

REVIEW OF JUDICIAL REFORMS IN BHUTAN

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This paper highlights the anomalies of judicial reforms in Bhutan.² It presents a historical perspective of Bhutanese judicial reforms and addresses recent developments. It discusses court performance and experiences and approaches adopted in making the courts efficient. Much of the reform initiatives emanate from the throne. His Majesty the King has always advocated an efficient judicial system for the Kingdom.³ In obedience to the Royal Commands, the judicial system and judicial process in Bhutan has been streamlined and improved. The judiciary is continuously reformed, the courts modernized, the judicial quality improved through training, the procedures shortened and accountability is enhanced.

Procedural Reforms

The Bhutanese court realizes the significance of having a simplified procedure for both civil and criminal cases. The absence of any specific external influence on the Bhutanese legal system⁴ has helped us to introduce a system most suitable for the courts and the people. This required the ability of the judiciary to develop a system that considers contemporary values and emerging needs of the society based on a rich heritage of conflict resolution.⁵ Bhutanese courts maintain and uphold the law in the so called “serviceable state”.⁶

¹ Judge, Royal Court of Justice, Phuntsholing Court. The writing of this paper would not have been possible without the direction, guidance and materials provided by His Lordship, the Hon’ble Chief Justice of Bhutan.

² This paper discusses the reforms initiated and implemented since early 1990’s by the Judiciary of Bhutan. For brief reading see “Introduction to the Bhutanese Legal System” a booklet by the High Court, 2001.

³ Since His Majesty ascended the Golden Throne, he was concerned with the justice system and the Royal Command was issued for the overall developments and improvement of judicial system inter-alia re-structural design, staffing pattern and overhauling of judicial process. See the minutes of the meeting, dated 29.12.1987, after the Chief Justice of the High Court received the Royal Command.

⁴ The Bhutanese judiciary has been able to respond to its own needs unlike the prevalence of procedural rigidity left by the legacy of colonial power in most of other developing world.

⁵ See L. Dubgyur on “Arbitration....” SAARCLAW publication, 2000 and T. Wangchuck on “Mediation.”, independently published by the High Court.

⁶ Granting audience by His Majesty the King to the Drangpons (27th August, 2002) after 16th Annual Judicial Conference, we were reminded in the following words “there were two essential needs for the average citizen of Bhutan: health and justice. People need good doctors and medicine when they are sick and they need justice when they are wronged. Governance is good when laws are good and there is justice,” For detail report, See Kuensel, 31.08.2002.

In addressing the procedural reforms, I will not dwell on nor explaining the enactment of Civil and Criminal Procedure Code,⁷ which undoubtedly gave formal foundation for modern procedural law.⁸ I would rather highlight procedural simplification and its impact on resolving cases. Simplified procedure has also helped courts address time management by introducing reformative hearing calendars for judges.⁹ Although the cost of litigation has never been a major issue or alleged to be expensive,¹⁰ procedural reforms have helped improve public confidence and accessibility in the reduction of overall cost of litigation.

Simplifying Procedures for Litigants

Complex rules, unnecessary and prolonged arguments are avoided and simplified actions encouraged. The trial system is continuously reviewed considering public needs. Mediation and other forms of alternative dispute resolution are encouraged.¹¹ Bhutanese courts have become more accessible and efficient.¹²

The procedures for filing complaints or applications are simplified. Most of the applications are lodged through the use of simple forms.¹³ Litigants have the option of preparing a case without relying on expensive services.¹⁴ Appearance before courts in person by the litigants are not necessary. Assistance of *jabmi* (legal counsel) has made people understand judicial process more closely.¹⁵ The option for the litigants of not hiring services of a legal counsel has proven effective and cheaper. These options make courts more accessible and efficient in delivering justice.

⁷ No commentaries on the Civil and Criminal Procedure Code (hereafter CCPC) are written. It would be another interesting areas of research for understanding our law in broader perspective.

⁸ Over past decades (1990-2002) the National Assembly has passed more than 46 Acts tabled by different government departments, agencies and ministries. However, the enactment of these laws has invariably led to inconsistency and conflicts with the existing provision or with the old laws. The author is currently researching on these issues.

⁹ All the courts follow specific hearing calendar. The hearing schedules of the day are displayed in the boards affixed for the purpose in courts.

¹⁰ In saying this, members of the National Assembly have asked the High Court to come up with specific guidelines or draft Advocate's Act to check and limit the fees of the *jabmi*. See National Assembly resolution, 79th Session.

¹¹ Out of a total 709 cases decided by the Phuntsholing Court in the year 2002, about 19 cases have been settled mutually. See for details the data compilation of Phuntsholing Court.

¹² Even for small claims, people now prefer to use court. In *Re. Karma Thinley Vs Loday* the disputed claim was only Nu. 3,500.00 See Judgment No.3204, 11.4.2003, Phuntsholing Court.

¹³ For instance, the application forms for land transaction, application for marriage certificate, adjournment, request for judicial investigation, etc. just needs filling up of minor details only.

¹⁴ The drafting of the plaint or application doesn't necessarily need the service of a lawyer as long as the application confers *Yig Kur Namzha* (See Dasho Khandu, "Driglam Namzha", 1997) and the issues are clearly spelt.

¹⁵ See 31.1 of the CCPC, 2001.

Introducing simple forms avoid repetitive arguments.¹⁶ It enhances transparency and accountability in the judiciary. While forms for civil cases can be obtained from the Legal Units at low costs,¹⁷ the forms for criminal cases are provided free of cost by the courts for the time being. The forms are also available on the website.

Simplifying Procedures for the Court

The procedural reforms in the courts are meant to limit delays and render efficient judicial services.¹⁸ In setting up the standard of performance, trials and hearing processes have been streamlined according to the new procedure code.¹⁹ It encompasses thirteen stages of hearing in full trial proceedings.²⁰ The exhaustive hearing process is geared to address inherent danger of over simplified or abrupt hearings that can affect the standard of justice.

The Bhutanese court believes in the use of quality time by guiding litigants, but without interruption in the hearing process. The judges play an active role in the hearing process rather than remaining mere spectators and refereeing the cases. Before the trial commences, the judges 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, and avoid surprises in the proceedings. Right from the institution of the case, the litigants are made aware of their legal rights to settle cases at any stage of the proceedings. Settlement and withdrawal of litigation may be made even at the last minute before the case is settled by the court.²¹

Another important aspects of the procedural reforms are summary trials and summary judgments. Default and *ex prate* judgments also address the prolonged issues of judicial non-compliance.²² Other simplified substantive rules are updated and aimed at enabling people to structure their behaviour, which reduces the chance of using legal means as the ultimate mode of dispute resolution.

¹⁶ In each stage of hearing, there are simplified deposition forms. For details, refer trial document of the Chief Justice, 22nd January 1995.

¹⁷ Price for the forms are fixed in the 16th judicial conference.

¹⁸ Majority of the cases are now solved within 108 days. See data compilation report by the High Court since 1992-June, 2003.

¹⁹ See Section 81-92 of the CCPC, 2001.

²⁰ See *Ibid.*, and the hearing procedure form.

²¹ *Ibid.*, Section 150.

²² *Ibid.*, Section 152.

Hearing and Case Management

Hearing calendars link the management²³ of a case to a particular judge making judges accountable. The judicial system has broadly stipulated stages of hearing so that hearing discipline, awareness of submissions during the hearings and reminder of necessities of submissions, and elimination of repetitions are maintained.²⁴ Hearing calendar allows the litigants and *jabmi* to proceed with their case pre-prepared, have fair opportunity to present evidence, and allow hearings to proceed as scheduled.

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, the public confidence in the judicial system will increase.²⁵
- (b) The hearings process is transparent. In each stage of the hearing, the court allows the party to exchange copies of statements or deposition, determine discovery requests, lists of witnesses and request for judicial investigation.²⁶
- (c) The courts in Bhutan tried to eliminate cases²⁷ that were *sub-judice* for two or more years by the end of June 2003. The results were satisfying.²⁸
- (d) The hearing system is effective and efficient. Repetitive and time-consuming arguments are reduced. Conversely, hearings are systematic, exhaustive and satisfying.
- (e) With the introduction of 70 forms, professionalism has been enhanced and time consumption reduced.

²³ See the detail format of case and staff management system developed and circulated by the Chief Justice in 11.06.1991. The Hon'ble Chief Justices has noted that he has adopted the Buddhist concept of "*Zin Chong Pal Sum*" (identification, administration and discrimination) in adopting case management system.

²⁴ For the total number of 415 cases decided by all the courts in Bhutan in three months (Feb., March and April, 2003) the average hearings was calculated to 3.56 per case. For detail see data compilation by the Research and IT division, High Court, 03.07.2003.

²⁵ "His Majesty commanded to me that the cases should not be unreasonably delayed at the cost of people's time and expenses". Personal interview with the Chief Justice.

²⁶ The carrying of judicial investigation by a judge is unique to Bhutanese legal jurisprudence. It is heartening to note that the International Court of Justice has also now started carrying spot verification by the judges. (See *Gabcikovo Vs. Nagymaros* (Hungrie/Slovaquie) ICJ 1994 www.icj-icj.org).

²⁷ The Hon'ble Chief Justice's proposal to maintain nation wide zero-level cases by the beginning of 1993 was met with debates and opposition. See for details the resolution passed by the Hon'ble Judges of the High Court, 16.12.1992.

²⁸ For result, see nation wide case report from January to June 2003, circulated on 03.07.2003 by the High Court.

- (f) The forms, along with the checklist have improved the system. Every court has Bench Books with instructions, functions, responsibilities and job descriptions of the court's staff.

Formulation of Judgments

There is no exception to the Bhutanese courts in passing a written reason judgment.²⁹ The existence of the forms of almost all types of judgments³⁰ makes the courts follow uniform processes in rendering judgment. The capability, wit and wisdom of each judge are recorded through the passing of judgment supported by law and evidence.

Handing down a written judgment is a means of communicating effectively with the public about what the judges have to say in a particular case. Reasoned judgment has the benefit of both winning and losing parties to comprehend the reasoning of the courts as well as the public at large, especially when the judgments are reported through media.³¹ Further, handing down of the copies of judgments makes courts accountable, and thus ushers transparency in the judicial system.

Judicial Evaluation and Accountability

Judicial evaluation is a consistent and continuous process, adopted by the present Chief Justice under the coordination of the Registry Division, through data analysis and monitoring done by the IT and Research Division of the High Court. Records and performances of each individual bench clerk are maintained on weekly basis and report submitted to the High Court. Case status reports of individual courts are submitted every month and bi-annual case reports compiled.³² Annual inspection of courts are spearheaded by a senior judge of the High Court to inspect and evaluate performance and ensure consistency and uniformity of application of forms and hearing process.³³ The inspection team carries elaborate but simple forms and questionnaires for the evaluation process to encourage improvement and inspect standards. This transparent system helps to maintain good relationship between the

²⁹ See Section 96, CCPC 2001.

³⁰ Refer forms for general civil and criminal judgments, summary judgment and default judgments.

³¹ Only a few cases have been published through Kuensel.

³² The Case Report is the statistical report published for the annual cases registered, decided, pending and appealed.

³³ Refer to the inspection reports, 2003 of Dasho Pasang Tobgay, Judge, High Court, highlighting efficient judicial process and tracing backlog cases.

courts. The cross tabulation from the Case Information System has exposed various lapses.³⁴

The High Court conducts annual judicial conference for all the judges of the courts.³⁵ The annual conference offers a common forum for the judges to address and discuss issues to enhance judicial competency through exchanges of ideas, feedbacks and experiences. Annual case static reports are presented in the judicial conference, which monitor and evaluate 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 about this system encourage court officials to work for quality improvement, and create public awareness.³⁶

The report comparing performances among courts appears to have more impact on judicial performance by increasing accountability and encouraging competition among judges for improving performance. The resolution of the judicial conferences mandates the judges to curtail excessive and undue delay. In order to track delays, cases are broadly divided into two categories: cases that are solved within 108 days and cases that take more than 108 days. Almost all the criminal cases are solved within 108 days. This measuring yard stick in the courts has sensitized the judges in addressing and giving specific attention to old and back-logged cases. Further, the follow up of specific cases reduces time to dispose cases not only because the judge in charge is more familiar with it, but also because judges feel more accountable.³⁷

The ability of the Bhutanese courts to generate accurate statistics has helped reduce delay because judges care about their numbers.³⁸ 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 a judicial database also makes cases easy to track, safeguards losses, prevents manipulation and curbing of "sloppy procedures" and corrupt practices.

³⁴ The inspection team asks the individual judges and the judicial staff to remedy the lapses and seeks explanations in serious cases.

³⁵ Thus far, the High Court has conducted 16 Annual Judicial Conferences.

³⁶ The 16th Judicial conference has also resolved that the transparency much be improved through media publication. For further details see resolution of the 16th Annual Judicial Conference, 2002.

³⁷ Refer computer programmed generated report, IT Division, High Court.

³⁸ The High Court (IT Division) not only compile overall data concerning the information as to the number of cases registered, decided, pending and appealed but also track down information concerning individual cases. See data compilation report (1992-June, 2003).

Introducing Information Technology and Computerization

The computerisation of courts since the early 1990's³⁹ has brought about significant procedural and managerial reforms in the judiciary.⁴⁰ The use of computers for judicial process has to be accredited for enabling rendering of judicial services in much faster, better, easier and efficient ways.⁴¹ The maintenance of forms and records in softwares makes accessibility, reusing, information and data sharing easy. It also helps to reduce manipulation and unhealthy practices.

With the judicial website, courts will be linked with the global networks and be able to share information and knowledge.⁴² It is expected to provide facilities to establish networks between courts in Bhutan. The case information reports from the district and other courts could be submitted through e-mail and do away with the present practice of submitting in hard copies. Communication with the public would also be enhanced.⁴³ The litigants, legal counsel and the general public will be able to browse case information and reports. An electronic access to court records will further boost judicial temperament and transparency.

Professionalism and Legal Education

The Judiciary has maintained that the education of the judges and judicial staffs are means to promote judicial efficiency and professionalism. Appointment of judges with law backgrounds⁴⁴ and higher knowledge in *Dzongkha* is aimed to improve and enhance the professional standard of adjudication. It is necessary for any legal system to safeguard public trust and confidence in the courts. Legal education alone is not what the court officials do to educate themselves. The judiciary has also realized the importance of disseminating information to the law enforcement agencies and to the general public.⁴⁵ "...the public could not be expected to look to the courts with confidence if they did not know what the courts did" (Burt, 1999).

³⁹ The first computer arrived in the High court along with Chief justice in 1991 after he was appointed in 18th April 1991. (As recorded in the personal diary of the Hon'ble Chief Justice).

⁴⁰ Currently there are 153 computers allocated to all the courts in Bhutan.

⁴¹ Law clerks can now type about two to three judgments in a week.

⁴² The domain name www.judiciary.gov.bt will soon be launched by the High Court.

⁴³ As the knowledge and access to computer increases, establishing of "e-court" will not be a long-term dream in Bhutan.

⁴⁴ There was persistent opposition within the judiciary for reforms and of sending young lawyers for legal studies abroad and their appointment to the bench (As recorded in the diary maintained by the Chief Justice).

⁴⁵ About 288 police officers and staffs of law enforcement agencies were trained in batches, while more than 1500 DYT & GYT members are also made familiar with the Bhutanese legal system and the rule of law.

The judiciary has adopted two-pronged strategy in achieving greater professionalism. One is the training of young lawyers by sending them for LL.B and LL.M programmes and the two years post graduate course in National Legal Course.⁴⁶ Another is the in-service training programme offered for the judges and staff of the judiciary by conducting regular training programmes, workshops, seminars and judicial conferences.

Reforms Through Research

The research and training division of the High Court conducts research and provides basis for judicial reforms. The ability of a court to control its own practice and procedure through research and information sharing is an important aspect of judicial transparency.

Over the past few decades, research has been focused on a few areas. Research in legal terminology⁴⁷ and legal language,⁴⁸ court etiquette,⁴⁹ structural necessity of the court building, paintings and internal courtroom design,⁵⁰ and Bhutanese legal sources have been carried out⁵¹. Enormous empirical research on legal terminology has been developed and encrypted in our laws.⁵² There is a move to publish a legal dictionary by the High Court.⁵³

Conclusion

The onset of judicial reforms in Bhutan has developed the ability of the judiciary to confront various challenges in the modern age. The opportunity to confront such challenges must depend on the dynamism of leadership and willingness to adopt and accept changes. Judicial reforms go hand in hand with political changes initiated by His Majesty the King. Linking courts with an evolving democratic environment has been the basic approach for effective management of justice.

⁴⁶ The need for judicial education has been appreciated only slowly, even within the judiciary, but has now been seen as a significant achievement and acceptance by the general public.

⁴⁷ The workshop on "Bhutanese Legal System and Terminology" was conducted to disseminate information to the public in Thimphu in 22nd February 1999.

⁴⁸ The acceptance of legal terminology and the legal language is continuously gaining public acceptance. However, it may be noted that kuenselonline readers had the apprehension of the change of the term "*Thrimpon*" to "*Drangpon*" until the High Court disclosed the outcome of the research as to why *Drangpon* had to be adopted. See Kuensel dated, 04/04/02.

⁴⁹ A handbook on court etiquette has been published by the High Court and circulated to all the courts. For details see "Court Etiquette" High Court publication, 1995.

⁵⁰ *Ibid.*,

⁵¹ See the paper on "Bhutanese Legal System", 1996, High Court, Thimphu. Detail write up on Bhutanese Legal sources could be another area of interest.

⁵² The Dzongkha version of CCPC has maintained researched legal language carried out for about nine years by the Research Division of the High Court.

⁵³ As suggested by Lopon Lungten Gytscho, Semtkho Rizhung Inst., Dorji Gyeltshen (DDC), Choki Dendup, Dzongkha Editor Kuensel.

Initiating and instituting judicial reforms are not a one-time programme or a piecemeal adjustment. It is a 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 benchmark of the judiciary's relentless efforts to create a sound legal environment backed by public confidence. A strong legal system directly links to an environment conducive for economic growth and development.⁵⁴

No system will be without short falls. But knowing one's weaknesses is also important criteria for reform. The credit for modernization and reform of courts is due to those who believed that change doesn't happen over night. The choice between reform and reform in the right direction is difficult. However, these arguments do not reveal any weaknesses or deficiencies in the judicial system. The existence of collective views will always be an asset for further improvement.

⁵⁴ Investment both within and without country will be encouraged only where there exists sound legal backings.