

ANNUAL REPORT OF THE JUDICIARY OF BHUTAN, 2012

Justice is a social virtue and an inherent human necessity. It is the right of every human being. Delivery of justice requires strengthening of institutional and legal framework, infrastructural development and an enhancement of technology and human resource.

The Judiciary of Bhutan in 2012, through structural progress, use of technology and enhanced professional development with better judicial temperament continued to strengthen access to justice, due process of law, fair trial and rule of law to deliver timely and quality justice inherent in the Bhutanese legal system. Justice should not be denied or delayed. Respect for the rule of law and providing better, faster and inexpensive justice is essential to promote and strengthen Gross National Happiness. These principles are ingrained in the interlocking system with adequate mechanisms for checks and balance and self-correction. The appeal system is one of these mechanisms.

Access to Justice

Access to justice is vital in redressing the grievances of victims. With easy accessibility to the Court of law, the Courts are experiencing registration of frivolous cases that detract from legitimate adjudication.

Appeal

Appeal is a facet of natural justice and a constitutional right. While extolling the virtue of easy access to appeal, one of the negative aspects is the numerous appeals and interminable delay of cases caused by the appeal system. The problems of appeal, in general are:

- (a) Very often, some litigants view the appeal system more as the opportunity to play a tactical game of "beating the system".
- (b) Some parties use it as a delaying tactic for their advantage.
- (c) Some parties appeal, although they have no hope of winning. Their strategy is just to force their adversary (who cannot afford to litigate a case) to agree to a settlement favourable to them.
- (d) In most monetary cases, the party misuses the system to delay payment. They often get two to four years respite, which affects the other party.
- (e) The appeal system reflects that litigants will exhaust all the levels of appeal to harass the other party.

The Supreme Court has established a credible and effective appeal system. The new appeal system is a result of the experiences of the Bhutanese legal system and many common law and continental appeal systems. The important aspects of the appeal are:

- (a) The Supreme Court reviews the appeal during the miscellaneous hearing and it is discussed during the weekly conference, either to dismiss or admit the appeal.
- (b) If the appeal is admitted, the Full bench hears it. It conducts three hearings comprising of opening statement, rebuttal and closing statement.
- (c) The Supreme Court generally restricts its appellate power to either affirm the decision of the Trial Court or the High Court.
- (d) If the Trial Court or the High Court has rendered judgment without quoting sections of law, it is remanded or new proceedings are ordered.

Statistics

The workload of the Courts in 2012 was as follows:

- (a) 1226 cases were brought forward from 2011.
- (b) 13,978 new cases were registered. The highest number of cases were recorded in Thimphu Dzongkhag Court with 4128 cases and the second highest was recorded in Phuentsholing Dungkhag Court with 814 cases.
- (c) 14,150 cases were decided, out of which, 9802 cases were decided within 108 days while 10,730 cases were decided in more than 108 days but within 365 days.
- (d) 232 cases were appealed to the High Court, out of which, 172 cases were appealed to the Supreme Court.
- (e) Out of the 1054 pending cases, 29 cases have been pending beyond 365 days.
- (f) The Courts of Haa, Pema Gatshel, Tsirang, Jomotshangkha, Nganglam, Sakten, Sipsu, Sombeykha and Weringla have done well in reducing delays and for prompt delivery of Justice by having zero case balance.

The High Court

There are 2 benches in the High Court. Bench I decided as under:

- (a) Cases affirmed – 116 (70.30%).
- (b) Partial reversal - 37 cases (22.42%).
- (c) Full reversal – 12 cases (7.27%).
- (d) Cases appealed – 61 (36.9%).
- (e) Balance – 67 cases.

Bench II decided as under:

- (a) Cases affirmed – 135 (69.59%).
- (b) Partial reversal - 48 cases (24.74%).
- (c) Full reversal – 11 cases (5.67%).
- (d) Cases appealed – 91 (46.9%).
- (e) Balance – 51 cases.

The Supreme Court

The Supreme Court registered 161 cases excluding 14 cases from 2011. From the total of 175 cases, 93 cases were affirmed after reviewing their petition of appeal and discussion during the Conference of Justices. Out of 119 miscellaneous hearings, the Court accepted 37 matters for regular hearing. Thus, an appeal to the Supreme Court is fairly easy, but the Court only accepts about 22% of these appeals. The statistics of decisions of the Court are as follows:

- (a) Cases affirmed – 93(75%).
- (b) Partial reversal - 8 cases(6.45%).
- (c) Full reversal – 11 cases (8.87%).
- (d) Case remanded – 6 (4.84%).
- (e) Cases withdrawn – 6 (4.84%)
- (f) Balance – 51 cases.

Comparative Statistics of 2011 and 2012

- (a) There was an increase of 1733 registered cases, an increase by 13.1%.
- (b) The Courts rendered 14,150 decisions, an increase by 3.76%.
- (c) There were 4393 matrimonial cases excluding the application for marriage certificates and 3414 monetary matters.
- (d) There is 29 cases pending beyond 365 days, a decrease by 68.8%.

The comparative statistics of affirmation by the appeal courts indicate that the lower courts have followed judicial process and fair trial. Concurrently, the statistics show that the misunderstanding about the higher courts affirming all the lower courts judgments are erroneous and interpretation of the same law differently at various level of appeal are also incorrect.

Infrastructure Development

Many court buildings and residences for the judges were built with the financial assistance from the Royal Government of Bhutan and other donor agencies. The Judiciary is appreciative of the continued support of the Gross National Happiness Commission and the contribution made by the Governments of Denmark, Austria and Switzerland for funding the construction of court buildings. Courts in Samdrup Jongkhar, Samtse, Mongar, Pemagatshel, Trashigang, Phuentsholing and Gelephu were funded by the Government of Denmark. Swiss Development Corporation are funding the construction of courts in Bumthang and Trongsa. In addition, the Austrian Development Corporation is financing the construction of courts in Tsirang, Dagana and Zhemgang. The construction of Lhuentse Court is funded by the Royal Government of Bhutan. Further, the Government of India has rendered financial assistance for the construction of Nganglam, Jhomotsangkha, Samdrup Choeling, Lhamoy Zingkha, Sipsu, Thrimshing, Wamrong and Pangbang. The construction of the Supreme Court under the assistance from the Government of India is in good progress.

A well-planned court structure provides conducive working environment to the judicial staff as well as dignity to the litigants.

Human Resource Development

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. Scores of Bhutanese students have been sent to the best legal institutions in India to study law and Master degree in the USA, Australia and few European countries under the funding of the donor agencies. Similarly, technical competence of the Judiciary has been enhanced by sending few engineers and Information Technology personnel to pursue higher studies.

A total of 209 (80 female and 129 male) bench clerks were trained in the country on Philosophy, drafting judgment, Case Information System and other related subjects. Further, a total of 88 (21 female & 67 male) bench clerks were trained in “Comparative Legal Studies, Court Structure and Procedure” in Thailand.

Lectures and Seminars

Several lectures and seminars on wide ranging topics were held for the judges and the legal fraternity of Bhutan by various experts from Australia, Switzerland, Germany, United Kingdom, USA and India, etc. Similarly, Justices and Judges were sent on exchange and attachment programs to Switzerland, Singapore, Australia and Thailand to explore and establish future institutional linkages between the Judiciary of Bhutan and the Judiciaries of those countries.

Judicial Performance

The judicial reforms and monitoring system resulted in creating an inbuilt system of healthy competition in terms of both the quantity of trials conducted and quality of decisions rendered by every court in the Kingdom. Further, the introduction of yearly statistical report of cases has created awareness and competition among courts and judges. It has advocated prompt and professional investigation, fair trial and timely dispensation of justice.

Conclusion

The Royal Courts of Justice is the embodiment of hope to secure reverence for the Rule of Law, protection of private rights, ensure public justice and sustain human dignity. The court buildings are structurally strong and architecturally elegant with engineering provision for expansion in future. They are the symbol of commitment to justice and enduring visual friendship of the donors. Similarly, the productivity of the judicial staff has improved and the working environment has progressed.

The Bhutanese legal system endeavours to be efficient and effective ensuring prompt investigation, adjudication and dispensation to ensure low incidences of violent crimes and high level of safety of life and property in the country through access to justice, due process, fair trial and rule of law. Justice sustains peace, stability and progress of the country. However, the rule of law needs vigilance. Militancy of law making, disproportionate penalties, conflicting provisions, and plea for liberal interpretations have negative impact on law. This would lead to negation of the intent of the laws made by Parliament. The Constitution follows dual system with qualified principle. The Constitution was unveiled ushering in unprecedented political reforms and the Judiciary must respond effectively to the provisions of it to renew our commitment, strengthen our determination, dedicate our fortitude and submit unwavering devotion to serve the cause of justice under His Majesty's enlightened reign for the people of Bhutan.