the Advocate Act, the Penal Code and Evidence Act are available in the web page, www.judiciary.gov.bt and sale through Kuensel.

12. Monitoring and Reporting

The Judiciary has introduced several reforms to increase accountability, responsibility, transparency and sense of competition. Such transformation is expected to bring about better improvements involving institutional supervision through:

- (a) Enforced Judicial databases makes cases easy to track and hard to manipulate or delay unnecessarily. It also helps to guard against sloppy procedures and corrupt practices.
- (b) Maintaining of individual calendars, explicitly linking the management of a case to a particular judge, makes the judges accountable to the public. Daily hearing schedules can be downloaded from the computer.
- (c) Providing of statistics on judicial performance reduces delay, even without specific enforcement mechanisms. Statistics are most effective when information on clearance rates and time to disposition is generated for each judge.
- (d) Distribution of annual national case report to all Courts in Bhutan in the first week of January for their comments and corrections, serves to stimulate competition among the Courts and act as a stimulant to the poor performers.
- (e) Monitoring and evaluating the hearing stages, time aggregates with cases decided within 108 days and more than 108 days serves to expedite disposal of cases while maintaining quality and required standards. This report reflects performance and apprehension.
- (f) Docket flooding and litigation logjams are being addressed for speedy justice and

early disposal of cases. 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.

- (g) The Inspection teams from the High Court visit the Dzongkhag Courts annually for inspection, providing clarifications and guidance regarding judicial reform initiatives.

13. Service to the Litigants

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. The people can access the Judiciary web page to download legal forms and other necessary information regarding the laws without dependence through self-help, which is hoped to enable people to structure their behavior so as to reduce their chances of ever having to use the legal system.

14. Judicial Reform through Research and Development and Establishment of a Reform Division in the Judiciary

The Research division conducts research on sources of Bhutanese laws, Court etiquette and manners, legal terminology, Bhutanese Political Theories, Bhutanese Architecture, Painting, etc. The division has successfully conducted in service legal trainings, but it needs to be strengthened further so as to be able to provide meaningful in service training for the Judges and judicial personnel. It would be under the Judicial Reforms initiatives, to research, develop and collate information to answer the unending quest of improving justice. Over recent years researched essays on legal issues and books related to Bhutanese laws are also published.

Throughout the world there is a growing recognition that economic and social progress cannot be achieved on a sustainable basis without respect for the rule of law. In this context, judicial reform must form an integral part of the economic, political and administrative development. Judicial reforms promote the rule of law, which is a fundamental component of democratic government. The impending adoption of the Constitution and the change in the system of governance, a historic event necessitates that judicial reforms be implemented immediately and on a priority basis.

The Judiciary is in the process of establishing a separate Reform Division which is indispensable to a sound reform management process. The Reform division shall have a definite structure, streamlined work flow and highly skilled personnel under the direct supervision and guidance of the Chief Justice of Bhutan. The division will be staffed with experts in management, reform and finance engaged in conducting a continuous assessment of the functioning of the Judiciary to institute both short and long term projects with constant monitoring and evaluation of all activities to solve the maladies plaguing the Judiciary. The Reform Division shall have the mandate to create a Judiciary that can provide fair, efficient and speedy justice in an equitable manner.

15. National Judicial Commission

His Majesty the King had appointed the National Judicial Commission to raise and streamline the standards for selection of judicial candidates, ensuring that the candidates

have good standing, possess and enjoy good reputation for integrity and good character with outstanding legal ability and commitment to equal justice under law.

16. Independence of the Judiciary

Institutional independence of the Judiciary is guaranteed through the separation of power and jurisdictional monopoly in the draft Constitution of Bhutan. Simultaneously, personal independence is ensured through professionalism and selection of judicial candidates by the National Judicial Commission.

17. The Judicial Service Act

The National Assembly of Bhutan enacted the historic Judicial Service Act in its 86th Session. The Act is based on the cardinal principle of separation of powers in any democracy. It establishes and promotes standards for ethical conduct of judges and other judicial service personnel. It is a comprehensive document, a structure for an independent, transparent and effective administration of the Judiciary. The Act shall strengthen public trust and confidence in the judicial system and in the integrity of the Judiciary by protecting the consumer of Justice and preventing any wrongs through early warning and actions.

It is one of the major components of the judicial reforms initiated under the personal supervision and guidance of the Fourth King, His Majesty the Druk Gyalpo Jigme Singye Wangchuck.

Conclusion

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

It is imperative to preserve an independent Judiciary as a "citadel of public justice and the public security". An independent and easily accessible Judiciary which fearlessly delivers justice irrespective of power, wealth, status or political affiliations is the *sine qua non* for the rule of law.

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