

Introduction to the Bhutanese Legal System

Royal Court of Justice

High Court

Historical Information

- 1636 - first set of Bhutanese laws
- 1652 – Codification of laws completed
- Code based on fundamental teachings of Buddhism
- Addressed violations of both ecclesiastical and temporal laws
- Ten pious acts – *Lhachoe Gyewa Chu*
- Sixteen virtuous acts of social piety – *Michoe Tsangma Chudrug*

Ten Pious Acts

Lhachoe Gyewa Chu

- Not taking a life
- Not taking which is not given
- Not engaging in sexual misconduct
- Not lying
- Not speaking harshly
- Not slandering
- Not engaging in worthless chatter
- Not being covetous
- Not being malicious
- Not holding wrong views

Ten Pious Acts

Lhachoe Gyewa Chu

- Three immoral actions of the body
- Four immoral actions of speech
- Three immoral actions of mind

Adherence of these acts is consistent with one of Buddha's approach by which beings can develop the means to enlighten themselves.

Sixteen virtuous acts of social piety

Michoe Tsangm Chudrug

- Do not kill or steal
- Do not hold wrong views
- Do not go against the wishes of parents
- Do not be disrespectful to elders, learned persons and leaders
- Do not hold evil thoughts toward family or friends
- Do not refrain from helping neighbors
- Do not be dishonest
- Do not follow bad examples
- Do not be greedy or selfish
- Do not inspire evil thoughts in others
- Do not be late in repaying debts
- Do not cheat
- Do not act differently to rich and poor, or those of high and low status
- Do not listen to evil advice
- Do not be deceitful
- Do not be short-tempered or lose patience

Zhabdrung's Code

Basis of Bhutanese legal system

- Amended several times, mid-18th century
- First and second kings made modifications
 - His Majesty Ugyen Wangchuck
 - His Majesty Jigme Wangchuck
- Principles of Buddhism and natural justice have not changed and have always been upheld.
- Evolved over centuries reflecting culture and lifestyles, keeping stream of justice clear and pure.

Thrimzhung Chhenmo

- During the rein of the third King, the National Assembly of Bhutan enacted the first comprehensive codified laws known as the *Thrimzhung Chhenmo* or the Supreme Law.
- Almost all modern categories of criminal offenses and corresponding penalties were enshrined under this provisions.

Bhutan's Legislative Procedure

- Drafting committee appointed by the government submits its draft to the Lhengye Zhungtshog (Cabinet) for endorsement.
- After endorsement, tabled before National Assembly for debates.
- Copy of bill distributed to every member of the National Assembly.
- Members then discuss the bill with the people in their respective constituency.
- Views of public are debated and argued again during the following session of the National Assembly.

Law

- Law gives form and direction to the social world.
- It is the solemn will of the legislature for the common good.
- “As the earth is to living and none living entities, law is to a human being.”
 - *Pelgoen Phagpa Lhuedrup (Buddhist philosopher)*
- Laws are classified into *ranghin gi thrim* and *chay pai thrim*.
- They correspond to natural and positive laws.

Positive Laws

- Separation of power and responsibility
- Weights and Measures – fair trade
- Obedience to laws
- Fair Trial
- Adjudication by Due Process
- Equal Justice without discrimination

Objectives of the Judiciary

- Create more reliable, fair and efficient justice systems as stated by Justice Cardozo “the final cause of law is the welfare of society.”
- The judiciary’s ability to administer justice regardless of language, religion, race or social class; inspire trust and confidence; fairly administer justice independently in accordance with the law, must be developed.

Principles of Judiciary Justice

- The constant and perpetual desire of the legal system is to render all people their rights according to the laws.
- Under the Bhutanese precept, justice is *drang thrim*, which means that a dispute is pacified in conformity with seven Buddhist principles.

Seven Buddhist Principles

- Proper decorum
- Legality
- Freedom from duress
- Decision through majority
- Ground of a judicial decision
- Resolution through rebuttal
- Plea guilty

Principles of the Judiciary

Due Process of law

- Due process of law is a fundamental feature of the Bhutanese legal system.
 - Section 60.1 of the Civil and Criminal Procedural Code, 2001
- It is a measure authorized by law so as to keep the streams of justice pure through:
 - Fair trials
 - Lawful arrests and searches
 - Legal remedies
 - Elimination of unwanted delays

Principles of the Judiciary

The Independence of the Judiciary

- The Judiciary is one of the institutions on which rest the noble edifice of the Rule of Law.
- Independence of judiciary is one of the corner stones of National domestic policy.
- The Judiciary is a body independent of the executive and legislature.

Principles of the Judiciary

The Independence of the Judiciary

- Only a judge duly appointed by His Majesty is empowered to hear and decide cases.
- *Drangpons* (law lords) were appointed in few *Dzongkhags* in 1960.
- High Court established in 1968.
- In 1976, HM King Jigme Singye Wangchuck *kadyon* (Royal Edict) empowering the High Court to appoint judges.
- A judiciary established separate from Legislature and Executive, fully independent in the exercise of its functions – Civil and Criminal Procedure Code of 2001.

Principles of the Judiciary

Jambi – a Bhutanese legal counsel who have been licensed to practice.

- Officers of the legal system
- Well versed in Bhutanese laws
- Have special responsibility for quality of justice.
- Always uphold the interests of their clients
- Uphold honor, maintain dignity and integrity of the profession.
- Owe a duty not to injure the opponent or use unfair methods against the opponent or to benefit themselves.

Principles of the Judiciary

Jabmi

- There is no self-regulatory mechanism of the profession itself.
- The Judiciary as a regulatory authority has the disciplinary jurisdiction over them.
- In General, all the Courts have power to admonish/reprimand or suspend the Jabmi practicing before them for professional or other misconduct.
- High Court can bar Jabmi from practicing before the Courts of law, if convicted of a cognizable offense or otherwise.

Principles of the Judiciary

Jambi

- A party can lead or defend oneself in person or through legal assistance of a *Jambi* of one's own choice.
- In 1996, HM commanded the High Court to conduct professional training for *Jambis*.
- A *Barmi* performs the roles similar to mediator.
- The term *Ngotsap* means a legal representative, through not in a strict sense.
- An indigent accused shall be given Legal Aid for one's defense where the interest of justice so requires.

Principles of the Judiciary

The *Bah*

- A *Bah* is a legal undertaking or bond executed between the litigants or parties concerned.
- Three types of *Bah*:
 - Executed at end of every *genja* (agreement between parties concerned). *Genja* duly signed, written testimony to consent of parties and enforceable in court of law.
 - Executed at end of every statement submitted before a Court of law.
 - Executed at end of a Judgment as part of the judgment.

Principles of the Judiciary

Adjudication without Proceedings

- At any state of the proceedings, the parties are allowed to pursue mutual settlement with or without the assistance of a *Jambi* in all civil cases. (1959)
- The parties can also receive assistance of a *Chimi, Gup, Chipon, Mang-mi or Barmi*, as mediators. The final settlement must be through voluntary consent and signed by the parties and mediators.
- It must bear a proper legal stamp and should be in conformity with laws of the land.
- In the case of multiple executions of agreement on the same subject matter, the latest agreement in point of time shall be treated as valid in law.
- It becomes void when in conflict with existing laws or a valid objection is filed as to its legality.

Principles of the Judiciary

Appellate Procedure

- Any party may file an appeal petition to a higher Court against a judgment of the subordinate Court. Appeal subject to three conditions:
 - It is permitted only from the final judgment
 - It must be filed in the registry of the appellate Court, and
 - It must be preferred within tens days after the day of Judgment.

Principles of the Judiciary

Appellate Procedure

- Any party having fully exhausted the judicial appeal processes and still aggrieved by the decision of the Court may appeal to His majesty the *Druk Gyalpo*.

Principles of the Judiciary

Appointments of Judicial Service Personnel

- HM the King, on the recommendation of the National Judicial Commission, appoints by warrant under HM's hand the seal:
- Chief Justice of Bhutan
- *Drangpons* of the Supreme Court
- Chief Justice and *Drangpons* of the High Court
- *Drangons* of the *Dzongkhag Courts*

Principles of the Judiciary

His Majesty the King

- The supreme authority in all matters of law and justice in the kingdom is His Majesty the King.
- HM the King has the prerogative to commute the sentence of death or imprisonment for life; grant amnesty; pardon or grant leniency to a person convicted of an offense with or without a petition submitted by the convict.

Principles of the Judiciary

The Structure of Courts

Supreme Court

- Original jurisdiction over cases which are not covered or only partially covered by existing law.
- Exercises jurisdiction outside Bhutan on the basis of international law principles.

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