

## **Annual Report of the Judiciary of the Kingdom of Bhutan, 2013**

First week of the year offers opportunity to the Judiciary to present the Annual Report. The publication of our Annual Report commenced from 1992. Together, with dedicated members of the Judiciary, we took giant steps in clearing the backlog cases, Human Resource Development, Information Technology, Dzongkha Usage and Infrastructural Development in 1991. Successive years have vindicated that commitment and we have triumphed over the adversities.

Firstly, major sweeping reforms under the command and guidance of His Majesty nullified the delays and cleared the backlog of cases. Secondly, the Judiciary has strategically invested in legally qualified Judges with LL.M and Ph.D degrees without replacing the lay judges completely, sourcing the wisdom of the past. Thirdly, use of Information Technology is pervasive in the Judiciary and it has enabled the courts to eliminate the manual processes of cause list generation, preventing any manipulation by vested interests. Further, the use of data storage and retrieval system has facilitated statistical and quantitative methodology for comprehensive analysis. Fourthly, the Judiciary has always strived to promote Dzongkha in keeping with the national policy. Training in Dzongkha for the Drangpons and Bench clerks initiated in 1991 has finally culminated with the training in *Situ-delchhen* the highest form of Dzongkha grammar. Knowledge is always a blessing. Dzongkha grammar and spelling is important, it will invariably enhance the quality of the court's written decisions. The Judiciary's effort to promote Dzongkha is also aimed at preserving our spiritual heritage, culture and traditions. Progress and development of the Judiciary has always been grounded in tradition and modernity, keeping pace with the rapid socio-economic changes. Finally, infrastructural development has been implemented successfully. The construction of court buildings are an integral part of the structural reforms within the Judiciary. Eleven District Courts and Eleven sub-division courts are being constructed with generous assistance from our donors. The court building manifest physical separation of power affirming the principle of independence cardinal to the doctrine of equal protection enshrined under the Constitution. The court buildings will forever remain enduring symbols of friendship and generosity of our donors, united in our effort to elevate and secure justice.

The legal profession is the custodian of the sacred trust to uphold the rule of law. Its essence is the assurance that no one is above the law; that everyone is answerable to it; that corruption will not be tolerated; that every citizen should have the greatest equality of opportunity; and the ideals of our national pledge should be pursued by each citizen with dedicated personal effort relying on the strength of their abilities, and not on their race, language, region or religion.

**Statistics:**

As mentioned in the World Bank Report, “*Statistics are effective when information on clearance rates and time to disposition is generated for each judge.*” The workload of the Courts in 2013 is as follows:

- (a) 1,054 cases were brought forward from 2012.
- (b) 19,653 new cases were registered.
- (c) The highest numbers of cases were recorded in Thimphu, Phuentsholing and Paro with 6,791 cases, 1,317 cases and 1,095 cases respectively.
- (d) 19,304 cases were decided. Out of which 12,857 cases were decided within 108 days.
- (e) 305 cases were appealed to the High Court. Out of which 226 cases appealed to the Supreme Court, 44 cases were admitted.
- (f) Out of 1,403 pending cases, 68 cases have been pending beyond one year.

**Comparative Statistics of 2012 and 2013**

- (a) There was an increase of 5,870 registered cases, an increase by 40.12%.
- (b) The Courts rendered 19, 304 decisions, an increase by 0.44 %.
- (c) There were 6,133 monetary cases followed by 4,696 matrimonial cases, excluding the application for marriage certificates.

Thanks to the unremitting effort and the work of the Judges and Bench Clerks, I am happy to report that:

- a) The rule of law provides to citizens equal and unhindered access to the justice system, to defend their rights and to contest law suits between private citizens and between private citizens and public institutions. Therefore, there were 32,080 Miscellaneous Matters registered in the Registry of Courts. Access to justice is vital in redressing the grievances of victims. Through unhindered access, victims would be comforted and the offenders be made accountable. It also acts as a deterrence to potential perpetrators;
- b) We remain in the comfortable situation of not having backlog of cases and adhering to clearing cases within ONE YEAR. We have only 68 cases that are pending beyond one year, despite the Judges being distracted by ongoing continuing legal education programs, official functions and occasional travel abroad to attend meetings, workshops, and seminars. Apart from the above reasons, the cases remained pending due to the time taken for forensic reports, parties not reporting to Court on time, party missing etc.
- c) Appeals are disposed off timely, and judgments have become more learned. However, appeal system may require further reforms. False ideas and vain expectations along with frivolous appeals should not be permitted to negate the legitimacy and efficacy of the appeal system. Excessive and indiscriminate access would invariably over burden the Supreme Court and High Court in due course of time. Especially, since the Justices sit

- en-banc* to hear the appeals registered. The lead Justice allocated a case must read the case file in preparation for conducting a miscellaneous hearing. During the miscellaneous hearing the appellant makes an oral submission and proffers a written plaint, while the Justices seek clarifications through questioning. Thereafter, the lead Justice prepares a bench memorandum which is circulated to the Associate Justices. Then during the exclusive Justices Conference conducted every Monday and Thursday, a vote is taken whether to admit or dismiss an appeal;
- d) Many law Universities were very helpful to provide admission and scholarships to our Judges for upgrading their education, skills, competence and professionalism, Swiss Judges and the Swiss Federal Administrative Court were exceptionally cooperative and forthcoming in their efforts to strengthen and support the Bhutanese Judiciary with Human Resource Development;
  - e) Construction of Dzongkhag Courts provides dignity to the litigants and provide conducive atmosphere for productive litigation and services to the people. We would like to express our deep appreciation to the Governments of India, Denmark, Austria, and Switzerland for their generous support. Legal institutions must spread throughout the country and be maintained on an ongoing basis, as law and justice is pervasive;
  - f) A few more Courts will be constructed with assistance from the Governments of India, Austria and Switzerland. We are looking forward to the unveiling of the iconic symbol of Indo-Bhutan cooperation, the Supreme Court complex. The magnificence of the Supreme Court supported by the Government of India will be unveiled, ushering in the crowning glory of the majesty of law and implementation of comprehensive reforms to elevate justice. Its regal splendor, traditional elegance, modern comfort and human dignity;
  - g) Cases may be similar but never identical. The Bhutanese Courts follow the doctrine of *stare decisis*. However, it must be noted, that doctrine of precedence does not apply to courts at the same level. Therefore, the affected parties must move the High Court if there are any disparities in sentencing, and the precedent set by the appeal court is applicable to all the lower courts. Any move to review the sentencing structure must be approached with caution. The sole objective of law is to “stamp out criminal proclivity”. Punishment ought to fit the crime, however, in practice sentences are determined largely by mitigating and aggravating circumstances. His Majesty the Druk Gyalpo commented that Judges must apply their minds with rationality; otherwise computers will suffice, which may not render justice; and
  - h) Bhutan has reinstated the open air prison system. Parliament may therefore, consider revisiting the sentencing scheme. Amendments to the law are inevitable, but full scale amendment of the enlightened Penal Code may be detrimental to the overall administration of justice.

### **Judiciary activities in 2013**

- (a) 299 Judges, Drangpon Rabjams, Bench Clerks were trained in *Lekshey Nawai Dampa*.

- (b) 15 Judges, Drangpon Rabjams and Registrars were trained in *Situ-delchhen*.
- (c) 28 number of Judicial personnel were awarded gold medal, 55 were awarded silver medal and 115 bronze medal were awarded and Dasho Tshering Wangchuk, Justice of Supreme Court was awarded Red Scarf by His Majesty the Druk Gyalpo on 17<sup>th</sup> December.

### **Conclusion**

The Annual Report is a quest that unites all of us to elevate justice and constantly reflect on actions to make them more responsive to the needs of our evolving society. The Annual Report highlights the appeal system. Appeal is an integral part of natural justice and human rights. Thus, everyone shall have the right to one's judgment being reviewed by a higher court according to law, but within the bounds of reason and efficiency. However, the ease of access driven by a populist impulse, unfettered and unlimited access to appeal invariably leads to financial drain, mental exhaustion, and inordinate delays and harassment of the other party with the appellant buying time by misusing the appeal system. Therefore, the Supreme Court and the public at large must not misjudge overflowing docket of cases from the current luxury of few cases. Indiscriminate higher acceptance of appeals by the Supreme Court and High Court will create backlog and distract its attention from pressing constitutional and social issues. Frivolous cases detract and divert attention from legitimate judicial duties.

The Annual Report marks the beginning of a new journey, into change of improved standards of legal service, up-graded technological solution and innovative ideas. Consequently, e-litigation will be introduced. The e-Litigation system will take the use of electronic tools in litigation to a higher level thereby, reducing inefficiencies and preventing manipulation. The Judiciary will continue to upgrade our processes and our skills.

I look forward to a robust backing and unflinching support from all quarters as the Judiciary surges ahead in creating a secure future for our people under the rule of law, ensuring a harmonious functioning of the organs of governance for the good of the people, so that we will enhance the resplendent glory of Bhutan as commanded by His Majesty, *“it is important to ensure trust and confidence in the judicial system. People must have confidence in judicial independence, fairness, impartiality, and in the ethical standards of the judges. Judges and staff of the Judiciary must remain grounded, be practical and serve with humility.”*

Friday, January 03, 2014