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PLEDGE

His jewel-like form, the possessor of inconceivable qualities,
Whose merits and virtues are as vast as the ocean,
Pure and the source of happiness,
Flawless and unparalleled, the Supreme among humans.
His name is renowned throughout the three realms;
With pure body, speech, and mind,
We offer inexhaustible praises.

Manifesting the qualities of all Buddhas,
In the person of His Majesty, the Fourth Druk Gyalpo,
We celebrate His glorious presence,
The supreme jewel among humans.

Through the power of faith and deep respect,
Before the One who turned the Wheel of Dharma, we bow,
The Immaculate, His Majesty, the Fourth Druk Gyalpo.
May the ocean of merit be completed and perfected,
May the ocean of pristine wisdom remain pure and
May His sublime activities permeate the ten directions.

On the auspicious occasion of the 69th Royal Birth Anniversary of His Majesty the Fourth Druk Gyalpo, Jigme Singye Wangchuck, the Bhutan National Legal Institute offers our profound respects and prayers for His long life and happiness. May all auspiciousness prevail!

(11.11.2024)

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PREFACE

The Bhutan National Legal Institute (BNLI) is the research, training, and academic arm of the Royal Courts of Justice. Besides capacity-building initiatives, we consider legal academic research - a quintessential element for promoting the *rule of law*, judicial learning, and practical judicial discourse. One of the significant impetuses in forming and evolving great ideas is unearthing knowledge and creating knowledge-sharing and knowledge-management strategies through influential academic and non-academic discourses. Critical analysis posits the existence of a strong relationship between the judiciary and the academics. It amalgamates the marriage of two minds, brings the different perspectives of law and judicial discourses, and helps to create a philosophical undertone and rich academic discussions. It simplifies the legal mosaic through academic theory and practical scholarship.

As part of enhancing academic rigour, accelerating the creation of legal ideas and legal scholarship, and marking the Royal Birth Anniversary of His Majesty the Kings, the BNLI engages in bi-annual publications of the *Bhutan Law Review*. As part of the academic endeavour for 2024, the BNLI undertook academic research in various aspects of the administration of justice aligning with its vision for 2024: *"Enhancing Access to Justice Through Research and Innovation".* This is with the belief that we can contribute to the legal profession and advance the culture of legal research and critical legal analysis through an analytical legal reasoning perspective. Further, this is to create a broader legal literature to enhance decision-making tools and help in legal academic development.

With the increasing focus on research to highlight the nuanced developments in law and jurisprudence, legal research is becoming an imperative tool either as a legal education apparatus or to provide a pragmatic approach to critical legal thinking and analysis. Critical legal scholarship is primarily based on what is evident and assumes a just society through effective legal rules, premises, and policies supported by critical thinking, research, and analyses. In pursuit of academic aspirations in the field of law, amongst other issues in the administration of justice, our research analysis is primarily based on the premise that

legal thinking and critical legal explorations must be supported with sound academic inputs.

In this pursuit, the BNLI undertook legal research on critical aspects of the administration of justice by employing innovative legal research and interview methods. This is aimed at broadening the lens of legal academic research and widening the horizons of development thinking. Further, it tries to advance and widen the legal perspectives and academic foundations to enable academic research to play a constructive role in legal development and enrich judicial decision-making infrastructures through empirically supported academic knowledge and scholarship. It is with the belief that the concept of *'applied legal disciplines'* such as law provides a critical point for analysis and appraisal. As part of it, it provides the opportunity to learn, analyze, and bring in the paradigm shift from a different legal and academic lens.

Further, in legal development thinking, a smart environment and ideas are essential to promote a new parameter of knowledge creation. Based on these premises, we embrace legal research based on key components of organizational culture and cultivate a new parameter that helps to integrate varied perspectives on the administration of justice. Building on the important legal sciences that are essential in the development process, this research intends to illuminate the changing role of judicial capitalization and the expanding roles of judicial and legal infrastructure in the contemporary legal ecosystem. The research discusses the critical issues of appeal, legal and judicial transformation initiatives, adaptive legal culture, traditions, and critical appraisal of community and court-annexed mediation initiatives. This academic research tries to offer a balanced and unbiased perception of law and the administration of justice and enhance the academic repository in the Royal Courts of Justice. It further focuses on developing knowledge and theory by examining the multidisciplinary aspects of law and the administration of justice. The research aims to proliferate and expand academic writing and deepen the research perspectives on various issues of law, society, and the changing ecosystem of governance and social expectations. The scope of the research initiatives has been deepened with extensive data collection and conceptual development.

We are grateful to the Judges, Registrars, court staff, legal professionals, and others who contributed immensely to this research. We value their time, energy, and engagement with the research. Many of the data would not have been obtained otherwise. We at the BNLI are deeply grateful to Her Royal Highness Princess Sonam Dechan Wangchuck for Her perpetual blessings in guiding the research to a definite conclusion. The insights shared in this research document will be worthwhile for legal and judicial professionals, enabling them to design, strategize, and contribute effectively toward building a robust justice system.

MAINTAINING EQUILIBRIUM - ROLE OF LEGAL AID IN ACCESS TO JUSTICE

ABSTRACT

This paper examines the vital role of legal aid in improving access to justice for people who are unable to access justice by reasons of economic and other barriers. The paper emphasizes the concept of legal aid as a vehicle of access to justice and underscores its significance as an essential instrument to promote equitable access and representation. Further, the paper emphasizes the importance of timely access to legal aid, indicating that pre-trial legal services remain a critical element of justice to afford people with legal protections, and enable them an equitable, and accessible legal defense mechanisms. By analyzing various international legal aid models and instruments, the paper highlights the need for comprehensive and inclusive legal aid services to uphold the *rule of law* and promote equitable legal aid and legal aid related justice services. Further, it tries to synthesize the effects of legal aid on the people of Bhutan. In brief, the findings demonstrate that effective legal aid not only empowers individuals but also reinforces trust in the justice system and creates an alternative recourse to legal services.

Keywords: legal aid, access to justice, people-centric service, due process

INTRODUCTION

In today's complex legal landscape, access to justice is emerging as an important right and opportunity. The concept of right, and the concept of access and equity- that is supported by law, legal frameworks and infrastructure[s] represents the stark deviation from traditional normative justice services. While laws get complex, more versatile and diversified, understanding the laws, and defending with the aids of the laws, is a complex argument, even for an experienced legal professional. The 'ambit' of legal expressions: which in many cases, can be interpreted with huge legal differentials, necessitates legal services that is mediated by experience, acute ability to argue, and defend.

With the changing dynamics of legal rights, access to justice rights dimensions are premised as being available to all individuals irrespective of their socio-economic status. Economic barriers, can be seen as impediment to access to justice, and the lack of legal knowledge also exacerbate the situation. Unlike in Bhutan, people in many countries face insurmountable barriers to access to justice, and for many of them,

navigating the legal system requires crucial legal expertise built on the fundamental concepts of access, education, and legal aid. Legal aid has begun to serve as a critical justice institution that promotes legal equity and access. In Bhutan, legal aid is both a constitutional and a statutory right. The recent institutionalization of legal aid services in Bhutan signifies the hallmarks of a rapidly transforming legal industry and infrastructure.

Under the benevolent leadership of His Majesty the King, the legal aid system in Bhutan was established in 2022. Legal aid, for that matter, should be considered a 'Royal Gift' to the people of Bhutan. The institution of legal aid greatly enhanced access to justice and, more importantly, it has enhanced the conception of competent access to justice. 'Competency' is a key terminology that has to expand the ideals of legal profession and professionalism. Competent access to justice is essential for upholding rights and enabling individuals to seek legal protection and remedies. Here, the competent remedies should include adequate and competent legal representation and assistance that helps reshape their arguments before the law. Legal aid mediates good lawyering, submissions, and arguments that strengthen representation and contestations. Importantly, legal aid helps to reinforce legal representation and assistance, thus mediating an important legal course in enhancing justice. It can be summated that many disadvantaged people often face barriers such as financial constraints, limited legal knowledge, and social disparities that prevent them from fully participating in the legal system. Legal aid is a bridge towards access to justice and an important device through which the legal profession responds to the legal needs of the people (Chakrabarti, 2023).

Further, in today's evolving legal scenarios that demand legal skills and economic resources, legal aid has been acting as an important promoter of equity and fairness in the justice system, thus acting as a robust enabler for a reinforced justice system based on principles of equitable representation and voice. In Bhutan, legal aid has visibly begun to maintain the legal equilibrium between different parties contesting a case before the court. It started as a noble legal infrastructure strategy for legal empowerment and capacitation. It is serving its way and creating a legal conscience based on principles of 'good faith' and compassionate justice service.

In Bhutan, by understanding the national legal and legal experience landscapes, legal aid has been designed to meet both the civil and criminal needs of the people, thus positing an understanding that legal needs arise both in civil and criminal cases, and both require adequate defense mechanisms. Unlike in other countries, that positions legal aid towards helping people in criminal matters only, our approach to justice is based on compassion, equity, and responsible legal services: that understands and responds to the aspirations of the people. Legal aid, has helped to fulfill the aspirations of the people, who direly requires 'expert legal interventions' and it has altered the conception of justice, and the foundations of truth in many cases.

Legal aid, as practiced in other jurisdictions, aims to provide legal assistance that constitutes various services, including legal advice, legal representation in court, legal assistance, and legal information. These services constitute a bundle of legal services as part of justice pathways for the people. By offering these essential services, legal aid enables individuals, particularly those unable to afford legal services or assert their rights to navigate the legal system effectively. This navigation compass is directed through multi-pronged approach, from service to sensitization to creating the firm legal and institutional foundations of legal aid. This is to create a robust legal aid services through responsive initiatives.

Like in other jurisdictions, legal aid in Bhutan serves as a crucial conduit between the legal system and those needing legal services. As part of it, the Legal Aid Center (LAC) under the Bhutan National Legal Institute was established as the nodal agency to provide legal aid services following a *Royal Command* in 2022. The LAC's primary objective is to offer free legal assistance to individuals who cannot afford legal representation to navigate the legal system effectively. The operationalization of the Center is guided by the *Legal Aid Rules of 2022*, which aim to ensure that legal aid is accessible to all, with a particular focus on vulnerable groups such as women and children in difficult circumstances, persons with disabilities, and those who are economically disadvantaged. The LAC is crucial in ensuring these groups have equal access to justice and prompt legal support. The LAC serves as a vital resource for individuals seeking legal representation and information about their legal rights and available services within the justice system. Through various community advocacy initiatives, the LAC works to

demystify the legal process, empowering individuals to make well-informed decisions regarding their legal matters.

STUDY CONTEXT

As said, in Bhutan, legal aid is undertaken for both civil and criminal cases. As initiated in other jurisdictions, the legal aid services undergo a two-system Test called the *Merit* and *Means Test* to assess and verify the genuine legal assistance requirements, thus creating a transparent and merit-based system of legal aid. Since 2022, LAC has endeavored to enhance access to justice. However, we believe that strict scrutiny of the services with analysis and appraisal are critical to engage in constructive assessment. This is to analyze and understand the various dimensions of development, and align with future directions. Consequently, this study intends to assimilate the effects of legal aid services on access to justice and assuage its ability to promote holistic legal aid services.

This analysis intends to correlate the impact of legal aid on the people through the baseline year (2022) to the end line (October 2024). In line with other academic resources, it aligns the legal aid services to a bundle of inputs: legal representation, legal assistance, and legal advice. Here, we assess how it has impacted the access to justice and helped the people to ease the legal burdens. Further through this, we examine how legal aid has changed the course of justice and explore barriers, and other challenges so that it holistically pits the idea of accessible and responsive legal aid services. The research methodology used for this study is a mixed approach that combined both qualitative and quantitative methods.

FRAMEWORK IN BHUTAN AND HISTORICAL MILESTONES

The importance of legal aid was initially acknowledged under the principles of state policy, the *Constitution of the Kingdom of Bhutan 2008*, which imposes an obligation on the State to provide legal aid, a fundamental principle of the *rule of law* deeply rooted in the values of equality and justice. Further, in the *Civil and Criminal Procedure Code of Bhutan, 2001*, emphasizes the significance of providing legal assistance to indigent defendants to uphold justice. However, developing a legal institution and apparatuses requires skills, financial competencies and responsive mechanisms, that best responds to the legal climate of Bhutan.

Hence, legal aid has been in discussion for many years. After the *Legal Aid Symposium* in 2014, it remained in limbo for many years. While the *Legal Aid Symposium* discussed the key aspects of legal aid, including international best practices, it did not agree on who should spearhead, creating a positional vacuum and dilemma in its operation. Due to challenges such as limited resources and a lack of clear legislative framework, and particularly to the lack of a designated authority to administer legal aid services, the provision of legal aid by the State was not fully realized. Instead, initiatives like ROYAL AIDJUST under His Majesty's Secretariat, the National Commission for Women and Children (NCWC) and Civil Society Organizations (CSOs) have been providing legal aid to those in need, including children and women, before establishing a nodal agency for legal aid. To support the formalization of legal aid, the Bhutan National Legal Institute has been tasked with establishing a purposeful LAC to cater to the needs of the people. This initiative, guided by a *Royal Command*, aims to lay the groundwork for implementing legal aid services in Bhutan. Since then, the LAC has been undertaking various dimensions of legal aid services.

INITIATIVES UNDERTAKEN BY THE CENTER

A. Holistic And People-Centric Legal Aid Services In Bhutan With Examples Of Best Practices From Other Jurisdictions

Holistic and people-centrism is a modern nomenclature for efficient and people-directed services. To enable comparative study analyses, we have brought in the examination of legal aid services in other jurisdictions, so that it compares and provides best practice knowledge, and critical knowledge repository for improvement, and service enhancement. In India, introducing a national toll-free, real-time, monitored, and multilingual legal assistance initiative has proven to be a highly effective method in adopting a more comprehensive approach to legal aid. This initiative covers all district legal service authorities and caters to the needs of various categories, including vulnerable sections of society.

Likewise, in the U.S., the holistic defense model, which integrates criminal defense attorneys with social workers, has been instrumental in achieving more successful case resolutions by addressing the underlying causes and challenges that may lead to criminal behavior. This approach

contrasts the traditional defense model, which focuses solely on legal aspects (The Bronx Defenders, 1997). For instance, the International Legal Foundation (ILF) has spearheaded multiple release motions, provided essential supplies during the COVID-19 pandemic, and offered support with sentencing arguments and housing arrangements upon release in countries like Afghanistan and Myanmar. This underscores the significance of holistic representation in reducing the likelihood of future recidivism. The Ministerial Roundtable on Access to Justice for the Global South convened in New Delhi, underscoring that access to justice is a fundamental right. It emphasized that inclusive and holistic legal aid services are crucial in upholding this right. Such services are vital in promoting peace and justice and establishing strong institutions (NALSA, 2023).

In response to the various initiatives in the Global South, the LAC in Bhutan has also implemented its initiatives that aligns with international development and priorities. One such initiative includes the development of a legal aid data management system. This system aims to enhance the accessibility and efficiency of legal aid services by ensuring prompt response times and easy access for service providers. In addition, the initiatives implemented by the LAC, including the construction of a wheelchair ramp and inclusive training for bench clerks, have significantly enhanced access to justice for marginalized and vulnerable populations.

The ramp has eliminated physical barriers, allowing individuals with mobility challenges to easily access legal services, thereby promoting inclusivity and demonstrating a strong commitment to equity within the legal framework. Meanwhile, the training program for bench clerks focused on disability equality, gender-responsive legal services, and the specific needs of vulnerable groups. This educational effort fosters a people-centered approach in the justice system, cultivating a culture of empathy and understanding among service providers. Together, these initiatives create a more inclusive and accessible environment, ensuring that all community members can seek and obtain legal assistance effectively regardless of their abilities or backgrounds. Furthermore, the LAC in Bhutan is committed to a collaborative approach with other justice sector institutions. This approach provides a holistic service beyond just addressing legal issues. It also addresses individuals' social and personal challenges, and ensures comprehensive legal representation.

By adopting these strategies, the LAC in Bhutan is dedicated to providing high-quality legal aid services that meet the diverse needs of its clients.

B. Early Access to Legal Aid in Criminal Justice

Similarly, it is established that the pre-trial stage is significantly crucial for individuals arrested or detained in the criminal justice system. For those who come in conflict with the law, timely access and intervention is imperative to ensure a fair due process and uphold inherent dignity of persons, and enable the process for a fair trial. Early legal aid interventions safeguards persons coming in conflict with the law, secures and enforces their individual rights, and creates an empowering legal environment that serve as a vital protection against the unintended implications of law enforcements. This is seen as a very critical element of justice. It requires timely and strategic legal and legal aid interventions. Therefore, it is imperative for legal aid providers to focus on strategies that reduce pre-trial detention by ensuring prompt interventions, and providing adequate legal supports, wherever necessary.

The *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* highlight the critical importance of adequate legal aid provision at all stages of the criminal justice process. By requiring States to guarantee timely access to legal assistance, these guidelines aim to safeguard the rights of individuals from the moment they are deprived of liberty. *Principle 8* of the *Guidelines* stresses the importance of informing individuals of their right to legal aid and other procedural safeguards before any questioning occurs, as well as the potential consequences of waiving those rights. This proactive approach empowers individuals by ensuring they know their legal entitlements and reinforces the justice system's integrity.

Furthermore, the *Guidelines* advocate disseminating information regarding rights and legal aid services, making it accessible to the public. This transparency is crucial in improving access to justice, enabling individuals to navigate the legal system more effectively and ultimately contributing to a more equitable and just society (United Nations Office on Drugs and Crime, 2013). For example, in Nigeria, the Police Duty Solicitors Scheme (PDSS) has been established to provide legal services and support to individuals in police custody facing legal issues. By deploying Duty Solicitors at police stations, the scheme ensures that indigent suspects receive legal assistance within the first 48 hours of

arrest. An evaluation of PDSS has revealed that it has diverted over 13,000 individuals from the criminal justice system in its initial five years, with 90% of these individuals being released within the first 10 days of their detention. Through this initiative, Nigeria has effectively reduced both the number of detainees and the length of pre-trial detention, all while upholding constitutional rights (New Delhi Document for Strengthening Access to Justice, 2023).

The Principles on the Importance of Early Access to Quality Counsel underscore the significance of early representation, client-focused advocacy, independent investigations, thorough case preparation, pre-trial litigation, and endeavors to secure a pre-trial release. Data on the impact of such pre-trial interventions in Nigeria indicates a 72% decrease in the average duration of pre-trial detention. Involvement of legal counsel at the time of arrest or detention substantially enhances the likelihood of release by steering clear of prosecution, promoting diversion, submitting motions for bail or conditional release, and initiating other pre-trial actions. Timely and competent defense representation safeguards rights and helps prevent unwarranted or illegal pre-trial detention. Various legal advocacy strategies should be integrated into all defense or legal approaches.

The Organization Women Beyond the Walls is dedicated to developing gender-responsive alternatives aimed at reducing pre-trial detention for women. This organization references *Rule 64 of the Bangkok Rules*, which emphasizes the importance of non-custodial sentences for pregnant women and mothers with dependent children unless the offense is deemed severe (Women Beyond Walls, 2005). Noteworthy programs such as Sisters Inside bail support in Australia and the Sierra Leone Paralegal/Duty Counsel Legal Empowerment Scheme serve as prime examples of cross-jurisdictional efforts to implement pre-trial interventions that prioritize due process and safeguard individual rights (Sisters Inside, 2003).

These initiatives are crucial in ensuring fair treatment and support for women in the criminal justice system. Drawing inspiration and normative guidance on best legal aid practices and international norms and standards in legal aid services, the LAC is developing a Framework and Toolkit for Children's Access to Legal Aid during Pretrial. This is to enhance early access to legal aid for children so that legal aid services are

timely and enhance the principle of due process. Further, this aims to ensure all indigent defendants' early access to legal aid.

C. Awareness on Legal Aid and Legal Aid Services

The LAC is committed to enhancing access to justice by increasing public awareness of available legal aid services and assisting those in need. Through various outreach initiatives, such as a panel discussion on the Bhutan Broadcasting Service Television and Access to Justice Advocacy Programs for School Law Clubs in 29 schools, the Center has effectively improved its understanding of legal rights and available legal aid services, empowering individuals to seek help when necessary. Shortly after its establishment, the Center conducted virtual awareness sessions on legal aid services for judges, Court Registrars, bench clerks, and Local Government Leaders of 205 Gewogs.

To further engage with communities, the Center partnered with the Office of the Attorney General (OAG) to deliver an in-person Legal Literacy Program, including sensitization on legal aid in 11 Dzongkhags for Local Government Leaders and sector heads. Additionally, the Center organized two workshops for private lawyers to raise awareness about legal aid services and the significance of *pro bono* work. To promote collaboration with the CSOs in addressing access to justice gaps, the LAC, in partnership with the Human Dignity Clinic of the Jigme Singye Wangchuck School of Law (JSW Law) conducted an awareness program on legal aid services. This outreach is crucial, as CSOs can effectively advocate for the rights of marginalized populations. Similar sensitization on legal aid was also provided to protection officers of The PEMA Secretariat to encourage them to refer cases involving children and women to the Center.

FINDINGS ON THE IMPACT OF LEGAL AID ON ACCESS TO JUSTICE

The services of legal aid have examined through various dimensions and perspectives. To obtain realistic data, and information of the impacts and quality of services, interviews of the beneficiaries were undertaken. This was to obtain their assessment of the services and tasks we undertake so that, we are able to take corrective justice initiatives. Here, the interview of the beneficiaries and service providers, including legal professionals who provided legal aid services, stated that legal aid

stems as a cardinal justice support. Interviews with the beneficiaries indicated that they felt the legal aid services was very useful initiative and it fulfils the basic expectation of the people: helping them when they need. Further, they shared that legal id services enhanced their pathways to access to justice and, more importantly, restored their dignity and perception of the laws.

Besides securing the interests of justice, they shared that it has given them a new pathway to accessing justice and enforcing their rights through a competitive legal environment and representation. They opined that they were able to defend their cases effectively. This, as stated, it has helped to ease access to justice and, more importantly, relieved the parties from personal appearance in the courts. This is a significant step towards securing an accessible and effective channel to justice. The respondents, especially the beneficiaries, expressed a great sense of gratitude and indebtedness for the legal services. They stated that the services have rescued them from economic burdens and helped them navigate the legal system effectively. The respondents shared that the services have rescued them from serious legal implications.

In an institutional analysis, the concept of access to justice has been greatly widened, and its impacts on individuals have been tremendous. This includes reduced sentences, acquittals, dropping of the charges, and the deferment of the judgments, thus redefining the judicial course and legal actions against the individuals. These dimensions are beyond the access of justice concepts, and most importantly, the services have helped them to secure truth and justice. These are mostly aligned with the concepts of humanism and justice that capture the emerging concepts of legal-emotional intelligence, and the art of benevolence in justice. This is a new apparatus to secure the just needs of the Bhutanese society based on the integral elements of justice and human aspirations.

The benefits of legal aid services, the due process concept, and effective representation provide two-pronged benefits to the people. While laws have to be implemented to secure the interests of justice, justice itself has to be maneuvered through the conception of effective defense. Effective defense and due process go hand in hand and are integral to ensuring that justice is fair and responsive. Further, this can be enunciated as legal and factual justice, constituting the emerging element of justice and judicial consciousness. As a legal aid beneficiary, **A** stated that 'justice in modern times' has become a battleground for legal wits

and effective arguments based on law. This encapsulates the need for strong economic legal support.

The interviews of beneficiaries and service providers loosely termed as respondents show that the representation of the litigants by lawyers has had a profound positive impact on the court proceedings, who were skilled in navigating complex legal systems and proceedings given their expertise in law. In addition, the language barrier, often seen as a complex linguistic challenge, has been addressed through the representation of lawyers in the court. Moreover, legal aid lawyers have contributed to the efficiency of court proceedings, enhanced submissions and contentions, and efficient judicial proceedings focused on capable representation. Further, legal aid has become a vital means to secure the interest of justice for people who cannot defend themselves appropriately.

Through this analysis, it could be studied that legal aid has begun to serve as an important element in the administration of justice. It has acted and acts as the voice for the people in need. It has been established that due process is an important element in the administration of justice. Therefore, this points out that ensuring due process is essential in building confidence in the legal system besides substantive law. This indicates that the Justice Sector Institutions (JSI) have to, besides the substantive requirements, ensure that the due processes are humane, timely, and respectful. Adequate and efficient representation is cardinal in enhancing efficient access to justice that is maneuvered through respectful due process. It can be summarized that people examine the process equally as it is done in substantive law. Preparing cases thoroughly and presenting well-structured arguments could help reduce delays and streamline the judicial process. This benefits the litigants and alleviates some of the burdens on the court system.

Since its establishment, the Center has received 118 applications from individuals seeking legal aid. The Center's legal representation services have helped individuals navigate the complex and daunting legal system, ensuring they receive fair treatment throughout the legal process. The Judiciary has facilitated referring 19 litigants who need legal aid services to the Center, which enabled access to justice, especially for vulnerable populations. Legal representation for indigent and other populations by private lawyers on *pro bono* basis has also played a crucial role in establishing a level playing field with the state prosecutors in the court. This has brought about ensuring equal access to justice and fair

trial. Out of the 118 applications received by the Center, 68 individuals met the eligibility criteria for legal aid, while 48 were found to be ineligible, with two under assessment. Out of the 48 ineligible applicants, 44 cases could not meet the *Merit Test*, and four applicants were ineligible since they were found to be economically resourced. However, the Center provided these individuals with legal information to help them navigate the legal process effectively, and prepare their case. The following graph shows the empirical data.

Figure 1: Total legal aid services, 2024.

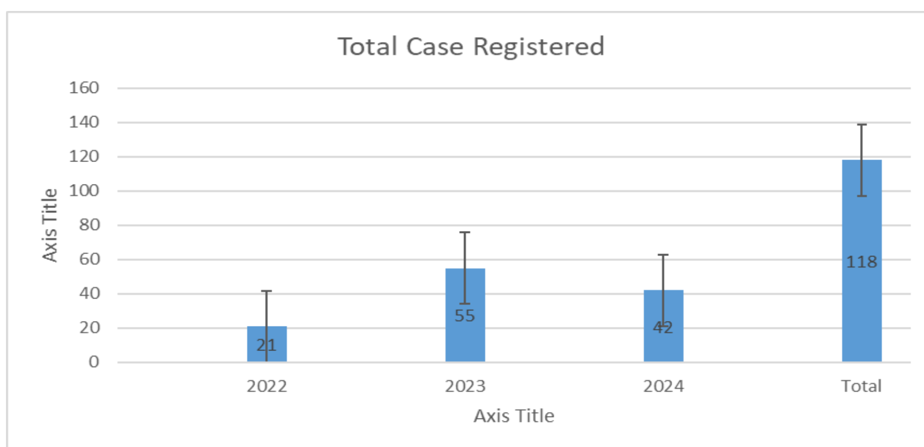

Figure 2 - Year-wise registration for legal aid services.

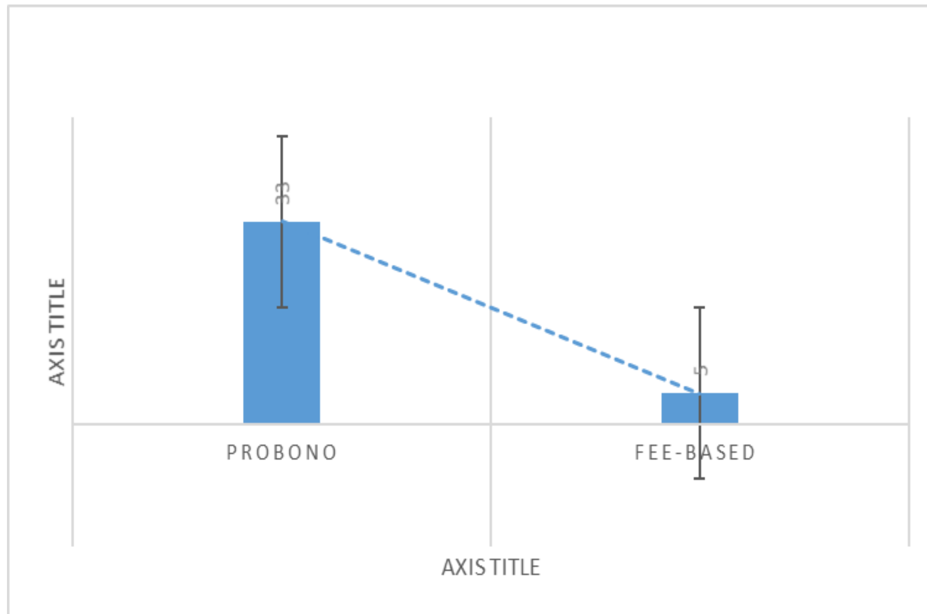

Figure 3: The nature of legal services provided.

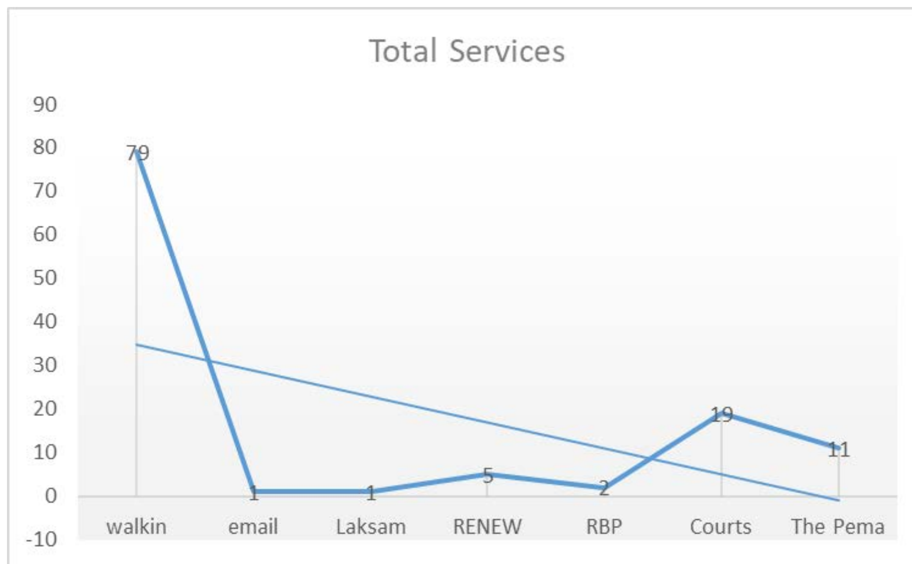

Figure 4: Institution-based case referrals to the LAC.

OUTCOMES OF LEGAL AID

In one way, the operation of the LAC is the most altruistic operation of the law and legal infrastructure. The impact stories highlight the significant advantages of legal aid services in empowering vulnerable individuals, safeguarding their rights, and advancing social justice. For instance, Mr. X, who faced charges of statutory rape, was initially sentenced to life imprisonment by the trial court. However, after appealing to the High Court with assistance from a legal representative from the LAC, his sentence was reduced to 25 years. Similarly, Mr. Y, charged with the rape of a child over 12 years old, received pro bono legal representation, resulting in the court deferring judgment due to insufficient evidence.

Another case involved Mr. A, a person with a physical disability who had an amputation following an electrocution incident; he received legal support from the LAC, and his case was resolved through mediation, resulting in a compensation agreement with Nu. 850,000/- which had been out of reach for four years before he approached the Center due to his disability. *Pro bono* legal representation also benefited Mr. T, an indigent individual with a speech impairment who was charged with displaying a weapon, leading to his acquittal. Additionally, a farmer who was under detention for over a month was accused of rape. Through the legal representation services of a *pro bono* lawyer, he was released on bail without needing to post a bond, after which the Office of the Attorney General dropped the charges. Beyond providing legal aid, the LAC has assisted individuals in seeking approval for changes in court jurisdictions, facilitating direct access to justice, and reinforcing due processes to create a more supportive legal environment.

CHALLENGES AND WAY FORWARD

The LAC is committed to ensuring all individuals have equal access to justice and legal assistance. Its efforts have significantly enhanced access to justice in Bhutan, and the Center continues to strive towards our mission of providing quality legal aid services to those in need. These efforts manifest through physical accessibility and disability equality, as well as gender-responsive legal services. The initiatives implemented by the LAC, including the construction of a wheelchair ramp and inclusive training for bench clerks, have significantly enhanced access to justice for marginalized and vulnerable populations. The ramp

has eliminated physical barriers, allowing individuals with mobility challenges to easily access legal services, thereby promoting inclusivity and demonstrating a strong commitment to equity within the legal framework. Meanwhile, the training program for bench clerks focused on disability equality, gender-responsive legal services, and the specific needs of vulnerable groups. This educational effort fosters a people-centered approach in the justice system, cultivating a culture of empathy and understanding among service providers. Together, these initiatives create a more inclusive and accessible environment, ensuring that all community members can seek and obtain legal assistance effectively regardless of their abilities or backgrounds.

One of the challenges LAC faces is the outreach of services to remote communities. Hence, the project to expand the LAC in two regions, one in the southern region and another in the eastern region of Bhutan, will strive to extend services to the people living in geographically remote areas. This initiative should be executed to make legal aid more people-centric and accessible. The Center must be strengthened with adequate human and financial resources to address gaps in the current service delivery. However, the uneven distribution of lawyers in the other districts remains a challenge in providing prompt legal aid service, considering the turnaround time for appointing lawyers from Thimphu, where most lawyers are clustered. In this light, e-litigation and online hearing are potential solutions.

CONCLUSION

In Bhutan, legal aid has become a vital tool for ensuring that justice is accessible to all, particularly for those who are economically disadvantaged. Legal aid services have significantly improved access to justice, often influencing judgment outcomes in meaningful ways. These services have contributed to acquittals, reduced sentences, and deferred judgments, marking a shift in the traditional sentencing paradigm. By making justice more accessible, legal aid services have redefined the approach to judgments, promoting fairer and more balanced outcomes. Legal aid services have helped bridge gaps in access to justice and fostered a more equitable, more inclusive legal system by providing support in navigating complex legal processes. As Bhutan continues to develop its legal infrastructure, strengthening and expanding legal aid will be essential in upholding the principles of equality and justice for every citizen.

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MEDIATION AS AN AVENUE FOR ENHANCING ACCESS TO JUSTICE IN BHUTAN

ABSTRACT

The research paper '*Mediation as an Avenue for Enhancing Access to Justice in Bhutan'* conducts a comprehensive study on mediation initiatives implemented by the Bhutan National Legal Institute (BNLI) from the data of 2017 to 2023, focusing primarily on their effects on access to justice in Bhutan. Within a cultural milieu steeped in Buddhist traditions, Bhutan's historical affinity for mediation serves as a foundation for understanding its contemporary judicial landscape. While the formal judicial system traditionally addressed disputes, it often faced significant challenges, including lengthy timelines and high costs, hampered timely access to justice. In contrast, Alternative Dispute Resolution (ADR) methods, particularly mediation, offer a viable and efficient means for conflict resolution, engaging citizens in cooperative dialogue and mutual agreements. The study emerges in a historical context where mediation practices in Bhutan can be traced back to the 8th century, exemplifying a rich legacy that has flourished through the contributions of significant historical figures. Mediation has been systematically integrated into Bhutan's legal system with legislative frameworks. Utilizing a mixed research methodology, this paper employs secondary data derived from the Annual National Mediation Reports of BNLI and the *Annual Report of Judiciary* from 2017 to 2023. The investigation evaluates the impacts of mediation on social cohesion, legal outcomes, and community engagement. By exploring the effectiveness of mediation practices, the paper seeks to contextualize their role within the broader framework of Bhutan's justice system. It offers insightful perspectives and actionable recommendations for future reforms that could further entrench its significance in promoting equitable access to justice for all citizens.

Keywords: conflict resolution, party autonomy, inclusivity, restorative justice, accessibility

INTRODUCTION

Nestled within the majestic Himalayan region, Bhutan emerges as a beacon of Buddhist values and teachings, deeply intertwined with the rich traditions of its spiritual heritage. As a nation intrinsically linked to Buddhism, its citizens and the global community are attuned to the

profound insights emerging from Buddhist discourse, particularly concerning the challenges of the contemporary era. This period is often denoted as the age of the 4th Buddha, Sakyamuni, characterized by a deterioration rife with conflict, disputes, and pervasive suffering. Within this context, it is unsurprising that humanity experiences an array of disputes, necessitating the implementation of effective mechanisms for resolution. Traditionally, the judicial system has served as the primary vehicle for addressing conflicts, encompassing the adjudication of disputes and criminalizing unlawful actions. However, this conventional legal approach frequently encounters significant hurdles, including extended timelines and prohibitive costs, often resulting in delayed justice. Given these challenges, the pursuit of timely and accessible resolution has prompted an increasing reliance on ADR methods, empowering individuals to resolve their conflicts through mutual agreement and more informal processes. ADR encompasses an array of techniques, including negotiation, mediation, and conciliation, all designed to facilitate cooperative communication and achieve resolution in a more efficient and less burdensome manner.

Globally, ADR has emerged as a transformative approach to dispute resolution, gaining recognition and acceptance across various legal systems. Historically, many jurisdictions have predominantly relied on formal court proceedings to resolve conflicts—a practice that has persisted for generations. The cultural foundations of ADR are deeply embedded in the traditions of countless societies. For instance, the origins of ADR can be traced as far back as 1066 AD in England, where it began to evolve as a formal practice. In Bhutan, the roots of ADR extend even further back, linking to the 8th century when the esteemed Indian Buddhist Master Padma Sambhava, known as Guru Rinpoche, mediated territorial disputes among local kings in a region now known as Nabji in Trongsa. This momentous event not only signifies the genesis of mediation in Bhutan but also plays a vital role in restoring peace and advancing the principles of Buddhism across the nation. The repercussions of this foundational mediation practice still resonate today, underscoring the significance of ADR in Bhutanese society as a preferred mechanism for conflict resolution.

Since its inception in the 8th century, mediation has remained a crucial element in resolving conflicts, serving individuals and fortifying

the communal fabric of Bhutanese society. The rich and enduring legacy of mediation in Bhutan is mainly illuminated by documented practices from the 16th century onwards, a period distinguished by the remarkable contributions of revered figures like Pema Lingpa, Zhabdrung Ngawang Namgyel, Desi Sherab Wangchuk, and Trongsa Poenlop Ugyen Wangchuck. These individuals played key roles in mediating disputes among state leaders, exemplifying mediation's essential function as a harmonious instrument for nurturing stability within the nation. The tradition of mediation in Bhutan is a powerful testament to the values underpinning community vitality and national integrity. Acknowledging the extraordinary effectiveness of this venerable approach, Bhutan has systematically woven the principles of ADR into its legal frameworks. Notable legislative milestones, such as the Thrimzhung Chhenmo of 1959 and the Constitution of the Kingdom of Bhutan established in 2008, underscore the importance of mediation as a fundamental aspect of justice.

Furthermore, the *Civil and Criminal Procedure Code (CCPC) of Bhutan*, enacted in 2001, emphasizes the integration of these methodologies into formal judicial processes. The establishment of the Bhutan Alternative Dispute Resolution Center on May 15, 2018, marked a transformative moment in institutionalizing ADR. Such legislative backing legitimizes mediation as a formidable dispute resolution approach, emphasizing its capacity to alleviate burdens on conventional court systems and to ensure justice is attainable for all citizens. In a contemporary landscape where access to justice is pivotal for fostering equitable governance and social harmony, the enduring practice of mediation emerges as a cornerstone for conflict resolution and community engagement. The BNLI recognizes this enduring importance and has taken significant strides under the esteemed guidance of Her Royal Highness Ashi Sonam Dechan Wangchuck, the Honorable President of the Institute.

Since its inception in 2012, the BNLI has been at the forefront of a transformative initiative to enhance local leaders' capacity through an extensive mediation training program. This ambitious effort not only seeks to invigorate mediation processes within Bhutan but also aspires to institutionalize these practices in alignment with the diverse needs of our communities. By thoroughly assessing existing mediation practices

across various regions, the BNLI has successfully consolidated its approach, creating a robust framework for dispute resolution. Equipping local government leaders with essential mediation skills is paramount in this effort, as the Institute endeavours to engrain justice into the everyday lives of citizens, making it readily accessible. This initiative represents more than just the transmission of conflict resolution skills; it signifies a transformative paradigm shift to establish standardized best practices nationwide. Such an organized strategy not only enhances the quality of mediation services but also nurtures a culture steeped in peace and cooperative dialogue among citizens—an essential foundation for a harmonious society.

This research paper undertakes a comprehensive study of the mediation initiatives conducted by the BNLI, drawing on data spanning from 2017 to 2023. This timeframe has been selected due to the unavailability of mediation reports in 2024. The annual collection of mediation data, typically carried out in December, poses challenges in gathering additional data in October or early November without placing undue burdens on Courts and local government agencies. Consequently, our analysis has exclusively focused on mediation reports from 2017 through 2023. By employing this empirical framework, the paper aims to illuminate and articulate how these mediation initiatives advance the cause of a just and equitable society in Bhutan. Furthermore, our investigation has delved into mediation's integral role in nurturing the rule of law and reinforcing community resilience. This comprehensive examination will shed light on the historical context, cultural significance, and modern mediation applications within the Bhutanese legal system. Additionally, the study will evaluate the impact of mediation on essential facets such as social cohesion, legal outcomes, and community engagement—crucial for fostering an equitable justice system. Through this exploration, we hope to advance our understanding of how mediation enriches access to justice in Bhutan.

OBJECTIVES

The primary objective of this research is to assess the impact of mediation on enhancing access to justice for Bhutanese citizens while analyzing its role in promoting social cohesion, improving legal outcomes, and fostering community engagement within Bhutan’s legal framework. This study will also evaluate mediation's historical and

cultural significance in Bhutan, examining its effectiveness as a mechanism for developing a fair and resilient justice system. By exploring these multidimensional aspects, the research aims to contribute valuable insights into the potential of mediation to facilitate equitable dispute resolution and strengthen the legal culture in Bhutan.

RESEARCH QUESTIONS

1. What are the impacts of the mediation initiatives on access to justice, social cohesion, and community resilience in Bhutan?

2. How do these initiatives reflect mediation's historical and cultural significance within the country's legal framework?

METHODOLOGY

The research methodology employed in this study is mixed. We relied exclusively on data from the annual Mediation Reports published by the BNLI from 2017 to 2023. Due to concerns about potentially compromising the sentiments of local government leaders and courts, we opted not to send official correspondence or surveys to collect mediation data. Issuing a second request for this information, particularly ahead of the annual report notification typically distributed in December, could have jeopardized future cooperation. Consequently, we refrained from soliciting data for 2024 and instead focused on utilizing the comprehensive data from the previous years' Annual Mediation Reports for this study. Thus, the methodology for this study is based on a secondary data analysis of existing mediation reports rather than primary data collection.

I. MEDIATION IN BHUTAN

Institutionalization of Mediation in Bhutanese Legal Framework

The third paragraph of Article 1 of the UNCITRAL Model Law of the Year (2002) for international commercial conciliation defines mediation as "*any process, whether referred to as conciliation or mediation, or by another term of similar meaning, in which the two parties*

request another person or persons (conciliator or conciliators) to assist them in their endeavours to reach an amicable settlement of their dispute arising out of a contractual or other legal relationship" (UNCITRAL, 2002). It's a way to solve disagreements without going to court, where a neutral third party facilitates agreeing and settling the issue. In Bhutan, mediation has a deep-rooted significance in Bhutanese culture, intricately woven into the nation's social fabric since the time of Guru Rinpoche in the 8th century. This historical figure is revered for introducing Buddhism in Bhutan, and his teachings emphasized the importance of dialogue, understanding, and compassion in resolving disputes. The principles he espoused have cultivated a cultural environment where mediation is not merely a method of conflict resolution but a holistic approach to maintaining social harmony and fostering relationships. As a result, mediation reflects Bhutan's commitment to collaborative conflict resolution, a practice that resonates powerfully within the context of contemporary Bhutanese society. The rich legacy of conflict resolution established by Guru Rinpoche manifests in various aspects of Bhutanese life, where community and cooperation are valued above contentious adversarial encounters. In traditional settings, disputes were commonly addressed through community gatherings, where elders and respected leaders facilitated dialogue, encouraging parties to explore their differences and seek common ground. This collective approach to conflict resolution enhances community ties and reinforces the ethos of mutual respect—values pertinent to Bhutanese culture today.

The establishment of the ADRC in 2013 marked a significant milestone in the institutionalization of ADR focusing on arbitration within Bhutan's legal framework. This initiative signified the recognition of ADR as a formal means of addressing disputes, providing citizens with an alternative to the often prolonged and adversarial nature of court proceedings. By instituting an ADRC, Bhutan has taken a progressive step toward modernizing its approach to conflict resolution while remaining true to its cultural foundations. The Centre serves as a vital resource for individuals seeking to resolve conflicts amicably, allowing for collaborative dialogue that respects the interests of all parties involved.

Establishment of Court-Annexed Mediation (CAM) Units

The Court-Annexed Mediation (CAM) program was established as a key component of judicial reform, guided by Her Royal Highness

Princess Sonam Dechan Wangchuck, to improve access to justice and promote societal harmony and peace. This service is structured to enable litigants to seek negotiated resolutions with the support of impartial in-house judicial mediators throughout the litigation process, right up to the delivery of the final judgment. The CAM was officially launched at the Punakha Dzongkhag Court on October 28, 2019, in a ceremony esteemed by the presence of Her Royal Highness, Princess Sonam Dechan Wangchuck (Annual Report, 2019). It represents a significant advancement in enhancing access to justice, particularly by providing a more effective, accessible, and cooperative framework for resolving disputes. By incorporating mediation directly into the court process, the unit serves as a bridge between formal litigation and party-based conflict resolution, allowing parties to engage in meaningful dialogue and negotiation in a less adversarial environment. This integration is particularly crucial in addressing the challenges of delayed justice often experienced in conventional court proceedings, which can be lengthy, costly, and emotionally taxing for those involved. With the mediation unit in place, cases that might otherwise languish on court dockets can be resolved more swiftly, thereby reducing the backlog that plagues many judicial systems. This expedited approach not only alleviates the burden on court resources but also ensures that individuals receive timey resolutions to their disputes, a fundamental aspect of a fair and effective justice system. Moreover, mediation fosters a more inclusive process by empowering individuals to take an active role in their conflict resolution.

Unlike traditional litigation, where outcomes are imposed by judges, mediation encourages participants to collaboratively explore their needs and interests, leading to agreements that are more tailored to their specific circumstances. This participatory nature of court-annexed mediation enhances the perceived legitimacy of the outcomes, as parties are more likely to accept and adhere to resolutions they have helped to create, leading to higher satisfaction and compliance rates. Furthermore, by promoting an atmosphere of cooperation rather than confrontation, the mediation unit contributes to healthier interpersonal relationships among disputing parties and can serve to restore relationships that might have been damaged by conflict. This restorative aspect is particularly important in family law cases and community disputes, where ongoing relationships are often necessary and valuable.

Additionally, the CAM prioritizes the development of mediation competencies among legal professionals and court personnel, thereby embedding these skills within the legal ecosystem. Training judges, lawyers, and court staff in mediation principles not only equips them to facilitate mediation effectively but also promotes a broader cultural shift within the legal system that values collaborative approaches to conflict resolution. As legal practitioners become more adept in mediation techniques, they can offer clients informed choices about how to address their disputes, fostering an environment where mediation is perceived as a viable and effective alternative to litigation (Mediation a Versatile Path in Court-Annexed Mediation, Private Practice, and Professionals Capacity Building, n.d.), This educational component reinforces a preventive approach to conflict, as individuals equipped with conflict resolution skills are more likely to engage constructively and seek collaborative solutions before disputes escalate to contentious litigation. Importantly, the benefits of court-annexed mediation extend beyond individual cases; they contribute to more equitable access to justice. By reducing barriers associated with traditional litigation, such as exorbitant legal fees and the intimidating atmosphere of courtrooms, mediation becomes an accessible option for a wider range of individuals, including those from marginalized or underrepresented communities.

Nation-wide Mediation Training Initiatives

A crucial aspect of promoting sustainable mediation practices in Bhutan lies in the nationwide mediation training initiatives aimed at empowering local government leaders and members of the legal fraternity, which serve as instrumental components in enhancing access to justice across the nation. These training programs are pivotal not only in equipping key stakeholders with the necessary skills to facilitate mediation effectively but also in fostering a cultural shift toward cooperative conflict resolution that aligns with Bhutan's unique social context. By specifically targeting leaders within local governments, Bhutan cultivates a grass-roots culture of mediation that resonates deeply with community values, traditions, and norms, thus ensuring that community-driven conflict resolution remains both accessible and contextually relevant (Sonnenberg, 2020). This grassroots emphasis is paramount in a nation where communal relationships and social harmony hold significant importance. When local leaders are trained in mediation

techniques, they become essential agents of change capable of addressing disputes within their communities in nuanced and culturally sensitive ways. This training enables them to approach conflicts not just as isolated incidents requiring resolution, but as opportunities to engage their communities in dialogue that fosters understanding and collaboration.

Furthermore, as these trained leaders implement mediation practices, they enhance public awareness and acceptance of mediation as a viable alternative to litigation, cultivating a broader recognition of its benefits among community members. This increased visibility of mediation encourages individuals to view conflict through a collaborative lens rather than resorting to adversarial interactions that can exacerbate tensions and divisions. In this regard, mediation training serves not just to prepare leaders for formal mediation but also to instill in them the values of effective communication, empathy, and negotiation that are vital for nurturing long-term relationships among community members (Moore, 2004). As local leaders embrace these values and employ mediation techniques, they can effectively defuse conflicts before they escalate, ultimately supporting the societal goal of maintaining harmony. Additionally, these initiatives benefit the legal fraternity by bridging the gap between legal professionals and community members, fostering a more integrated approach to justice that recognizes the importance of local customs and practices in shaping conflict resolution strategies. By equipping legal practitioners with mediation skills, the programs empower them to offer clients informed alternatives that prioritize reconciliation over retribution, thereby disassociating legal proceedings from an adversarial mindset (Butcher, 2020). This empowerment is crucial in a context where the legal system may be perceived as distant or intimidating; trained legal professionals can demystify the mediation process, making it more inviting for individuals to seek assistance in resolving their disputes.

Likewise, the training fosters collaboration between local leaders and the legal fraternity, creating a network of support that reinforces mediative practices at multiple levels of society. Communities that embrace mediation, supported by trained local leaders and legal professionals, are better positioned to address conflicts in a manner that reflects their unique cultural identities while simultaneously upholding the principles of justice and equity. The ripple effects of these training

initiatives extend beyond immediate conflict resolution; by encouraging a culture of mediation, Bhutan is laying the groundwork for a society where disputes are managed constructively, relationships are nurtured, and social cohesion is prioritized. Moreover, these programs can significantly impact marginalized or underrepresented communities, ensuring that mediation is not only seen as a resource for the privileged but is recognized instead as an essential tool for all groups within society. This inclusivity reinforces access to justice, as individuals feel empowered to engage in processes that respect their voices and agency, regardless of their socio-economic status. Ultimately, the nationwide mediation training initiatives represent a pivotal investment in Bhutan's future, equipping stakeholders with the tools necessary to foster a sustainable and equitable system of justice that resonates with the nation's cultural values. As communities become more adept at resolving conflicts through dialogue and understanding, the potential for long-term social harmony is greatly enhanced, making these training programs a cornerstone of Bhutan's commitment to restorative practices and inclusive governance.

Training the Legal Fraternity

Additionally, providing training on mediation to the new lawyers of PGDNL, law graduates of Jigme Singye Wangchuck School of Law, and other lawyers in the legal fraternity ensures that legal professionals are well-versed in mediation principles and practices, which profoundly enhances the overall access to justice within the judicial system. This targeted training equips lawyers with the skills they need to effectively facilitate and advocate for mediation as a viable dispute resolution option, thereby creating an environment where clients are presented with informed choices regarding their paths to conflict resolution. By integrating mediation training into the legal education curriculum and ongoing professional development, legal practitioners can develop a nuanced understanding of collaborative problem-solving approaches, allowing them to offer clients tailored strategies that prioritize negotiation and mutual understanding over adversarial litigation. This alignment between legal training and mediation practices fosters a comprehensive legal framework that broadens the scope of conflict resolution available to individuals, ensuring that litigation is not the sole avenue for addressing disputes. As legal professionals become adept at recognizing which cases

are suitable for mediation, they can counsel their clients more effectively, guiding them toward amicable resolutions that often yield higher satisfaction levels compared to those achieved through traditional court proceedings.

This cultural transformation within the legal arena alters how disputes are approached and signals to the public that the justice system values and promotes cooperation over confrontation. The resultant environment encourages individuals to view mediation as a pragmatic choice, thereby reducing the stigma often associated with seeking alternate paths to resolution. Accessibility to mediation also expands significantly when legal professionals are trained and enthusiastic advocates for the practice, as courts positioning mediation as a first-line method for dispute resolution can lead to greater public awareness and engagement. Ultimately, the benefits of such comprehensive training ripple through the entire justice system, creating a scenario where increased access to mediation translates into improved societal outcomes. When individuals are informed about and have access to mediation, they experience transformations in their approach to conflict resolution; disputes become opportunities for dialogue rather than insurmountable obstacles, leading to more effective community engagement and participation (Spangler, 2003). This shift is particularly impactful for marginalized groups who may traditionally perceive the legal system as intimidating or unwelcoming. With the support of competent legal professionals advocating for mediation, these individuals can navigate the complexities of dispute resolution with greater confidence, ensuring their voices are heard and their interests are effectively represented. Therefore, comprehensive training of the legal fraternity in mediation principles strengthens the justice framework by ensuring that clients have access to more equitable and constructive conflict resolution avenues—ultimately reshaping the justice landscape to prioritize relationships, understanding, and long-term societal harmony over mere adjudication.

II. WHY MEDIATION IS AVENUE FOR ACCESS TO JUSTICE

A Broader Societal Investment in Skills of Dialogue and Mediation

The commitment to mediation training initiatives represents a significant societal investment in cultivating essential skills such as dialogue and negotiation, which are critical components in enhancing access to justice through the establishment of the CAMU within judicial systems. By prioritizing these training programs, communities can become adept at implementing mediation techniques, which in turn diminishes the potential for conflict escalation and fosters a culture of understanding and respect among their members. In contemporary society, where disputes frequently arise from misunderstandings, cultural differences, or varying perspectives, the ability to engage in constructive dialogue holds immense value. Mediation training equips community members and legal professionals alike with the tools necessary to navigate conflicts proactively, allowing them to address underlying issues before they evolve into more entrenched disputes. This proactive engagement not only mitigates the emotional and financial toll associated with adversarial legal processes but also nurtures relationships that are essential for the health and stability of any community.

Furthermore, as individuals gain expertise in mediation skills, they become more empowered to resolve conflicts amicably within their environments, thereby reducing the reliance on traditional litigation pathways that can often perpetuate cycles of resentment and antagonism. This shift towards a mediation-friendly ethos supports the development of a more harmonious society, where the emphasis is placed on collaboration rather than confrontation. Moreover, communities that cultivate mediation practices typically witness improved interpersonal relationships, as parties involved in conflicts learn to communicate more effectively and empathetically through mediation processes. As these skills become ingrained in the community’s culture, they contribute to a broader societal transformation that values negotiation and mutual respect, leading to healthier interactions in diverse settings—be it familial, social, or professional. Additionally, the integration of mediation training into community engagement strategies positions mediation as a primary conflict resolution method, thereby enhancing public awareness

and acceptance of mediation as a legitimate and effective means of addressing disputes. Such acknowledgement is crucial in reducing the social stigma associated with conflict resolution processes; instead of perceiving mediation as a last resort or a sign of weakness, community members start to appreciate it as a constructive avenue for addressing grievances.

The enhanced visibility and appreciation for mediation can also lead to increased participation in community-led conflict resolution initiatives, which further strengthens the ethos of collaborative problem-solving. The benefits also extend to the legal system, where the support of mediation can alleviate the burden on courts by reducing the number of cases requiring formal adjudication. As more disputes are resolved through mediation, courts can operate more efficiently, focusing resources and attention on cases that necessitate judicial intervention, ultimately contributing to an expedited justice delivery system. This efficiency not only enhances the overall efficacy of the judiciary but also reinforces public trust and confidence in the justice system itself. When members of society perceive their judicial institutions as reactive and responsive—capable of facilitating quick and equitable resolutions—they are more likely to engage positively with those systems, further contributing to a culture of respect for the rule of law. Consequently, the comprehensive embrace of mediation training initiatives plays a pivotal role in reshaping the societal narrative surrounding conflict resolution. As communities prioritize the development of dialogue and negotiation skills, they cultivate an environment ripe for understanding and harmony, significantly reducing the propensity for conflicts to escalate into adversarial situations. Ultimately, these initiatives do not merely contribute to immediate conflict resolution; they lay the groundwork for a more resilient society where individuals are equipped to handle disputes constructively and collaboratively—transforming conflicts from potential sources of division into opportunities for growth and understanding. In this way, the integration of mediation practices within communities and judicial systems serves as a vital mechanism for promoting long-term social stability and cohesiveness, ensuring that access to justice is not only a systematic possibility but a lived reality for all members of society.

Complements Bhutan's Aspiration to Promote Gross National Happiness (GNH)

Furthermore, the integration of mediation training into Bhutanese culture complements the country's aspiration to promote Gross National Happiness (GNH) as a central governing philosophy, underscoring the multifaceted benefits that such training can yield for societal well-being. GNH emphasizes a holistic approach to development, prioritizing the collective happiness and welfare of its citizens alongside economic growth (Ura, 2015). It recognizes that a healthy society is one where conflicts are resolved collaboratively and respectfully, thus placing significant importance on social cohesion, community harmony, and environmental sustainability. Mediation, in this context, aligns seamlessly with the principles of GNH, serving not merely as a functional mechanism for dispute resolution but also as an essential vehicle for nurturing intrinsic human values such as empathy, respect, and cooperation within the community. The emphasis on collaboration inherent in mediation makes it an ideal approach for resolving disputes, particularly in a society like Bhutan, where interpersonal relationships and communal ties are deeply rooted in the cultural fabric. By promoting dialogue and understanding between conflicting parties, mediation facilitates outcomes that honour the perspectives and needs of all participants, thereby strengthening social bonds and fostering long-term relationships. This is especially pertinent in scenarios involving family disputes, community disagreements, or local governance issues, where the need for ongoing relationships is critical; resolving such matters through mediation can mitigate potential animosities, reclaiming harmony within the community.

Additionally, integrating mediation training nurtures a culture of conflict literacy, equipping individuals with vital skills to navigate disputes and misunderstandings in their daily lives. As community members gain proficiency in mediation techniques, they become more adept at employing constructive dialogue, which not only helps in resolving immediate conflicts but also instills a prevailing ethos of conflict resolution that emphasizes proactive communication. This cultural shift enhances community engagement and participation, ensuring that citizens feel empowered to address grievances in ways that uphold collective well-being rather than resorting to adversarial methods.

Moreover, mediation training dovetails with GNH's emphasis on environmental sustainability by promoting a more thoughtful and responsible approach to resource management and community relations. When communities engage in mediation, they cultivate a mindset that values collaboration over competition, fostering a sense of shared responsibility toward both social and environmental stewardship. This is particularly significant in Bhutan, where the natural environment is intricately linked to cultural identity and economic development; as mediation encourages cooperative problem-solving regarding land, resources, and environmental issues, it creates opportunities for sustainable practices and ecological harmony.

Furthermore, the institutionalization of mediation within the court system, reinforced by CAMU, provides a structured framework that supports these cultural and philosophical goals. It allows for the formal recognition of mediation as a legitimate avenue for dispute resolution within the legal landscape, thereby enhancing access to justice for all citizens. In doing so, it reinforces the belief that justice is not solely about punitive measures but also encompasses restorative processes, contributing to a broader understanding of what justice entails in a society committed to happiness and well-being. As individuals experience the benefits of mediation, such as faster resolutions and mutually satisfactory outcomes, their confidence in the justice system grows, resulting in increased willingness to engage with established legal frameworks. This positive engagement reinforces social cohesion and cultivates a commitment to collaborative approaches as societal norms. The convergence of mediation practices with the principles of GNH exemplifies a transformative approach to justice that prioritizes human dignity, communal ties, and the sustainable development of society as a whole. By fostering a culture that values dialogue, empathy, and cooperative problem-solving, Bhutan not only enhances individual and collective well-being but also sets a profound example for other nations aspiring to integrate values of happiness and sustainability into their governance frameworks (Penjore, 2020). In this way, mediation emerges not just as a tool for resolving conflicts but as a foundational element that strengthens the societal fabric and aligns with Bhutan's broader mission to cultivate an environment where peace, happiness, and mutual respect thrive.

III. HOW MEDIATION ENHANCES ACCESS TO JUSTICE

1. Accessibility

Mediation has emerged as a significant ADR mechanism in contemporary legal systems, providing a viable pathway for individuals seeking justice in a complex and often congested judicial landscape. The benefits of mediation in enhancing access to justice are manifold, encompassing various dimensions that address the shortcomings of traditional judicial processes. At the core, mediation is founded on principles of *dialogue, collaboration, and mutual respect*, fostering an environment that empowers parties to engage actively in the resolution of their disputes. One of the foremost advantages of mediation is its *accessibility*. Traditional court proceedings can be daunting, particularly for individuals unfamiliar with the legal system. The formality, complexity, and associated costs of litigation often discourage potential litigants from seeking justice. Mediation, in contrast, is typically more approachable. It allows parties to participate in a less formal, more flexible setting, which can significantly lower the barriers to entry for individuals who might otherwise feel intimidated (SBEMP, n.d.). This informal atmosphere promotes open communication, allowing disputants to express their concerns and interests without the rigid constraints of courtroom proceedings. Furthermore, mediation often entails lower costs compared to litigation, primarily due to reduced legal fees and shorter timelines. This cost-effectiveness positions mediation as an economically feasible option for individuals, particularly those from lower socio-economic backgrounds. As such, individuals who may be discouraged by the potential financial burdens associated with litigation are given an alternative that enables them to pursue resolution without incurring exorbitant expenses, thus bolstering their access to justice.

2. Speed and Efficiency

Mediation stands out in contemporary dispute resolution as a process defined by its remarkable speed and efficiency, characteristics that have become increasingly scarce within traditional court systems. Conventional judicial processes are frequently beset by significant delays, stemming from a multitude of sources, including overwhelming case volumes, procedural complexities, and logistical challenges. As court

dockets continue to swell in response to both rising litigation rates and resource limitations, the adversarial system finds itself hindered by congestion, creating a bottleneck that prolongs the timeline for conflict resolution. Through our recent interaction with young lawyers, it is learned that the prospective litigants are facing frustratingly long wait times for trial dates even for a single case hearing, and the cases often linger unresolved for months or even years. This protraction not only heightens the emotional toll on the parties involved, who may experience anxiety, uncertainty, and an erosion of personal relationships during the wait for a resolution, but also places an immense strain on the integrity of the judicial system itself. In this context, mediation emerges as a powerful and timely alternative, adeptly addressing these systemic challenges by offering a mechanism that can resolve disputes in a matter of weeks or even days, significantly contrasted against the protracted timelines of court litigation (Gavrila and Mohamed, 2023).

The rapid resolution that mediation affords is crucial for several reasons. For one, it enables parties to re-establish stability in their lives, particularly in disputes involving personal relationships, such as family matters or business partnerships. The expeditious nature of mediation fosters a sense of closure, allowing individuals to move forward rather than remain entrenched in a state of conflict. The psychological benefits of resolving disputes quickly cannot be overstated; individuals are relieved of the stress and uncertainty that accompany prolonged litigation, thus fostering emotional well-being and aiding in the restoration of healthy relationships (Law Offices of Denise Eaton May 2024). Additionally, timely resolutions can prevent the escalation of conflicts. When disputes are addressed promptly, there is less opportunity for misunderstandings or grievances to fester, which can lead to a further deterioration of relationships. In contrast, prolonged court battles can exacerbate emotions, harden positions, and lead to a greater irretrievability of relationships, especially when the parties involved are family members or longtime associates.

Moreover, mediation’s efficiency translates into significant advantages for the legal system overall. The swift resolution of disputes through mediation alleviates the burdens on judicial resources. Court systems are often overtaxed with high volumes of cases, rendering it challenging for judges to dedicate the necessary time and attention to each

matter. By diverting straightforward and resolvable disputes to mediation, courts can concentrate their resources on more complex issues that genuinely require formal adjudication. These complex matters often involve intricate legal questions, extensive evidence gathering, and protracted procedural requirements that necessitate the involvement of the judiciary. Facilitating a system where mediation can efficiently handle simpler cases allows judges and court staff to devote their efforts to litigations where their expertise is essential, ultimately enhancing the effectiveness and credibility of the judiciary. However, the benefits of mediation extend beyond individual cases to encompass broader societal impacts. The ability to resolve disputes quickly and efficiently contributes to the overall integrity of the justice system. A justice system perceived as efficient and responsive encourages public confidence—citizens are more likely to view the system favourably when they encounter timely and satisfactory resolutions to conflicts. This confidence is fundamental for maintaining social cohesion and compliance with legal norms, as individuals are more inclined to trust and respect a system that operates effectively. Hence, the speed and efficiency of mediation represent significant advantages that are increasingly essential in today's legal environment. In fostering productive dialogue and collaboration, mediation enhances both individual case outcomes and the overall efficacy of the justice system, cultivating a society that values resolution over confrontation and dialogue over division. As societies continue to navigate complex social landscapes and the demands of an evolving legal environment, mediation stands out as a critical mechanism for fostering accessibility, efficiency, and integrity in access to justice.

3. Party Autonomy and Empowerment

A defining feature of mediation that significantly enhances access to justice is its unwavering commitment to party autonomy and empowerment (Angyal, n.d.). This aspect starkly contrasts with traditional litigation, wherein outcomes are typically dictated by judges within a formal, often adversarial framework. In mediation, parties are not mere participants; they assume an active role in the resolution process, allowing them to engage with the issues at hand meaningfully. This level of engagement fosters a profound sense of ownership over the outcome, as individuals work collaboratively to create solutions tailored to their specific needs and interests. Such empowerment is transformative,

enabling individuals to assert their voices and preferences in what can otherwise be a daunting legal landscape. The mediation process facilitates direct negotiation between parties, which often leads to more satisfactory and mutually beneficial outcomes. Unlike court-imposed judgments, which can feel arbitrary or disconnected from the parties' real-life contexts, mediation allows for the creation of agreements that reflect the unique circumstances and values of those involved. Participants have the flexibility to explore various options and craft solutions that may not be available through traditional legal channels. This tailoring fosters a sense of fairness and satisfaction among parties, as the outcomes are perceived as legitimate and equitable, borne out of their collaborative efforts. Furthermore, this emphasis on participatory problem-solving is especially crucial in disputes where ongoing relationships are at stake, such as family law cases, neighbour disagreements, or workplace conflicts. In these contexts, maintaining healthy relationships is paramount. Mediation offers a platform for open dialogue where misunderstandings can be clarified, grievances addressed, and mutual interests recognized (Willis, 2023). The collaborative nature of mediation allows parties to devise solutions that not only resolve their immediate disputes but also reinforce their relationships, cultivating an environment conducive to future collaboration and understanding.

In cases of family disputes—whether they pertain to divorce, child custody, or inheritance—participants often possess a vested interest in ensuring that their relationships, particularly with children or family members, are preserved and nurtured. Mediation facilitates this by encouraging parties to consider each other's perspectives and aspirations. By creating a safe space for dialogue, mediation not only addresses the conflicts but also promotes empathy and respect among the parties involved. This spirit of collaboration mitigates tensions and fosters a greater likelihood of achieving durable resolutions, thereby contributing to long-term relationship maintenance. Moreover, the relationship-building aspect of mediation has positive implications for the broader community. As individuals learn to resolve their conflicts amicably, they are more likely to engage in constructive dialogues in other aspects of their lives. This shift from adversarial interactions to cooperative problem-solving within communities leads to enhanced social cohesion. A community that practices mediation cultivates a culture of understanding and collaboration, which can be invaluable in addressing

collective challenges and fostering a sense of belonging among its members.

4. Equity and Inclusivity

Mediation is increasingly recognized for its role in supporting inclusivity and equity in dispute resolution, a characteristic that sharply distinguishes it from traditional court processes. The conventional legal system often operates within a framework that can inadvertently favour individuals who have greater financial resources and access to extensive legal representation. Those who can afford skilled attorneys are better positioned to navigate the complexities of litigation, thereby gaining an upper hand in the adversarial process. Consequently, individuals from lower socio-economic backgrounds or marginalized communities may find themselves at a significant disadvantage, often feeling disenfranchised or isolated from the formal justice system, which they perceive as opaque and inaccessible. In stark contrast, mediation fundamentally levels the playing field by allowing individuals from diverse backgrounds to engage meaningfully in the conflict resolution process. The informal nature of mediation, combined with its accessibility, creates an environment where all parties can directly participate, regardless of their economic status or familiarity with legal intricacies. This democratization of dispute resolution is vital; it empowers individuals to voice their concerns, share their perspectives, and engage in meaningful dialogue with their opponents. Such an inclusive approach facilitates mutual understanding and fosters a collaborative spirit that is often absent in litigation.

The flexibility inherent in mediation further enhances its potential for inclusivity. Unlike the rigid structures of court proceedings, mediation processes are adaptable and can be customized to fit the unique needs of the parties involved. Mediators can employ various techniques to encourage participation, including using plain language, adjusting the format of discussions to accommodate cultural backgrounds, and employing different mediation styles tailored to the preferences of the parties. This flexibility ensures that a broader range of voices are heard, which is especially critical for marginalized communities that may struggle to be represented in formal settings (Levy, 2016). By fostering an inclusive environment, mediation not only allows for a more comprehensive understanding of the issues at hand but also serves to

integrate the perspectives and experiences of all parties. Moreover, the inclusive nature of mediation aligns closely with the principles of social justice, as it strives to rectify systemic inequities within the justice system. By providing a platform for underrepresented voices, mediation promotes equity in dispute resolution, encouraging solutions that are not merely dictated by those with more power or resources. This is particularly significant in disputes involving community stakeholders, where the input of all affected parties can lead to resolutions that reflect the collective interests of the community rather than the interests of a privileged few. For instance, in community disputes over resource use or planning, mediation can facilitate structured conversations among residents, local government officials, and business owners (Levy, 2016). This collaboration can lead to outcomes that respect the needs and rights of all stakeholders rather than enabling decisions that may serve the interests of the few at the expense of the many.

5. Promoting Restorative Justice in the Communities

Mediation plays an essential role in promoting restorative justice within communities, emphasizing not just the resolution of disputes but also the vital processes of repairing harm and restoring relationships. Unlike traditional punitive justice systems that seek to impose penalties on offenders without necessarily addressing the underlying causes of conflict, restorative justice recognizes the interconnectedness of individuals within a community framework. Despite varieties of definitions of *Restorative Justice* - the commonly accepted definition defines restorative justice as *"any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator* (Lockyer, 2018)*."* At its heart, restorative justice aims to heal the wounds of crime or conflict, enabling a constructive dialogue between victims and offenders. This dialogical approach allows both parties to engage in meaningful conversations that foster mutual understanding, empathy, and accountability. In community disputes or criminal cases, mediation creates a safe space for victims and offenders to share their narratives, allowing each side to express their feelings, concerns, and perspectives. This process is particularly transformative, as it empowers

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victims by giving them a voice in what can often be a disempowering experience. Traditionally, victims may feel sidelined in the justice system, where the focus can skew heavily towards legal technicalities and punitive measures rather than the emotional and psychological toll of the wrongdoing. Mediation recognizes the victim's need for acknowledgement and validation, facilitating their expression of hurt and anger while allowing offenders to hear the direct impact of their actions. The act of having their stories listened to and appreciated significantly contributes to victims' healing processes, fostering a sense of agency and involvement in their pursuit of justice.

Moreover, mediation catalyzes offenders' accountability, encouraging them to reflect on their actions and comprehend the consequences on others. Instead of viewing punishment as a mere consequence, mediation invites offenders to understand the personal and communal damage they have caused. In structured conversations with the victim, offenders confront the real-life ramifications of their behaviour, promoting insights that can lead to genuine remorse and the desire to make amends. This overview of accountability serves a dual purpose: it holds individuals responsible for their actions while guiding them toward positive behavioural change (Restorative Solution, 2020). The intention is not merely to deter future misbehaviour through fear of punishment but to cultivate a deeper understanding of the values of respect, responsibility, and community connectedness. The restorative nature of mediation is particularly salient in cultures that prioritize collective harmony and interpersonal relationships. Many societies value community cohesion and aim for resolutions that align with local customs and practices, further reinforcing cultural traditions around conflict resolution. Mediation acts as a culturally competent tool in these contexts, respecting and integrating traditional dispute resolution methods alongside modern practices. Such an approach enhances the effectiveness of mediation by ensuring that it resonates with the values and norms of the community, ultimately promoting acceptance and commitment to the agreed-upon resolutions.

Furthermore, the restorative justice model considers the broader social context of conflicts, recognizing that many disputes and criminal behaviours stem from systemic issues such as poverty, marginalization, and social inequality. Mediation sessions often provide an opportunity to address these underlying issues, leading to discussions that not only focus on the specific incident but also consider the environmental factors

contributing to the situation. By fostering an understanding of these root causes, communities become better equipped to implement preventive measures, reducing the likelihood of recurrence. Restorative mediation promotes healing and reconciliation not only between individual victims and offenders but also within the larger social fabric. Successful mediation processes can strengthen community ties and promote collective responsibility for addressing conflicts and upholding social norms. In such settings, participants often feel a renewed sense of belonging and pride in their community as they work collaboratively towards the common goal of healing and reconciliation. This active participation reinforces the notion that justice is not merely a legal transaction but a communal process that engages all members in maintaining the health and integrity of their social environment.

Moreover, the ripple effects of restorative justice can enhance access to justice within communities. Mediation can build public trust in the justice system by transforming how conflicts are perceived and addressed. When individuals see that the justice process prioritizes understanding, healing, and relationship restoration, they are more likely to engage in it constructively. This, in turn, leads to increased community involvement in resolving conflicts at the local level, allowing for culturally appropriate and accepted solutions that resonate with community members. In this way, access to justice is not a distant ideal but a lived reality, one that empowers individuals to engage with issues and challenges as a united community constructively. Therefore, mediation is a powerful tool in promoting restorative justice at the community level. By facilitating dialogue and understanding between victims and offenders, mediation encourages accountability, fosters empathy, and enhances healing. This approach not only benefits individuals but also strengthens communal ties, reinforces collective values, and enhances access to justice. In today's increasingly fragmented societies, the transformative potential of mediation, grounded in restorative principles, offers a path toward healing, reconciliation, and sustainable social harmony. However, the only lacking is that in Bhutan, mediation is permitted for civil cases, while the restorative justice system hasn't fully developed yet. However, by embracing mediation as a cornerstone of conflict resolution, communities can cultivate a culture of understanding and cooperation, which is vital for navigating the complexities of human relationships and maintaining the social fabric.

6. Cultural Shift Towards Cooperative Conflict Resolution

The enhancement of access to justice through mediation signifies a transformative progression not only for individual parties engaged in disputes but also for the justice system as a whole. As mediation continues to gain recognition and integration within legal frameworks, it catalyzes a substantial cultural shift toward cooperative conflict resolution. This shift is crucial in addressing traditional litigation's limitations and challenges, particularly its accessibility, efficiency, and overall effectiveness. In traditional court systems, individuals often find themselves navigating a complex and adversarial landscape that can discourage participation, particularly for those from marginalized backgrounds. Formal procedures, extensive legal jargon, and the necessity of financial resources for competent legal representation frequently characterize litigation. These factors can create significant barriers to accessing justice, particularly for low-income individuals or those unfamiliar with the legal system.

In contrast, mediation offers a more approachable and less intimidating forum for dispute resolution. Its informal nature invites all parties to engage in dialogue and negotiation, fostering an inclusive environment that promotes participation regardless of socioeconomic status or legal knowledge. As this form of conflict resolution becomes more recognized, it broadens the landscape of access to justice, allowing more significant numbers of individuals to seek and achieve fair resolutions to their disputes. Moreover, the growing acceptance of mediation within legal frameworks reflects a significant cultural shift towards valuing collaborative approaches to conflict resolution. This shift is not merely procedural; it symbolizes a new mindset in which individuals and communities recognize that disputes can often be resolved through dialogue rather than adversarial confrontation. As individuals become more familiar with mediation, they develop essential skills in effective communication, active listening, and problem-solving—all of which contribute to a more harmonious approach to conflict resolution. Consequently, the increased prevalence of mediation can potentially lead to substantially reduced litigation rates. As people embrace mediation as a viable alternative to traditional court proceedings, the demand for

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litigation diminishes. This reduction benefits the judicial system, which is often overloaded with cases requiring extensive resources and time to adjudicate. By diverting fewer complex disputes to mediation, courts can alleviate the burden on their dockets, allowing judicial resources, such as time and manpower, to be allocated more efficiently to cases requiring formal adjudication. This optimization of court resources improves the overall functioning of the justice system, leading to swifter resolutions of cases within the court system and enhancing public trust in legal institutions.

Moreover, the cultural shift towards cooperative conflict resolution can have far-reaching implications for future generations. As mediation becomes ingrained within community practices and educational structures, children and young adults will learn the value of dialogue and negotiation from an early age. This foundational understanding will pave the way for a future where conflicts are approached thoughtfully and collaboratively, fostering generations that prioritize peace and understanding in their interactions. In this sense, mediation addresses current conflicts while shaping more harmonious future social dynamics. The enhancement of access to justice through mediation transcends individual dispute resolution; it catalyzes a significant transformation within the justice system and societal culture. The skills cultivated through mediation foster a culture of peace, understanding, and collaboration, ultimately contributing to a more resilient and engaged community. This foundational shift resonates not only within the legal framework but also throughout communities, enhancing interpersonal relationships and fostering a culture that values resolution, understanding, and mutual respect.

7. Fortifying Public Trust in the Justice System

Mediation has increasingly emerged as a pivotal mechanism for resolving disputes and fortifying public trust in the justice system as a whole. The strength of this relationship is underscored by the acknowledgement that individuals' experiences when navigating the mediation process can profoundly shape their perceptions of the efficacy and fairness of the legal system. When parties achieve successful mediated resolutions, they gain firsthand insight into a conflict resolution process that prioritizes their active involvement and input, ultimately

enhancing their confidence in the justice system. One of the fundamental aspects that distinguishes mediation from traditional adversarial approaches is the participatory nature of the mediation process. Unlike court proceedings, where judges often render decisions unilaterally, mediation empowers individuals to take an active role in crafting the terms of their agreements. This collaborative dynamic allows parties to articulate their needs, interests, and aspirations, leading to outcomes that are not only tailored to their specific circumstances but also reflect their shared understanding of the issues at hand. As participants engage in healthy dialogue, negotiating solutions that resonate with their values and priorities, they perceive the mediated agreements as more legitimate and equitable than imposed court judgments.

This heightened perception of legitimacy arises from the knowledge that they played a significant role in the resolution process rather than being passive recipients of a judicial decision. When individuals recognize that their voices have been heard and their input has influenced the outcome, their faith in the justice system grows. This enhanced trust in the justice system engenders a sense of civic responsibility among individuals. When people believe that their contributions matter and that the system is equipped to reflect their interests, they become more inclined to participate in mediation and other areas of civic life. This participation may manifest in increased engagement in community decision-making, discourse surrounding public policy, and active involvement in local governance. As public trust in the justice system flourishes through the experiences afforded by mediation, a cycle of increased civic engagement and participation emerges, strengthening democracy and local communities.

Additionally, the role of mediation in building public trust is particularly critical in addressing the concerns of individuals from marginalized or historically underrepresented backgrounds. Such individuals may have experienced systemic inequities that diminish their confidence in traditional legal mechanisms. Mediation presents an opportunity to bridge this gap by creating an environment that prioritizes inclusivity, respect, and dialogue. In many cases, marginalized communities may feel alienated by court processes, often perceived as favouring those with more resources or legal knowledge. By presenting mediation as a viable, respectful alternative, the justice system can

demonstrate a commitment to equity and accessibility, fostering trust among those who may feel disenfranchised. As a result, communities that embrace mediation as a primary means of dispute resolution are likely to develop norms that prioritize understanding and compromise over conflict and division. This cultural shift ultimately promotes peace within communities and reduces the likelihood of disputes escalating into adversarial confrontations. As cooperation becomes entrenched in community values, public trust in institutions—judicial or otherwise—grows, reinforcing social capital and collective well-being. Ultimately, mediation serves as a vital link between individuals, communities, and the broader justice system, strengthening the principles of access, equity, and accountability that are essential for a thriving and just society.

CONSIDERATIONS - CHALLENGES

1. *Limitation of cases that can be mediated*

Mediation has emerged as a pivotal mechanism for enhancing access to justice, mainly due to its ability to foster dialogue, understanding, and resolution constructively. However, despite its many advantages, mediation has significant issues and challenges that can inhibit its overall effectiveness and broader applicability in various contexts. First and foremost, it is essential to acknowledge that not all disputes are suitable for mediation. Only those cases deemed "mediatable" can effectively benefit from this process, which inherently limits the scope of mediation as a universal solution for conflict resolution. For instance, cases involving complex legal issues, severe power imbalances, domestic violence, or criminal accusations may not lend themselves well to mediation. Such disputes often require formal adjudication to ensure justice and accountability. This limitation highlights a crucial barrier: while mediation may offer a pathway to resolution for many conflicts, those situations that cannot be mediated risk remaining entrenched within traditional adversarial frameworks. This reality ultimately constrains access to equitable outcomes, potentially perpetuating injustices for those unable to navigate the complexities of the legal system without mediation.

2. *Confidentiality and Transparency*

Secondly, the confidential nature of mediation, while a fundamental strength that encourages open dialogue, introduces

challenges related to accountability and the promotion of social justice. Mediation does not produce publicized precedents or binding decisions; therefore, it cannot contribute to establishing legal principles that could benefit society. This lack of transparency may inadvertently uphold systemic inequalities, as the absence of documented cases prevents the identification and rectification of patterns that affect marginalized groups. Consequently, the effectiveness of mediation in fostering social equity is called into question, as it remains connected to the evolving body of law that informs and educates the public about their rights and responsibilities.

3. *Voluntarism Challenge and Engagement*

Thirdly, several inherent challenges stem from the principles that underpin mediation itself, which can complicate the effectiveness of the process. One of the foundational tenets of mediation is voluntarism—the idea that participation in the mediation process must be voluntary. At the same time, this principle is crucial for ensuring that all parties engage willingly and without coercion, it can paradoxically lead to problems of low commitment among some individuals. In practice, this may manifest in various ways; for instance, one party may enter mediation with a genuine desire to resolve the conflict, while the other is either indifferent or reluctantly participating due to external pressures, such as a desire to appease a family member or comply with a court mandate. This divergence in motivation can significantly affect the mediation process. When one party is significantly more invested in achieving a resolution than the other, it can lead to a situation where that more committed party becomes frustrated by their counterpart's perceived lack of engagement. This frustration can, in turn, result in a withdrawal of effort from the committed party, leading to a vicious cycle of disengagement. As the discrepancy in engagement grows, the mediation process may suffer. The less committed party might not fully participate in discussions, actively listen, or negotiate in good faith, which diminishes the opportunity for meaningful dialogue.

Moreover, this imbalance in engagement can create a dynamic where one party inadvertently dominates the discussion, ultimately threatening the mediation process's integrity and balance. When one party takes the lead in articulating their needs and concerns, and the other party remains passive, the mediator may need help to facilitate a balanced conversation. This situation can unfairly skew the dialogue toward the

interests of the more assertive party, leaving the less engaged individual feeling marginalized and unheard. Such a dynamic can lead to unsatisfactory outcomes, as resolutions reached under these circumstances may not accurately reflect the interests and needs of both parties. In an environment where one voice is louder than the other, the essence of mediation—collaborative problem-solving aimed at mutual benefit—becomes compromised. The less engaged party may ultimately feel coerced into accepting a resolution that does not genuinely align with their interests or values. This outcome not only undermines the effectiveness of the mediation process but also risks fostering resentment and disengagement from future mediation efforts, perpetuating a cycle of conflict rather than resolving it.

4. *Power Imbalance*

Fourthly, power imbalances frequently observed within disputes add another layer of complexity to the mediation landscape, significantly impacting the process's overall efficacy. When one party possesses greater resources, influence, or leverage—whether due to financial standing, social status, or access to legal representation—the potential for achieving an equitable resolution diminishes dramatically; such disparities can create coercive dynamics during mediation sessions, wherein less empowered parties may feel an overwhelming pressure to acquiesce to the demands and preferences of their more dominant counterparts. This can manifest in subtle ways, such as one party's intimidation through aggressive negotiation tactics, or more overtly, as threats or the imposition of unfavourable terms that the weaker party feels compelled to accept. As a direct consequence, the very essence of mediation—which seeks to foster collaborative and mutually beneficial solutions—becomes compromised (Narine, n.d.). An imbalance thwarts genuine dialogue and may inhibit the less powerful participant's ability to voice their concerns and interests freely. Instead of engaging in a constructive exchange aimed at uncovering shared interests and creative solutions, the mediation process may devolve into a scenario resembling traditional adversarial interactions. Here, the marginalized party often feels sidelined, underscoring a detrimental impact on their emotional state and the overall integrity of the mediation process. They may leave the session feeling marginalized, unheard, and less likely to trust future

mediation processes, particularly if their needs and voices remain inadequately addressed.

5. *Information Asymmetry (Barrier)*

The issue of information asymmetry is a significant barrier that can impede the effectiveness of mediation. When one party has access to more or better information than the other- legal knowledge, financial insights, or pertinent facts relevant to the dispute—it creates an inequitable playing field that hinders genuine dialogue and informed decision-making. In environments characterized by unequal information dissemination, the party with less access may struggle to negotiate effectively, resulting in compromises that do not accurately reflect their true interests or needs. This absence of complete and accurate information not only complicates the negotiation landscape but also leaves less informed parties at a distinct disadvantage, unable to advocate successfully for themselves (Norling Law, 2024). Moreover, this unequal distribution of information can further perpetuate existing inequalities within the mediation process. When parties are not on equal footing in knowledge, the mediator faces additional challenges in facilitating a collaborative process. Establishing a trusting environment where all parties feel empowered to speak freely becomes increasingly difficult. This lack of trust can lead to scepticism regarding the motives and integrity of the more informed party, ultimately diminishing confidence in the mediation itself and creating an adversarial atmosphere counterproductive to the mediation's goals.

6. *Infrastructural Challenges*

Lastly, this discussion focuses on the CAMUs and the mediation rooms managed by courts and local government authorities. Although many courts in Bhutan have successfully established effective mediation units and dedicated spaces, there remain infrastructural challenges in some locations, as shared during our recent virtual interactions and study of issues and challenges in mediation. Economic constraints and insufficient funding limit the availability of designated areas for mediation sessions, leading to several complications. For instance, the lack of adequate space makes it difficult to uphold confidentiality, as multiple mediation sessions often occur in the same room. Additionally, mediators may experience delays, as they must wait for their turn when

the mediation unit or room is occupied by others. Furthermore, the current infrastructure poses significant obstacles to creating an inclusive environment for individuals with disabilities, as the facilities are not adequately equipped to meet their needs. However, we acknowledge the presence of some disability-friendly courts in some districts, like Paro District Court. Despite these challenges, there is a commendable feature within the court system: since the focus is primarily on family disputes, including matrimonial issues, there is a secure, separate area designated for children to occupy while their parents engage in mediation. This thoughtful provision enhances the support available for families during challenging times and may not be available in other courts nationwide.

RECOMMENDATIONS

To effectively enhance the role of mediation as a tool for justice, it is essential to address the multifaceted challenges it faces. Here are critical recommendations tailored to five significant issues that inhibit the full potential of mediation processes. Firstly, for the *Limitation of Mediable Cases*: To counter the inherent limitation that not all disputes are suitable for mediation, it is imperative to establish more precise guidelines that delineate which cases benefit most from this approach. Jurisdictions can develop a framework wherein mediators are equipped with the training and resources to identify cases that may warrant mediation and those that require formal adjudication. Creating a tiered mediation system may allow specialized mediators to handle cases involving domestic violence or criminal allegations. This ensures that these sensitive issues receive appropriate attention while allowing some aspects to be addressed through mediation where possible. Enhanced referral systems where parties can be directed to other forms of dispute resolution will ensure that mediation is utilized where it shines while offering access to justice for complex cases that necessitate traditional legal channels.

Secondly, *Confidentiality and Transparency:* While the confidentiality of mediation protects the parties' privacy, mechanisms must be established to foster transparency without compromising this confidentiality. Regulatory frameworks could mandate anonymized reporting of mediation outcomes to contribute to a database of precedents. Such an initiative would help identify patterns and inequities in mediation without revealing sensitive details. Furthermore, developing guidelines

that allow for a certain degree of disclosure concerning successful mediation outcomes can help inform the public about the process while enhancing accountability. This dual focus on confidentiality and collective learning can help practitioners and policymakers understand mediation's role in promoting social justice without risking individual privacy.

Thirdly, *Voluntarism Challenge and Engagement:* To mitigate the issues arising from the voluntary nature of mediation and the ensuing commitment disparities, mediators should employ strategic intervention techniques to facilitate engagement. This could involve pre-mediation preparation sessions to educate all parties about the mediation process and its potential benefits. Engaging participants in setting shared goals before the mediation could help ensure that both parties feel equally invested in resolving. Additionally, implementing check-in procedures during mediation can foster ongoing engagement and immediately address any signs of disengagement, allowing for course corrections and reiteration of the process's mutual benefits.

Fourthly, *Addressing Power Imbalances:* Tackling power imbalances in mediation requires a proactive and inclusive approach. Training mediators to recognize and address these disparities is critical. Mediators should be encouraged to implement techniques that balance participation, such as establishing ground rules for discussion that ensure equitable voice. Additionally, creating support structures for less powerful participants—such as access to advocacy services or community support groups—can empower them throughout the mediation process. Furthermore, mediators should consider utilizing techniques such as private sessions (caucus) to provide a safe space for less-empowered parties to discuss their concerns without fear of intimidation. These strategies not only foster more inclusive dialogue but also enhance the legitimacy and perceived fairness of the mediation process.

Fifthly, *Mitigating Information Asymmetry:* To combat the detrimental effects of information asymmetry, initiatives must focus on equalizing access to pertinent information among mediation participants. This can be achieved by establishing resource centers that provide parties with accessible information, tools, and resources relevant to their specific disputes. Such centers could offer workshops or materials that educate parties about the mediation process, common legal terms, and their rights.

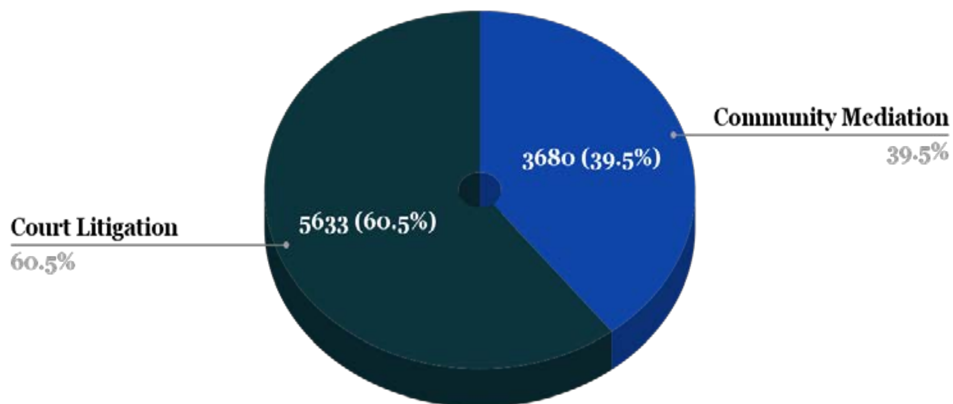
The mediator should also take an active role in ensuring that both parties share relevant information transparently before mediation begins, which can lead to more informed discussions and equitable negotiations. Furthermore, mediators can facilitate information exchange, ensuring that all parties understand the relevant facts and implications of the issues.

Lastly, *Infrastructural Challenges*: To effectively address the infrastructural challenges inherent in mediation, it is essential to prioritize the establishment of adequately equipped court-annexed mediation units and dedicated rooms. Ensuring that these spaces are designed with a strong emphasis on confidentiality and the parties' privacy is critical to fostering a trustworthy mediation environment. Furthermore, to maintain inclusive and efficient services, there must also be a commitment to creating facilities that are disability-friendly and accessible to all individuals. Investing in these infrastructural enhancements will not only improve the quality of mediation services but also demonstrate a robust commitment to equity and inclusivity in the justice process. By prioritizing these recommendations, stakeholders can significantly enhance the mediation experience for all participants, ultimately leading to more effective conflict resolution outcomes.

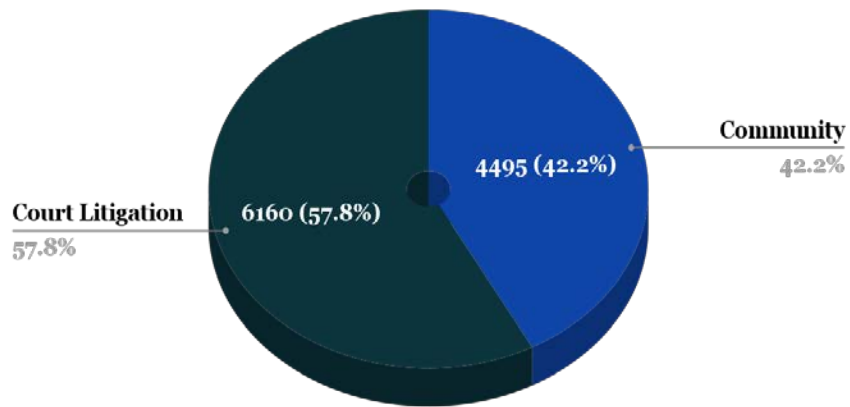
To enhance the mediation process as a vital mechanism for justice, it is essential to strategically address its inherent challenges, allowing it to serve all parties involved better. By recognizing and tackling issues such as suitability for mediation, power imbalances, and information asymmetries, stakeholders can strengthen mediation practices and broaden access to effective conflict resolution. Mediators must be vigilant in identifying disengagement and fostering an inclusive environment where all participants feel valued and encouraged to contribute meaningfully to discussions. This dedication to equal participation is critical for nurturing the collaborative spirit of mediation and reinforces its potential to address conflicts effectively. The ramifications of power disparities are significant, threatening to undermine the fundamental principles of fairness and respect that underpin mediation. To mitigate these challenges, mediators should actively implement strategies that level the playing field, such as providing resources for less advantaged parties and ensuring transparent information sharing. Creating a safe and open space for dialogue will empower all voices in the mediation process, further enhancing the likelihood of achieving equitable outcomes.

Moreover, addressing the limitations posed by the confidentiality of mediation requires careful thought. While confidentiality safeguards privacy, it should not come at the expense of accountability and public trust. Therefore, incorporating anonymized reporting of outcomes can foster a learning environment while maintaining individual privacy. In this way, the mediation process can evolve into a more inclusive and transparent forum capable of meeting the diverse needs of contemporary society. Ultimately, by approaching these multifaceted challenges with a constructive mindset, mediation can fulfill its role as an accessible and effective tool for justice, paving the way for a more just and equitable society for all. Through these efforts, mediation improves individual outcomes. It contributes to the development of broader legal and social norms that reflect the values of fairness and inclusion, impacting how conflicts are resolved in the future.

CASE DISPOSAL RATE OF MEDIATION VS COURT LITIGATION



% of Case Disposal - 2018



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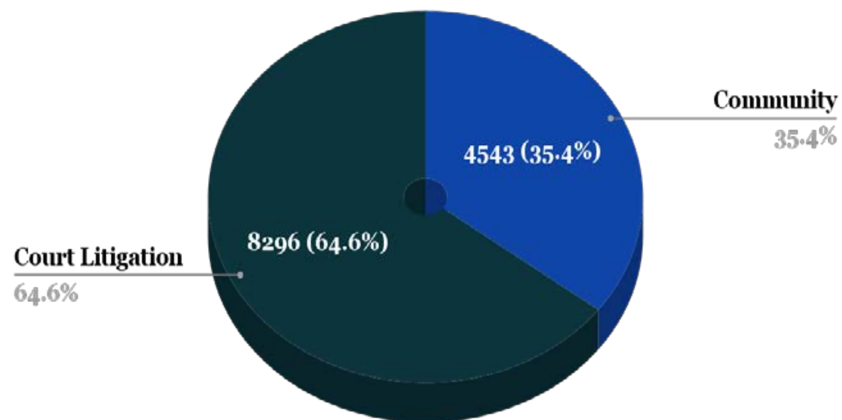

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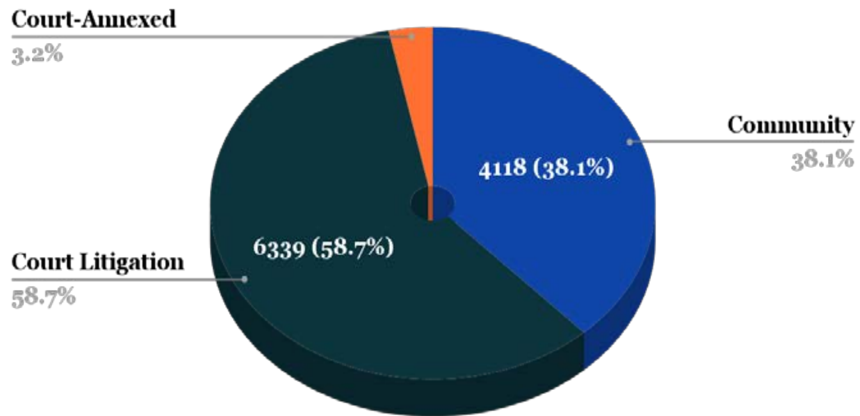

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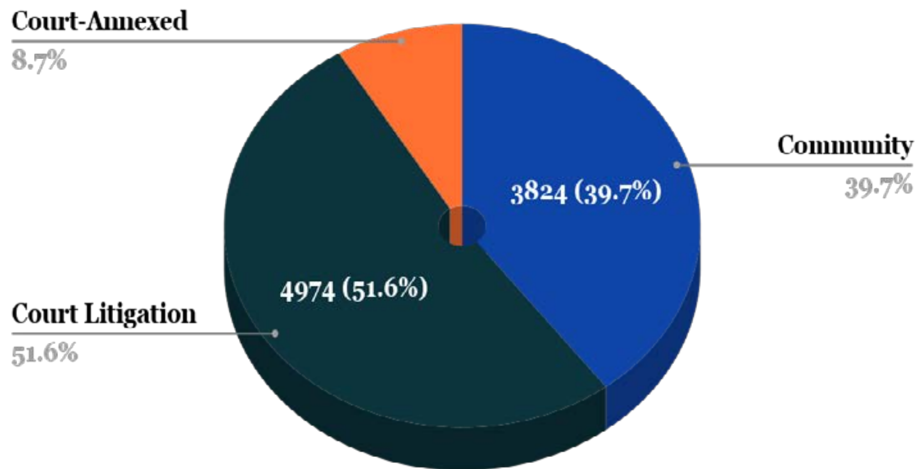

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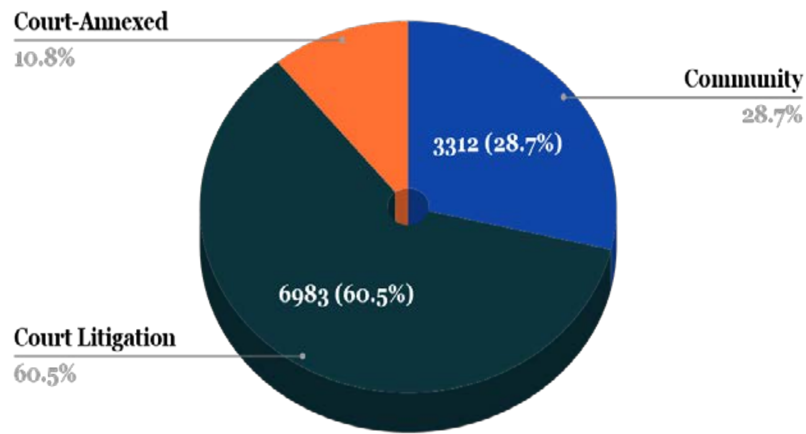
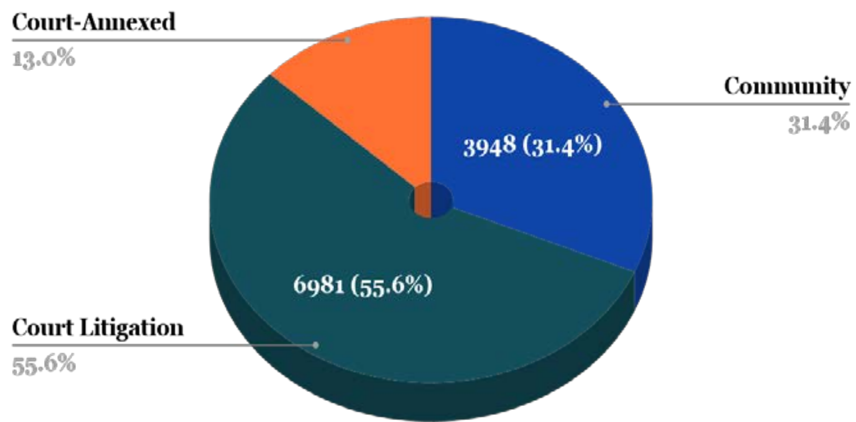


% of Case Disposal - 2023



Summary of Mediation and Litigation Statistics from 2017 to 2024

Year	# of Community Mediation	# of CAM	# of Litigation	Total
2017	**3680 (39.5%)**	No CAMU	**5633 (60.5%)**	**9313**
2018	**4495 (42.2%)**	No CAMU	**6160 (57.8%)**	**10655**
2019	**4543 (35.4%)**	No Records	**8296 (64.6%)**	**12839**
2020	**4118 (38.1%)**	**345 (3.2%)**	**6339 (58.7%)**	**10802**
2021	**3824 (39.7%)**	**836 (8.7%)**	**4974 (51.6%)**	**9634**
2022	**3312 (28.7%)**	**1246 (10.8%)**	**6983 (60.5%)**	**11541**
2023	**3948 (31.4%)**	**1629 (13.0%)**	**6981 (55.6%)**	**12558**

BRIEF FINDINGS

The comprehensive case disposal data collected from 2017 to 2023 provides compelling evidence of mediation's indispensable role in resolving disputes throughout the country. Before the establishment of the CAMU in 2019, mediation predominantly occurred within community settings. Local leaders and esteemed community elders were responsible for facilitating these resolutions. Their engagement in dispute resolution was significant, yielding an impressive average settlement rate of 39% for conflicts handled at the community level. The introduction of CAMU transformed this landscape, integrating mediation into formal judicial processes. This innovative shift led to an increase in the average settlement rate, which rose to 43.4% following the implementation of CAMU. This upward trend indicates an improvement in the quality and effectiveness of mediation practices within a structured legal framework but also highlights the critical importance of having a dedicated mediation unit that operates alongside traditional court proceedings. The

formalization of mediation through CAMU has provided both parties in a dispute with a more reliable platform for achieving resolutions, fortifying the belief that structured mediation can facilitate more amicable outcomes.

The impact of the COVID-19 pandemic also warrants examination, particularly during 2021, when a notable decline in the number of disputes was recorded. However, this decline was temporary, as 2022 witnessed a resurgence in conflict levels, which continued into 2023. An interesting observation is that despite these fluctuations in dispute rates, the volume of community-level mediation cases has remained stable, consistently exceeding 3,000 annually. Conversely, mediation through CAMU has shown remarkable growth, with a sustained increase in cases being mediated yearly. This duality underscores the efficacy of Court-Annexed Mediation as an essential mechanism that not only provides accessible justice but also actively addresses mediatable disputes, thereby alleviating the immense caseload on the judiciary.

Considering the potential consequences had CAMU not been established, one can reasonably conclude that the judiciary faced significant challenges, including prolonged resolutions and delayed justice for citizens. This highlights the essential role that mediation plays in the legal system, affirming that structured mediation methods such as CAMU not only enhance the quality of dispute resolution but also ensure that justice is accessible and expedient. In a nutshell, both theoretical insights and empirical data indicate mediation's vital contribution to the dispute resolution landscape. Its integration into traditional litigation processes fosters more amicable results, enhances accessibility to justice, and supports the overall efficacy of the judicial system. Moving forward, a continued focus on expanding and refining mediation resources, such as CAMU, will be instrumental in promoting equitable and timely outcomes for all members of society. Investing in these systems can further empower individuals to resolve their disputes constructively, leading to stronger communities and a more responsive legal framework.

CONCLUSION

In conclusion, mediation has emerged as an increasingly vital mechanism for conflict resolution within the dynamic and evolving global

context, substantially influencing Bhutan's legal framework. This practice is deeply rooted in the nation's traditional culture and customs, where it has consistently proven effective for disputing parties seeking resolution for centuries. By facilitating the resolution of conflicts and fostering the improvement of societal relations, mediation acts as a cornerstone for social cohesion. Its application in key state matters promotes social justice and nurtures communal harmony, underscoring its significance within Bhutan's unique social fabric, which intertwines cultural traditions with modern legal practices. The ongoing success of mediation is evidenced by its effectiveness in dispute resolution, with mediators achieving notable improvements in the settlement processes year after year. Mediation enhances access to justice by providing numerous advantages, such as increased accessibility for diverse populations, greater efficiency in resolving disputes, and an emphasis on party autonomy. It encourages inclusivity and cultivates a cooperative approach to conflict resolution, allowing parties to engage constructively rather than adversarially. Furthermore, mediation bolsters public trust in the legal system, aligning seamlessly with Bhutan’s aspirations toward Gross National Happiness and fostering the principles of restorative justice, prioritizing healing and reconciliation over punitive measures.

Nevertheless, the research highlights several inherent challenges in the mediation process. These include limitations on the types of cases that can be mediated, persistent power imbalances between disputing parties, issues related to information asymmetry, and existing infrastructural inadequacies that can impede effective mediation. Recognizing these challenges is crucial for developing strategies to enhance the mediation process. The findings from the data analysis suggest that addressing these obstacles through targeted interventions can significantly improve mediation outcomes.

This study, grounded in secondary data obtained from the Royal Court of Justice of Bhutan and the Bhutan National Legal Institute, unequivocally supports the assertion that mediation is critical in augmenting access to justice. It advocates for a sustained emphasis on mediation as a priority within the legal system, particularly in expanding its applicability to non-mediatable cases. By doing so, the legal framework can not only alleviate the burdens of litigation but also reinforce mediation’s importance in Bhutan’s quest for social equity and

justice. Subsequently, the evidence presented illustrates that mediation transcends the notion of being merely a supplementary pathway; it is, in fact, a fundamental avenue for achieving equitable access to justice in Bhutan. As the nation continues to navigate the complexities of modern legal challenges, it is imperative that stakeholders—including policymakers, legal practitioners, and community leaders—recognise and amplify the role of mediation in dispute resolution. By doing so, they can enrich the legal landscape while cultivating a more just and harmonious society. The future of mediation in Bhutan hinges on this recognition, paving the way for a legal system that embodies the values of cooperation, equity, and cultural resonance, which are essential for sustainable social development.

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ASSESSMENT OF THE SYSTEMS OF APPEAL IN BHUTAN

ABSTRACT

The "*Assessment of a Current Appeal System*" research will critically examine the appeal procedures within Bhutan's judicial system, focusing on efficiency, effectiveness, consistency, and uniformity. By assessing these procedures, the study aims to identify systemic flaws, procedural discrepancies, and barriers to justice that are pertinent in the current appeal system. Key areas of investigation include the frequency and grounds of appeals, the outcomes of these appeals, and the impact of appeal bond (*litigation cost*) impositions on access to justice, besides the four core areas mentioned earlier. A comparative analysis further reveals discrepancies in appeal procedures across various judicial levels, aiming to enhance the understanding of the system's effectiveness and fairness. While acknowledging the current appeals system in Bhutan, research findings indicate several critical flaws within the current appeal system. The imposition of appeal bonds appears to deter individuals from pursuing appeals, and procedural discrepancies across court levels contribute to inconsistencies in appeal outcomes, raising concerns about the fairness and uniformity of the judicial process. The exclusive location of the High Court further exacerbates these issues, particularly for individuals in remote regions who will face significant challenges in accessing the court. This study underscores the need to identify and resolve issues within Bhutan's appeal system, including standardization of appeal procedures, reconsidering appeal bond policies, and introducing mobile courts or establishing regional high courts to enhance accessibility. By addressing these issues, Bhutan can move towards a more equitable and efficient judicial system, ensuring that all individuals have fair access to justice irrespective of their location or financial standing.

Keywords: Appeal bond, procedural discrepancies, appellate jurisdiction, mobile courts

INTRODUCTION

As the guardian of justice and the upholder of the rule of law, the Judiciary plays a pivotal role in any democratic society. A well-structured

and efficient appeal system is an indispensable component of this judicial framework, providing individuals with a crucial avenue to challenge and rectify potential errors in judicial decisions. By offering a mechanism for review and correction, the appeal process safeguards the integrity of the justice system. It fosters public confidence in its ability to deliver fair and equitable outcomes (UNDP, 2024). Bhutan, a nation deeply committed to good governance and human rights, has established a multi-tiered appeal system to ensure justice delivery. The *Constitution of Bhutan* enshrines the right to appeal (Constitution, 2008), recognizing its significance in safeguarding individual liberties and promoting the principles of due process. This constitutional guarantee reflects Bhutan's aspiration to provide a fair and equitable justice system for all its citizens.

The appeal process in Bhutan is structured hierarchically, with cases progressing through multiple levels of courts. This multi-tiered system allows for a comprehensive review of lower court decisions, ensuring that errors or misinterpretations of law can be identified and corrected at higher levels. The Supreme Court, as the apex court, serves as the final arbiter of legal disputes, providing a crucial safeguard against miscarriages of justice. Yet, the constitutional provisions and the good conception of the appeal system have some limitations affecting its performance. Beneficiaries who are at the highest risk and belong to the low-income sections of society or live in far-off areas face several barriers, including procedural, monetary, and even geographic, to fair justice. Such obstacles can defeat the objective of the appeal system since the appeal system was meant to fairly and effectively right wrongs.

This study seeks to make a detailed assessment and critique of the appeal system in Bhutan to seek and find areas that require reform from i) structural and ii) procedural perspectives. To understand the impediments to the appeal system, namely the systemic cause of appeal objectives that include the High Court's geographic location, the appeal bond's cost, and various other legal procedures, we shall reach for specifics. As such, this research will critically review these issues, providing a multidimensional perspective on how the appeal system works in practice and how it could be developed for greater effectiveness in serving the interests of the Bhutanese people. We introduce concrete reform proposals aimed at making the system fairer, more efficient, and

accessible to ensure that it remains one of the important guards against miscarriages of justice.

A strong and fair appeal system is what a just and democratic society requires. We can strengthen the foundations of our judicial framework and solidify Bhutan's reputation as a nation committed to the rule of law and human rights by ensuring that we surmount the challenges that confront the appeal system in Bhutan today. Furthermore, it looks at possible reforms that will make the system fairer, more efficient, and more accessible. That the appeal process remains a viable and equitable option for all litigants, irrespective of their geographical location or economic condition, is fundamentally important to maintain the integrity of the Bhutanese Judiciary. The right of appeal is not a mere formality of procedure but a basic stone for justice by which one gets redress, and the decisions of law are made with due care, fairness, and accountability.

Therefore, this research work undertakes a critical analysis of the appeal system of Bhutan, mainly to discuss its loopholes and shortcomings, with a motive to provide the pathway for a more robust, swift and just judicial process that empowers citizens and upholds the tenets of justice. While appreciating the hard work of our diligent Judiciary, let us not be blind to the fact that even the best-engaged system can be improved upon. What we are trying to achieve in reexamining the existing appeal process is to detect areas that could be reformed to make it more effective and accessible.

Let us underline that this is not an attempt to dismantle the present system but a forerunner of development. We want to ask our readers to consider this book as one of mutual dedication toward betterment in our judicial setup and a yardstick of excellence. While we collectively pursue a proactive policy of reform, we ensure that the Judiciary of Bhutan will emerge as a beacon of justice and equity for ages to come. We humbly appeal to our readers to receive this study with open minds and in a constructive spirit. Our purpose is neither faultfinding nor denigration but the provision of constructive insights capable of building towards realizing a more just and equitable society. Only by coming together can we establish a judiciary that genuinely meets the needs of our people and cements Bhutan's position as a world leader in the quest for justice.

RESEARCH OBJECTIVES

In pursuing a fair and effective judicial system, understanding the intricacies of the appeal process is essential. Bhutan’s appeal system is critical in ensuring justice and providing individuals with avenues to contest decisions made by lower courts. This research aims to evaluate Bhutan’s appeal system by focusing on these key objectives:

1. Identify structural and procedural issues that hinder access to justice.
2. Investigate the impact of appeal bond requirements on access to higher courts, especially for low-income individuals.
3. Propose reforms to improve fairness, transparency, and accessibility in the system.

RESEARCH QUESTIONS

This study is guided by two central questions that aim to investigate the key barriers in Bhutan’s appeal system, focusing on procedural, financial, and geographic challenges while suggesting actionable reforms. Additionally, several sub-questions have been crafted to delve deeper into the complexities of the appeal system, ensuring a thorough understanding of its shortcomings and potential improvements.

1. Primary Research Questions:

a. What are the primary obstacles within Bhutan’s appeal system that hinder equitable access to justice?

b. What reforms or innovations can be implemented to improve the fairness, efficiency, and accessibility of this system?

2. Secondary Research Questions:

a. How do financial requirements, such as appeal bonds (appeal cost), affect access to justice for economically disadvantaged individuals?

b. In what ways do geographic and infrastructural challenges limit the appeal process, especially for those in remote areas?

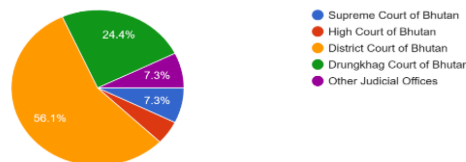
c. What practical reforms could enhance fairness, accessibility, and efficiency in Bhutan's appeal system?

These research questions are designed to provide an in-depth analysis of Bhutan's appeal system, identifying critical flaws and proposing targeted reforms to ensure fairness and accessibility, ultimately enhancing the overall delivery of justice.

INTRODUCTION TO SURVEY

In the context of this paper, a mixed-methods research approach was employed, incorporating both qualitative and quantitative methodologies to understand the subject matter comprehensively. To facilitate this, an anonymous survey was conducted targeting court officials, including judicial personnel, as well as attorneys from the Office of the Attorney General (OAG) and private practitioners associated with the Bar Council of Bhutan. The survey yielded 66 responses, enriching our findings with valuable insights drawn from a wide range of perspectives within the judicial framework. These results were further enhanced through private interviews with several key individuals with significant experience and expertise in the judicial process.

The authors posit that these findings are a foundational contribution to understanding Bhutan's appeal system. The participation of esteemed individuals from diverse professional backgrounds and a wide range of experiences, all of whom engage directly with the judiciary, underscores the reliability and depth of the insights gathered. Attached below is a graph that visually represents the percentage distribution of responses from the participants in the survey, providing a clear and quantitative illustration of the data collected for this paper. This amalgamation of perspectives adds richness to the analysis and emphasizes the critical nature of the appeal process within Bhutan's legal landscape.



1. Professional Role:
25 responses

APPEAL AND THE APPELLATE COURTS

In exploring the essence of this paper, it is crucial to recognize that an appeal represents a fundamental judicial mechanism by which individuals convey their grievances regarding decisions rendered by lower courts to higher courts, seeking a thorough review and potential reversal of those decisions. This vital process extends beyond the confines of the judicial system, permeating diverse professional fields where fairness and justice are paramount. The right to appeal is recognized universally as an intrinsic human right, emblematic of the belief that every individual deserves a fair opportunity for redress against adverse judgments.

The Black's Law Dictionary defines the term "*appeal*" as "*a proceeding undertaken to have a decision reconsidered by a higher authority; esp., the submission of a lower court's or agency's decision to a higher court for review and possible reversal* (Black Laws Dictionary, n.d.)." The Cambridge Dictionary further articulates it as "*to ask a higher law court to consider again a decision made by a lower court, especially in order to reduce or prevent a punishment* (Cambridge Dictionary, n.d.)." This definition underscores the universal applicability of the concept of appeal across various legal systems, reflecting a shared understanding of its purpose and significance. An appeal constitutes a request to re-evaluate lower court decisions based on the premise that such decisions may be flawed due to misinterpretation of the law or procedural errors, which could lead to inadvertent convictions. Notably, the appeal process is overseen by the Judiciary branch of government in every nation, reinforcing the accountability of the legal system to uphold justice and rectify injustices. This framework not only safeguards

individual rights but also fortifies the integrity of legal institutions, ensuring that justice is administered fairly and equitably for all.

In Bhutan, the *Constitution of the Kingdom of Bhutan*, established in 2008, encompasses 34 Articles and 4 Schedules, effectively addressing crucial matters pertinent to the state. As the supreme legal authority (Constitution, 2008), this *Constitution* assigns the Supreme Court of Bhutan the critical role of guardian and final arbiter regarding its interpretation (Constitution, 2008). Article 21 plays a vital role in defining the Judiciary of Bhutan through its detailed 18 sections. This Article articulates that the Judiciary comprises all courts and tribunals created by the *Druk Gyalpo* upon the recommendation of the *National Judicial Commission*. Section 2 of Article 21 clearly states that *"The judicial authority of Bhutan shall be vested in the Royal Courts of Justice comprising the Supreme Court, the High Court, the Dzongkhag Court, the Dungkhag Court, and such other Courts and Tribunals as may be established from time to time by the Druk Gyalpo on the recommendation of the National Judicial Commission* (Constitution, 2008)*."*

Furthermore, Section 1 of Article 21 highlights the essential purpose of the Judiciary: "*The Judiciary shall safeguard, uphold, and administer Justice fairly and independently without fear, favor, or undue delay in accordance with the Rule of Law to inspire trust and confidence and to enhance access to Justice* (Constitution, 2008)*."* This commitment lays a strong foundation for public trust and confidence and promotes enhanced access to justice for all citizens. The principles outlined in these sections are further strengthened by Sections 7 and 14 of the same Article, reinforcing the notions of independence and integrity within the judiciary. Collectively, these provisions form the core of Bhutan's judicial system, establishing a robust framework that ensures justice is a fundamental principle in the nation's legal landscape. By embedding these principles in the *Constitution*, Bhutan demonstrates a commitment to uphold the rights of individuals while fostering a legal environment that reflects fairness and equity.

In Bhutan, the judicial hierarchy consists of three distinct appellate courts: the Supreme Court, the High Court, and the 9 *Dzongkhag* Courts, having sub-district courts known as Dungkhag Courts. It is widely recognized—nationally and internationally—that the Supreme Court serves as the highest appellate court in a country, which also holds true in

Bhutan. According to the constitutional framework, the Supreme Court of Bhutan is designated as the preeminent appellate authority. This crucial role is articulated in Section 7 of Article 21 of the *Constitution*, which stipulates that the Supreme Court shall possess the ultimate authority to hear appeals against judgments, orders, or decisions rendered by the High Court in all matters. Furthermore, it is empowered to review its previous judgments and orders, reinforcing its position as a critical guardian of justice within the legal system. In conjunction with this, Section 14 of Article 21 delineates the function of the High Court, establishing it as the court of appeal for decisions arising from the Dzongkhag Courts and tribunals. The High Court also holds original jurisdiction over matters not within the purview of the Dzongkhag Courts and tribunals (Constitution, 2008).

This well-structured appellate system not only ensures that there is a comprehensive mechanism for reviewing decisions but also emphasizes the importance of legal recourse. By affording individuals the right to appeal through these established courts, Bhutan commits to upholding the principles of justice and ensuring that the rule of law prevails across its judicial framework. In this way, the appellate courts collectively contribute to the integrity and fairness of Bhutan's legal system. In addition to the constitutional framework establishing the appellate courts, the *Civil and Criminal Procedure Code of Bhutan (CCPC)* enacted in 2001 further reinforces the existence and functions of the three appellate courts previously outlined. Specifically, Section 17 of the *CCPC* asserts that *"The Supreme Court shall have appellate jurisdiction over cases* (Civil & Criminal Procedure Code, 2001)*"* while Section 16 expands this jurisdiction to encompass the entirety of Bhutan, affecting all individuals within its borders, as well as those who have a recognized legal relationship to the country. These provisions delineate the scope of the Supreme Court's authority and decisively affirm its role as the highest appellate body for all legal cases.

Furthermore, Section 21 of the *CCPC* explicitly details the appellate jurisdiction of the High Court, stating that "*The High Court may exercise appellate jurisdiction over (a) any judicial review on appeal from an administrative adjudication; and (b) any order/decision/judgment of a Dzongkhag Court* (Civil & Criminal Procedure Code, 2001)*."* This provision underscores the High Court's significant role in the appellate

process, highlighting its function in reviewing administrative and judicial decisions. In a similar vein, Section 25 of the *CCPC* articulates the appellate authority of the *Dzongkhag* Courts, stating, *"A Dzongkhag Court shall exercise appellate jurisdiction over an appeal from an order, decision or judgment of Dungkhag Courts subordinate to it (Civil & Criminal Procedure Code, 2001)."* These provisions clearly delineate the various levels of appellate jurisdiction within Bhutan's judicial system. As a result of these specific sections in the *CCPC*, Bhutan's judicial hierarchy includes a total of 11 appellate courts, comprised of the Supreme Court, the High Court, and 9 *Dzongkhag* Courts, each operating alongside their subordinate original courts in the regions of Chukha, Dagana, Pema Gatshel, Samdrup Jongkhar, Samtse, Sarpang, Thimphu, Tashigang, and Zhemgang. This robust and well-defined structure not only enhances the accessibility of justice for citizens but also assures a thorough and fair process for reviewing legal decisions throughout the nation, reinforcing the integrity of Bhutan's legal framework.

In alignment with the constitutional provisions, subsequent legislative measures were formulated, with particular emphasis on the *CCPC* and its subsequent insightful *Bench Book* issued in 2009. Among the various chapters within the *CCPC*, Chapter 7 is dedicated exclusively to the appeals process, outlining the general protocol for filing an appeal to higher courts. Section 109 of the *CCPC* articulates that *"A party to a case may file an appeal to a higher Court against a judgment of the subordinate Court* (Civil & Criminal Procedure Code, 2001)*"* thereby clearly defining an appeal. Essentially, it serves as a judicial mechanism through which a party may seek a review of a subordinate court's judgment. Nonetheless, initiating an appeal is governed by specific legal stipulations dictating how one may apply and the permissible grounds for such an appeal. It is crucial to note that not all judgments rendered by subordinate courts are subject to appeal; instead, the law imposes certain limitations.

To this end, Section 109.1 of the *CCPC* stipulates the conditions under which an appeal may be lodged. This section specifies that an appeal is only permissible from a final judgment, provided that it has been duly filed in the registry of the appellate court within a period not exceeding ten days from the date of the judgment. This framework ensures that the appeal process is not merely a procedural formality but is

instead rooted in a well-defined legal structure intended to uphold the integrity of judicial decisions while allowing for necessary recourse in the interest of justice. By clearly outlining the protocol and constraints surrounding appeals, the *CCPC* fosters a balanced judicial environment where the rights of litigants are respected and the rule of law is maintained.

Subsequently, Section 110 of the *CCPC* delineates the procedure for appellate review conducted by higher courts upon receipt of appeals from subordinate courts. Specifically, it establishes that the Appellate Court is tasked with two primary responsibilities: (a) to ascertain whether any errors were present in the original ruling, and (b) if such errors are identified, to determine whether they necessitate a remand for further consideration or a full or partial reversal of the initial judgment. In conjunction with this, Section 111 of the *CCPC* addresses the outcomes of an appeal under the provision titled *"Decision on Appeal."* This section states, *"The Appellate Court may: (a) dismiss the appeal; (b) reverse all or part of the Judgment awarded by the lower Court after due process of law; (c) remand the case to the lower Court with instructions; (d) order a new proceeding; or (e) charge reasonable costs to be paid by the party submitting the appeal if the appeal is dismissed* (Civil & Criminal Procedure Code, 2001)*"* empowering the Appellate Court with several crucial mandates in the appeal process.

These provisions represent a critical framework within the broader procedural mandates governing appeals, complementing numerous other clauses that collectively guide the appeal process. By articulating these procedural standards, the *CCPC* enhances the efficiency and clarity of the appellate system and ensures that parties have recourse to a fair and transparent judicial review. This approach reflects the legislature's commitment to upholding justice and accountability within the legal system, fostering public confidence in the integrity of judicial processes. The distinct nomenclature of the various tiers within the judiciary suggests that the procedures associated with case management and hearing methodologies will inherently differ. Trial courts engage in thorough hearings that involve a well-defined series of stages, such as miscellaneous hearings, preliminary hearings, opening statements, rebuttals, evidence presentation, witness testimony, judicial investigations, cross-examinations, closing arguments, and the final

judgment. This comprehensive multi-stage approach ensures the court arrives at accurate findings, facilitating fair and equitable decisions. It is essential to recognize that the effectiveness of these decisions is influenced by a range of factors, including the nature of the cases presented, the expertise of judicial officials, the legal acumen of the courts, and the robustness of the evidence submitted. When a ruling appears unjust or misinterpreted, the aggrieved parties can appeal for a review and potential reversal of the decision.

In many instances, parties find satisfaction in the judgments of appellate courts. However, there are times when individuals choose to pursue further reviews from higher appellate courts. This hierarchical structure within the judiciary is essential for ensuring meticulous examination of any possible flaws in decision-making. In urgent legal matters, some appeals can be directly directed to higher courts, such as the High Courts or the Supreme Court. This flexibility within the judicial process reinforces the principles of accountability and justice and ensures that pressing legal issues are addressed promptly and effectively. By highlighting these pathways for appeal and review, the system demonstrates its commitment to continuous improvement and responsiveness to the needs of those seeking justice. In Bhutan, the jurisdiction of the three Appellate Courts is distinctly defined, with each court possessing unique authorities tailored to specific legal matters. The High Court, in particular, besides judicial appeal from lower courts, exercises direct oversight in administrative adjudications, including appeals against decisions made by arbitral tribunals or centers, as stipulated in Section 71 of the *Alternative Dispute Resolution Act of Bhutan 2013* (Alternative Dispute Resolution Act of Bhutan, 2013). This provision underscores the High Court's critical role in resolving disputes arising within alternative dispute resolution contexts.

Furthermore, the *Election Act of Bhutan*, enacted in 2008, grants the High Court the authority to adjudicate election petitions directly, bypassing any intermediate appeals to the District Appellate Court. Section 467 of this Act explicitly states, *"The authority to try an election petition relating to an election to the National Assembly or National Council shall be the High Court of Bhutan* (Election Act of Bhutan, (2008).*"* This clearly defined responsibility emphasizes the importance of the High Court in maintaining the integrity of democratic processes. In

addition, Section 511 of the same *Election Act* delineates the jurisdiction for appeals concerning electoral matters, specifying that appeals may be made to either the Supreme Court or the High Court. It states, "*An appeal may, notwithstanding anything contained in any other law for the time being in force, lie from every order made by a Trial Court to (a) The Supreme Court of Bhutan, in case the election petition is related to an election to the National Assembly or National Council; or (b) The High Court of Bhutan, in case the election petition is related to an election to a Local Government* (Election Act of Bhutan, (2008)*."* This delineation ensures that the appropriate court is engaged according to the specific nature of the electoral dispute.

Moreover, the High Court is also vested with jurisdiction over extradition cases, wherein the government may direct the High Court to conduct investigations and render decisions. This multifaceted authority illustrates that Appellate Courts function as appellate bodies for subordinate courts and as original courts for significant and urgent matters impacting the State. Such a framework reinforces the essential role of the High Court and other Appellate Courts in upholding justice and effectively addressing critical issues within Bhutan's legal structure. While the Appellate Courts in Bhutan serve as the primary appellate authority for a broad range of cases, they do not function as specialized courts. This contrasts with the judicial systems in several foreign jurisdictions, where distinct highest appellate courts are established based on the nature of cases and the legal issues. For example, in France, the Cour de Cassation, which serves as the supreme court, focuses on appeals related to the interpretation of the law. Concurrently, the Court of Appeals addresses cases by examining factual issues. In addition, the Conseil d'État operates within a separate framework of administrative courts, hearing appeals on factual matters and legal interpretations. A *Constitutional Council* addresses constitutional questions, bridging the legislative and judicial spheres.

In Germany, the Bundesgerichtshof (Federal Court of Justice) aims to ensure a unified interpretation of the law, while the Bundesverfassungsgericht (Federal Constitutional Court) is dedicated to constitutional matters. The Court of Appeals, known as Oberlandesgericht, reviews cases concerning legal and factual issues in civil matters, whereas it addresses only legal questions in criminal cases.

In the United States, the Supreme Court hears appeals that may involve factual disputes, legal interpretative issues, and constitutional matters arising from lower federal courts, along with appeals from state courts that pertain to federal law. Additionally, in England, specific appeals concerning factual matters may be directed to different courts than those handling issues of law, with the Supreme Court serving as the ultimate court of appeal. Similarly, the Supreme Court of Japan acts as the final court for appeals involving questions of fact, legal interpretation, and constitutional compatibility. This comparative overview highlights the varied frameworks of appellate jurisdiction across different legal systems, emphasizing the importance of specialized courts in addressing specific cases and ensuring clarity in the interpretation and application of the law.

FINDINGS

The Appellate Courts, as delineated by both legislative framework and judicial principles, primarily undertake the critical task of reviewing the judicial decisions, orders, and rulings issued by subordinate courts. As specified in Section 110 of the *CCPC,* these courts are tasked with two essential responsibilities: firstly, to assess whether an error occurred in the initial decision, and secondly, to evaluate whether such an error necessitates a remand to the lower court or a full or partial reversal of the decision. To gain a deeper understanding of the operational framework and functioning of the Appellate Courts in Bhutan, several pertinent questions were integrated into the survey, aimed at garnering insights into their procedural intricacies and the overall effectiveness of their review processes. This approach enriches our comprehension of the judicial landscape and contributes to enhancing legal practices within the country.

According to established legal norms, an appeal must be lodged within ten working days after a lower court delivers a judgment in Bhutan. This timeframe is consistently enforced across all three levels of the appellate judiciary. Specifically articulated in Section 109.1 of the *CCPC,* the stipulation mandates that the appeal petition be submitted to the registry of the appellate court within ten days of the final judgment rendered by the lower court. However, insights gathered from the survey responses reveal that the High Court operates under two distinct modalities concerning appeals procedures. The High Court occasionally entertains direct appeals as the *CCPC* prescribes. Conversely, in other scenarios, the High Court directs the appeal petition to be filed with the

subordinate court that issued the original judgment. This dual approach to appeal admission within the High Court has emerged as a point of contention among legal practitioners, warranting further exploration and discussion in subsequent sections.

Once an appeal is successfully admitted into the Appellate Courts, these courts' primary and sole duty is to thoroughly review the judgments rendered by lower courts. It is important to note that the Appellate Courts do not initiate a *de novo* examination of the case. Initially, the Appellate Court will ascertain the validity of the appeal grounds through a Miscellaneous Hearing in the High Court and a Review Hearing at the Supreme Court level. In fulfilling their responsibilities, the Appellate Courts adhere closely to the legal mandates established by the *CCPC*, as well as the *Guidelines on Appeal (GoA)* issued by the Supreme Court in 2022. The GoA provides comprehensive guidance on the appeal process, delineating ten specific grounds upon which an appeal may be based, as well as seven distinct grounds that may lead to the denial of an appeal petition. This structured framework clarifies the procedural expectations and ensures that all parties involved have a clear understanding of the criteria that govern the appeal process.

Section 5.1 of the *GoA* stipulates that an appellant presenting their case before the appellate court must specifically identify and articulate the segment of the judgment being contested, along with its associated challenges. Notably, such challenges must encompass at least one or more of the following ten grounds: *"a) Made a factual error; b) Made an error of law; c) Admitted erroneous or excluded evidence, which otherwise would have changed the outcome of the case; d) Did not allow the production of relevant evidence; e) Not declare a conflict of interest after parties submitted concrete grounds of conflict of interest; f) Did not follow due process; g) Erroneously assumed jurisdiction; h) Erroneously decided Locus standi; i) Awarded sentence on insufficient evidence; or j) Failed to consider the criminal defendants' allegation about fetching confession by torture or coercion* (Guidelines of Appeal, 2022)*."* The appellate courts are empowered to accept appeal petitions solely based on any of these specified grounds. This clearly defined framework enhances the clarity of the appellate process and ensures that the grounds for appeal are substantial and relevant, promoting a fair and just legal system.

In contrast, Section 9.2 of the *GoA* delineates specific judgments and grounds from which no appeal may be made. These include: *"a) Negotiated Settlements; b) Summary judgments; c) Default judgments; d) Reasoned Dismissal Orders; e) Withdrawn judgments; f) Time extension regarding judgment enforcement as the only ground of appeal; or g) An appeal regarding his/her conviction if the defendant pleaded guilty to the offence that he/she was charged for in the subordinate court. However, he/she may appeal regarding the gravity of the sentence* (Guidelines of Appeal, 2022)*."* This section clarifies the limitations regarding the admissibility of appeal petitions, emphasizing the situations in which appeals are effectively barred. Notably, it has been observed that many appellants tend to submit their appeal petitions without adequately consulting this guideline. This oversight highlights the need for greater awareness and understanding among appellants regarding the established parameters for appealing judgments. By fostering a more transparent comprehension of these provisions, we can help to ensure that appellants make informed decisions, ultimately enhancing the integrity and efficiency of the appellate process. This section enlightens the reasons for dismissing the appeal petition, and it has come to our knowledge that most appellants blindly apply for appeal without referring to this guideline.

In examining the specific reasons for appeals in the survey, it is apparent that disputes primarily arise concerning evidence, accounting for approximately 39% of the survey respondents. Other common grounds include sentencing issues (17.1%), misinterpretation of law (9.8%), and a minor portion related to procedural errors (4.9%). Additionally, issues about the facts of the case, requests for time extensions, waivers, sentence deductions, and motivations stemming from personal grievances comprised 2.4% of appeals. This data underscores the importance of fostering a better understanding of the appeal process among the populace, aiming to enhance the judiciary's integrity and ensure that appeals are grounded in legitimate grievances. By addressing these challenges, we can work towards a more equitable legal framework that upholds the principles of justice.

The survey findings indicate a significant trend of misusing appeal rights, with many individuals submitting appeals that need a solid legal foundation. The data from the responses of the judicial personnel reveals that 36.6% of respondents reported receiving frequent misuse, 26.8% of

occasional misuse, 19.5% of very frequent misuse, 9.8% of rare misuse, and a mere 7.3% of no misuse of appeal rights. This suggests that, alongside a considerable number of genuinely aggrieved parties pursuing legitimate grounds for appeal, the judiciary is equally confronted with a notable proportion of appellants who seek redress without a valid basis. The findings of this survey suggest that the judiciary is effectively exercising due diligence in assessing appeal cases in accordance with the legal provisions outlined in the *CCPC* and the *GoA*. The inputs gathered from respondents highlight that, while the judiciary is committed to admitting appeals based on valid legal grounds, it is equally vigilant in dismissing those that do not meet the requirements.

This meticulous approach reinforces the integrity of the judicial process, ensuring that only appeals that adhere to established legal standards are considered. By maintaining this rigorous filtering process, the judiciary not only upholds the rule of law but also fosters a more efficient and trustworthy legal system, thereby enhancing public confidence in judicial proceedings. Such practices demonstrate a balanced application of justice, where genuine grievances are addressed while baseless appeals are appropriately managed. Following the admission of appeals through a meticulous filtering process during the Miscellaneous Hearing at the High Court and the Review Hearing by the respective Bench at the Supreme Court, a Preliminary Hearing is conducted. During this stage, the Appellant is given an opportunity to submit their case, followed by a Rebuttal Hearing from the Respondent. After these initial hearings, proceedings in the Appellate Courts are adjourned until the judgment is rendered.

The survey reveals noteworthy insights regarding the timelines associated with these processes. A significant 48.8% of respondents reported being allotted less than 10 days to submit rebuttals, while 36.6% had a timeframe of 10 to 15 days. Additionally, 9.8% indicated a 15 to 30-day period for rebuttals, and only 4.9% allowed more than 30 days for this submission. Further findings highlight the duration required for fully resolving appeal cases. Approximately 63.4% of respondents reported that appeals take 3 to 6 months to conclude.

In contrast, 19.5% indicated a resolution timeframe of 6 to 12 months, while 17.1% reported that their cases were resolved in under one month. Notably, no respondents indicated that their cases extended

beyond 12 months. It is important to recognize that the variation in timelines is primarily influenced by the specific nature of each case rather than being a source of contention. This understanding underscores the judiciary's flexibility in adapting to the unique circumstances of individual appeals while striving to maintain efficiency and fairness in the legal process.

REVIEW OF APPEALS

To gain insight into the filtration process for appeal cases within the Appellate Courts, an inquiry was made regarding the mechanisms utilized to sift through review cases. The responses received indicated that there is no specific, formal filtration process involving distinct strategies or techniques. Instead, the process relies predominantly on the Guideline of Appeal 2022 and pertinent legislation, particularly the *CCPC* and the *Bench Book*. Under these legislative frameworks, the Courts maintain a steadfast commitment to the grounds of appeal articulated in the Guideline of Appeal and the legal stipulations outlined in the *CCPC.* The emphasis is placed on thoroughly evaluating the merits of each case, focusing primarily on substantial legal issues, such as questions of law, and occasionally considering factual aspects relevant to the case background.

Before formally registering an appeal, the Courts identify the grounds of appeal through an Appeal Show Cause procedure. Once these grounds are established, the Courts admit the appeal and set an appropriate appeal bond. Thus, in Bhutan, the principal mechanism for filtration revolves around clearly determining the grounds of appeal, aligning with international best practices. This approach mirrors the process observed in Finland, where similar structures exist within their Appellate Courts, namely the Court of Appeal and the Supreme Court, which oversee appeals from the initial District Court level. The primary purpose of the first stage of the appeals process is to provide parties with a sense of legal security and protection. The goal is to verify and uphold the correctness of the judgments rendered in the initial trial.

Consequently, the filtration mechanism at this stage is designed to eliminate cases that do not warrant further examination. This review is accomplished by carefully reviewing the lower court's judgments to ensure that they are grounded in solid justification and legality. Generally,

the process known as *"leave to appeal*"—or "*leave to continued consideration,*" as it is sometimes referred to—requires the appealing party to substantiate, in their petition, that there are legitimate grounds for questioning the outcome of the original ruling. Should the appellate court determine that such doubts are warranted during its review, it is mandated to re-examine the case; otherwise, it will not proceed (Sippo, 2018).

It is important to note that this review process extends beyond mere legal inquiries to encompass factual considerations as well. This broader scope is crucial to achieving the fundamental objective of the first stage of appeal: to fortify legal security. However, there exists a significant exception to this overarching principle. Regardless of whether the first instance ruling is deemed valid, a leave to appeal must be granted if it is deemed essential to reassess the case in light of its implications for similar cases. This provision aims to ensure that cases with potential precedential value are recognized at the appellate level, which is particularly important for the Supreme Court. Cases containing substantive precedents must be forwarded to the Supreme Court rather than filtered out during earlier stages.

The filtration system at this initial stage is quite comprehensive, encompassing all civil cases. Criminal cases are considered, provided the imposed sentence does not exceed eight months of imprisonment. Thus, the application of filtration is already quite extensive at this first stage. If leave to appeal is denied by the appellate court, the option to appeal to the Supreme Court remains contingent upon meeting the statutory criteria for such appeals. This opportunity is frequently utilized. However, it is noteworthy that grants for leave to appeal in the Supreme Court concerning filtration matters from appellate courts are relatively rare. The appeal filtration systems established within the Courts of Appeal and the Supreme Court of Bhutan demonstrate a structure similar to Finland's, underscoring a commitment to judicial efficiency and effectiveness. Both jurisdictions strongly emphasize the grounds for appeal and the critical evaluation of each case's significance in establishing legal precedents. This rigorous process results in a notable reduction in appeal cases, indicating a well-functioning judicial system.

Reflecting this positive trend, the Annual Report (2023) of the Judiciary of Bhutan highlights a commendable filtration process. It shows that appeals are carefully assessed, resulting in many cases being resolved

at the High Court level before reaching the Supreme Court. Specifically, of the 490 appeals forwarded from the District Courts and the Alternative Dispute Resolution Centre to the High Court, only 233 advanced to the Supreme Court (Annual Report, 2023). This statistic illustrates that nearly half of the appeal cases are successfully addressed and resolved within the High Court, demonstrating that both appellate courts effectively discharge their responsibilities in filtering cases. This outcome not only enhances the judiciary's efficiency but also reflects each Appellate Court’s dedication to fulfilling its judicial role. It fosters a legal environment where justice is administered thoughtfully, thus reinforcing public trust and confidence in the judicial system. Overall, the mechanisms in place contribute significantly to the goal of providing access to justice and upholding the rule of law in Bhutan.

CONSISTENCY, EFFICIENCY, EFFECTIVENESS & UNIFORMITY

The integrity and functionality of any institutional system hinge on its ability to be consistent, efficient, reliable, predictable, and robust. These attributes are essential for maintaining the coherence of the institution’s nature, purpose, and values. In the context of a nation’s justice system, fostering public trust and confidence is intrinsically tied to the consistency and efficiency of that system. Recognizing this, the research incorporated questionnaires focused on assessing both the consistency and effectiveness of the appeal process. This approach not only provides valuable insights into the appeal system in Bhutan but also highlights the diverse perspectives and values held by the two distinct groups surveyed. By examining these varying viewpoints, the study aims to illuminate the strengths and weaknesses of the appeal system, ultimately contributing to a deeper understanding and potential improvements in the judicial process. Such an exploration is vital for enhancing the overall trust and confidence of the public in their legal system.

The response gathered from judicial officials regarding the efficiency and effectiveness of the current appeal system has revealed insights categorized across five distinct standards: (1) Very Efficient, (2) Efficient, (3) Somewhat Efficient, (4) Inefficient, and (5) Very Inefficient. Among these ratings, the highest proportion—43.9%—indicates the system is regarded as ‘Efficient,’ closely followed by a 22% rating of

‘Inefficient.’ Meanwhile, ‘Somewhat Efficient’ garnered 17.1%, ‘Very Efficient’ accounted for 14.6%, and ‘Very Inefficient’ received the lowest score at 2.4%. When interpreting these findings, it is evident that the appeal system is predominantly perceived as effective, with 61% of respondents categorizing it as either ‘Very Efficient’ or ‘Efficient.’ However, it is also noteworthy that 39% of respondents identified inefficiency issues within the system. This figure, while lower, is significant, as it signals critical areas that require attention and improvement. This paper aims to delve into these inefficiencies, seeking to uncover the underlying factors that hinder the judicial system’s overall effectiveness. By addressing these specific concerns, the research aims to foster a deeper understanding of how to enhance the appeal process and strengthen the confidence of stakeholders in the judicial framework.

The inquiry into the consistency of the judicial system, particularly as perceived by Attorneys and Private Lawyers, yielded intriguing and concerning insights. Respondents categorized their assessments into four standards: (1) ‘Very Consistent’, (2) ‘Somewhat Consistent’, (3) ‘Inconsistent’, and (4) ‘Very Inconsistent’. The results indicate that 52% of respondents rated the system as ‘Somewhat Consistent’, followed by 24% categorizing it as ‘Inconsistent’, 16% as ‘Very Inconsistent’, and 8% as ‘Very Consistent’. On average, these responses reflect a split in perception, with 60% indicating some level of consistency and 40% denoting inconsistency, a finding that closely mirrors the evaluations of efficiency previously discussed. While it is commendable that over half of the respondents perceive the system as at least somewhat consistent, the substantial proportion expressing concerns about inconsistency raises important questions. It suggests that even those engaged in legal practice perceive significant variability in the workings of the current appeal system despite the higher percentage of perceived consistency. The evaluation of the effectiveness of the existing appeal system, as perceived by Attorneys and Private Lawyers, employs a rating scale from 1 to 5. On this scale, 1 signifies ‘Not Effective at All,’ while 5 denotes ‘Very Effective.’ The survey results reveal that 64% of respondents selected the neutral option, rating the system a 3, suggesting they find it neither particularly effective nor ineffective.

Furthermore, 24% (12% each) of those surveyed indicated that they believe the system to be ‘Not Effective at All’ and ‘Effective’ by

rating numbers 1 and 4, respectively.' Additionally, 8% rated number 2, representing 'Not Effective,' and merely 4% rated it a 5, reflecting the perception of 'Very Effective.' This result indicates that the appeal system currently faces challenges that hinder its effectiveness, and it is essential that we constructively address these issues. Many Court officials engaged in legal proceedings experience disappointment, impacting their ability to navigate the system effectively. This research is focused on identifying specific areas for improvement within the appeal process and developing actionable recommendations and reforms. We aim to foster a more effective, efficient, and reliable appeal system that better serves all parties involved, ultimately enhancing the pursuit of justice for everyone.

This generally reflects that most of the respondents consider that the effectiveness of the appeal system is average and doubt its effectiveness on a larger scale. A lot more light will emerge from the information obtained in the rest of the survey questions, where it is most likely to become apparent if the system of appeal was truly effective, efficient, and consistent in dispensing justice to its users. Therefore, several questions relating to the different appeal processes were asked to get a feel of just how fair and uniform the current system of appeal is. Indeed, as can be seen from the graph below, 41.5% of the respondents believed that the appeal procedures are mostly uniform. Another 34.1% believed that while the procedures are generally uniform, they have some discrepancies. Whereas 14.6% stated that appeal procedures are different, specifying many discrepancies, 9.8% reported not knowing whether such procedures are uniform.

On average, nearly 48.7% of the feedback suggests a perception that the appeal procedures lack uniformity, with a significant portion of respondents recognizing the presence of discrepancies. While the proportions regarding uniformity are relatively similar, it is noteworthy that close to half of those surveyed perceive inconsistencies in the appeal process. These findings strongly indicate that our current appeal system is experiencing notable flaws, highlighting the urgent need for measures to enhance uniformity across the Appellate Courts. Such actions are essential to ensure that the appeal process is equitable and transparent, fostering greater trust and confidence among stakeholders in the judicial system.

The compelling imperative for uniformity and standardization in the appeal procedures is underscored by 95.1% of respondents advocating for this need, with only 4.9% expressing neutrality. In light of these findings, this paper meticulously identifies the various issues and challenges contributing to inefficiencies, ineffectiveness, inconsistencies, and lack of uniformity within the appeal procedures across the appellate courts. It will go further to make recommendations on how the appeals process can be improved in line with the views expressed by the respondents so that it can work faster, better, and more uniformly. In this way, these pressing issues are targeted to realize, in the long term, an improved appeal process that should enhance the integrity and confidence of the legal system to benefit all its stakeholders. The reasons for such pronouncements of inefficiency and inconsistency in those practices will be dealt with in detail in the ensuing sections of the paper, which will discuss significant concerns and challenges that evoke such views. Below is a graphical representation of the survey findings supporting this study. This shows the dispersion in the responses and calls for a critical analysis concerning the components involved.

ISSUES AND CHALLENGES

Before addressing the concerns raised by Court officials, specific inquiries were made regarding the potential impacts of the current appeal bond policies, the centralized location of the High Court in Thimphu, and the practicality of implementing Mobile Courts. Responses to these inquiries came from judicial personnel and legal practitioners, including attorneys and lawyers.

APPEAL BONDS

The framework governing appeal bonds is articulated in Section 6 of the Guideline of Appeal. This provision stipulates that *"The appellate court, under appropriate circumstances, to secure the plaintiff's or judgment creditor's interest or discourage frivolous delays or prevent unnecessary harassment to a plaintiff or judgment creditor, may order the appellant to furnish an appeal bond as a precondition to an appeal in accordance with Section 109.3 of the Code. (a) The bond amount or the value of the bond amount shall not be less than 25% of the amount payable to the judgment creditor according to the subordinate court's judgment; and (b) If the appellant fails to comply with the appellate*

court's order, the appellate court may dismiss the appeal and order the subordinate court to enforce its judgment (Guidelines of Appeal, 2022)*."* This section effectively delineates the required bond amount and the consequences of not meeting this obligation, thereby underscoring the importance of adhering to these legal stipulations.

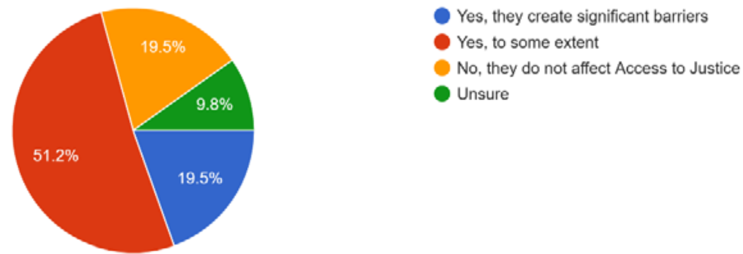
Section 7 of the *GoA* introduces an essential provision concerning the 'Exemption from Appeal Bond.' It specifies that *"If the appellant has a genuine ground of appeal as prescribed in this Guideline, but is not able to furnish the appeal bond, he/she may approach the Supreme Court which shall convene and deliberate on the matter and issue an order accordingly"* (Guidelines of Appeal, 2022). This clause acts as a critical safeguard for those appellants who possess valid reasons for their appeal but are unable to meet the financial requirements of the bond, thus potentially averting an unjust loss of their right to appeal and protecting against wrongful convictions. In a related vein, Section 8.1 of the *GoA* addresses the concept of Appeal Costs. It states, *"In accordance with Sections 111(e) Sub-section 111.1 of the Code, the appellate court may assign costs on the appellant to be paid to the respondent in civil cases, if the appeal is dismissed, in the following manner: (a) Nu.45,000.00 in the case of appeals to the Supreme Court if: (i) the appellant is the sole party to the case that has appealed from the trial court till the Supreme Court, and (ii) the appeal is dismissed or if the judgment of the High Court is affirmed by the Supreme Court. (iii) In cases where the judgment is partially or fully reversed, the appeal cost shall be reimbursed to the appellant"* (Guidelines of Appeal, 2022). These provisions illuminate the responsibilities associated with appeal processes while ensuring that genuine appellants are not unduly burdened, thereby maintaining the judicial system's integrity.

The survey results among judicial personnel reveal a significant consensus, with 70.7% of participants acknowledging that the existing appeal bond policies pose challenges to accessing justice, particularly for individuals from economically disadvantaged backgrounds, as illustrated in the accompanying graph. Similarly, feedback from attorneys and legal practitioners indicated that 51% of respondents concurred that appeal bonds serve as a deterrent for individuals considering the appeal of their cases, as further highlighted in the graph below. While the judicial personnel did not previously address it, it is evident that appeal bonds

function as a mechanism for filtering appeal cases, underscoring an important aspect of how financial barriers can influence the judicial process and access to justice. Subsequently, 76% of the respondents voted

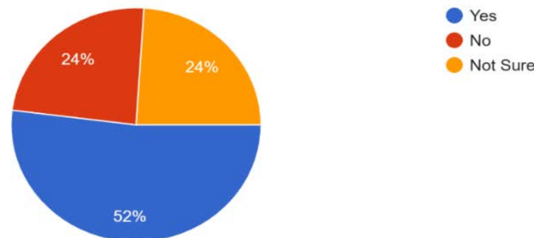
13. In your opinion, do the current appeal bond policies affect access to justice, particularly for economically disadvantaged individuals?

41 responses



7. In your experience, have appeal bonds deterred individuals from appealing cases?

25 responses



for revising the appeal bond policy to improve access to justice, while 12% each voted ‘No’ and ‘Not Sure’ respectively.

In addressing the matter of the appeal bond, the respondents expressed a variety of perspectives. Some suggested eliminating the appeal bond by implementing thorough reviews to dismiss frivolous appeals at the Appellate Court level. Others advocated for an increase in the bond amount, maintaining its use to ensure that only legitimate appellants are incentivized to pursue their cases. Additionally, several respondents proposed aligning the appeal bond with the parties' income levels rather than adhering to the current policy of setting the bond at a minimum of 25% of the total amount due to the judgment creditor as determined by the subordinate court. Furthermore, some participants

recommended abolishing appeal bonds in both District and High Courts, suggesting that such bonds should only be required at the Supreme Court level, with a designated minimum amount.

Several respondents emphasized that the difficulties appellants face in affording an appeal bond can tarnish the reputation of the Judiciary, expressing concern for the institution's image when individuals are distressed over financial constraints. Rather than maintaining a separate appeal bond, one respondent proposed that imposing litigation costs, calculated according to the national wage rate, would be more suitable and effective. This individual advocated for implementing this reform across all levels of the judicial system, from District Courts to the Supreme Court, to address the challenges associated with appeal bonds. Similarly, some respondents suggested that economically disadvantaged individuals should be granted a waiver for the appeal bond, contingent on a review of their financial circumstances conducted by a legal aid centre. Highlighting a shared concern, one respondent pointed out that the primary aim of the appeal bond is to deter frivolous appeals masquerading as legitimate cases. This practice, often called “time buying,” is particularly prevalent in monetary disputes, where judgment debtors may attempt to file appeals either with the original court or an appellate court as a strategic delay tactic.

CENTRALIZED LOCATION OF THE HIGH COURT

In response to the second inquiry regarding the centralized location of the High Court in Thimphu, which poses a geographical challenge for litigants from remote areas, the feedback from attorneys and lawyers revealed that 32% of respondents expressed strong agreement, agreement or neutral feelings about this issue, while only 4% disagreed. In contrast, among judicial personnel, 68.3% responded affirmatively, indicating that they believe the centralized location is indeed a barrier, while 22% disagreed and 9.8% were uncertain. This data underscores the significant hindrance that the centralization of the High Court presents, particularly for economically disadvantaged individuals residing in remote regions, thereby highlighting an urgent need for reforms to enhance access to justice for all. To address this pressing issue, respondents put forward two primary recommendations. The first and most significant suggestion involves the establishment of two additional Regional High Courts, one located in the South and another in the East,

or at the very least, the creation of a Regional High Court in the East, staffed by at least one judge proficient in the local language. In conjunction with this proposal, some respondents recommended the implementation of Mobile High Courts that would periodically service the eastern and central regions, as envisioned in the *Judiciary Strategy Paper*.

Additionally, some respondents called to consider redistributing the benches of the current High Court to other regions, contingent upon a careful analysis of the average annual appeal volume, should the establishment of new Regional High Courts prove unfeasible. It was argued that, in the absence of Regional High Courts, the situation is inherently inequitable for individuals in the East and South, especially given that the time frame to file an appeal is limited to just 10 days, while associated costs can be prohibitively high. Consequently, most respondents strongly advocated establishing either Regional High Courts or Mobile High Courts to address these challenges and improve access to justice adequately. The second recommendation focuses on enhancing and fortifying Virtual Hearings in the High Court, aimed at improving access to justice for appellants residing far from Thimphu. This initiative seeks to reduce the costs and time associated with travelling long distances to attend court in person. However, some respondents expressed that, given the currently low volume of appeal cases and the relatively manageable travel distances to Thimphu, there may not be an immediate need to establish Regional High Courts. This perspective highlights the importance of balancing the expansion of judicial services with the actual demand for such accommodations.

FEASIBILITY OF INSTITUTION OF MOBILE COURT

In response to the third question regarding the feasibility of initiating Mobile Courts to address the geographical challenges encountered by litigants, the findings revealed that 29.3% of respondents deemed the concept 'Highly Feasible.' A substantial 51.2% classified it as 'Somewhat Feasible.' Additionally, 12.2% of respondents expressed uncertainty about its feasibility, and only 7.3% considered it 'Not Feasible.' These results strongly suggest that the judiciary in Bhutan recognizes the potential to implement mobile courts as a viable solution to alleviate the geographical barriers litigants face, thereby enhancing citizens' access to justice. Similarly, to gain insights into lawyers'

perspectives regarding the introduction of Mobile Courts as a means to alleviate geographical barriers and enhance access to justice, nearly all respondents voiced their support for the initiative. A few individuals expressed some reservations, suggesting that while uncertain, it might be prudent for the judiciary to launch a pilot program to assess its effectiveness. One respondent articulated optimism about the potential of Mobile Courts, particularly a Mobile High Court, noting that this concept was included in both the 12th and 13th Five-Year Plans. The respondents stressed that the time has come for actual implementation.

This respondent highlighted the disparity in caseloads across different districts, pointing out that while some areas see minimal cases, others are overwhelmed. They suggested that deploying Mobile Courts could significantly assist those districts facing heavy caseloads. However, a few respondents raised concerns, suggesting that while there are benefits, implementing Mobile Courts could also introduce new challenges. One respondent categorically stated that it would not be feasible. In addition, several respondents advocated enhancing virtual hearings to improve access to justice further. They shared experiences where some courts were reluctant to accommodate Virtual Hearings, even in unavoidable circumstances. Thus, respondents have a clear consensus in favour of implementing Mobile Courts while promoting and strengthening virtual hearings to address better access to justice issues exacerbated by geographical barriers.

The survey included three thoughtfully crafted questions to uncover the various obstacles and challenges of accessing justice. The responses gathered from participants significantly underscored the reality of these issues, demonstrating that they are indeed prevalent concerns within the justice system. Furthermore, the feedback yielded many constructive recommendations designed to effectively address and mitigate these challenges. In the following paragraphs, we will explore in greater detail the specific issues and challenges articulated by the respondents. When asked to share any additional systemic barriers they have experienced within the current appeal system, participants provided insights reflecting various perspectives and experiences. This comprehensive discussion aims to highlight the nuances of these barriers, offering a deeper understanding of the obstacles litigants face as they navigate the appeal process. By examining these responses closely, we

can gain valuable insights into potential reforms that could enhance accessibility and fairness in the judicial system.

PERTINENT ISSUES SHARED BY RESPONDENTS

1. LITIGANTS BEING IMPRISONED IMMEDIATELY AFTER THE JUDGMENT

A respondent provided an in-depth account of this issue, and we tried to convey it as closely as possible. One of the most significant obstacles to exercising the right to appeal is the practice of incarcerating litigants immediately following a judgment. This situation severely limits their ability to prepare appeals, as there is often no one available to assist with this process while they are in custody. The previous framework, which allowed litigants to remain free on bail with surety until the Supreme Court rendered its final decision, proved to be a more beneficial approach. A respondent argued that it is worth noting that no legal statute mandates immediate imprisonment following a judgment. This practice merits careful examination and thorough research. S/he added that if our system required litigants to engage legal counsel or representation, the necessity for their physical presence in court could be diminished. However, the immediate imprisonment of individuals after a judgment from a first-instance court goes against the fundamental principle of '*innocent until proven guilty*.' Until a litigant is conclusively found guilty by a higher court, they should be presumed innocent. This rationale underpins the appeal process, a fundamental aspect of our legal framework.

The respondent shared that, regrettably, we tend to adhere to practices not codified in our legal system while overlooking the essential provisions that our laws explicitly establish. We must reassess these procedures to ensure justice is upheld by established legal principles. The current requirement to wait ten days following a trial court decision before the appellate court can grant bail is a matter of concern. Existing legislation does not stipulate such a delay, and this rigid and restrictive process ultimately harms individuals who find themselves compelled to serve their sentence despite having submitted an appeal. In such circumstances, all decisions made by the lower courts ought to be held in abeyance. Addressing this issue, an official from the High Court

elaborated on the existing bail practices within the court. Presently, bail requests are considered during miscellaneous hearings, which typically occur only on Mondays and Wednesdays. There is a waiting period until the case file reaches the High Court; at this point, the case is assigned to one of the two benches. Bail appeals are only heard during the initial hearing at the High Court when all justices are present. This procedure underscores the need for reform to ensure that individuals are not unduly penalized during the appeal process, inadvertently undermining the principles of justice and fairness.

2. TWO MODES OF REGISTRATION OF APPEAL CASES

The matter at hand has been frequently raised by legal practitioners seeking clarity regarding the jurisdiction involved in registering appeal cases. Currently, two distinct registration methods exist: one involves directly submitting the appeal to the registry of the High Court. At the same time, the other requires registration through the trial court, where the original judgment was rendered. The respondent pointed out the necessity for the judiciary to provide explicit guidance on whether the initial appeal application should be directed to the High Court or the trial court that issued the judgment. The current practice complicates matters in instances involving multiple defendants or parties, as some individuals submit their appeals directly to the High Court. In contrast, others take the route of registering at the trial court. This inconsistency poses significant challenges for parties trying to track the status of their cases, including navigating when their appeal will reach the appellate court.

Additionally, it is crucial to note that the lower court retains possession of the case file until the expiration of the 10-day appeal period, assuming that one of the parties may file an appeal. This practice inadvertently obstructs defendants’ right to bail, as courts often require parties to wait until the appeal period has entirely lapsed before they can file for bail – a legally questionable stance. A more transparent and more streamlined approach from the judiciary would greatly enhance procedural efficiency and protect the rights of all involved parties. In this context, an official from the High Court clarified the current procedures for case submissions, which can occur in two distinct manners. The first method involves direct appeals to the High Court, while the second entails

appeal from the Trial Court. When cases are submitted directly to the High Court, they are initially considered during miscellaneous hearings. If the appeal lacks sufficient grounds, it is dismissed before being formally registered as a case. In contrast, cases channeled through the Trial Court have already undergone a hearing process and are automatically registered and forwarded to the bench for consideration. Should the bench subsequently determine that these cases lack valid grounds, they will be dismissed at that stage.

This structured approach enhances the efficiency of the judicial process by ensuring that only cases with legitimate grounds for appeal proceed to further examination, thereby conserving judicial resources and expediting resolution for all parties involved. In this regard, Section 109.1 of the *CCPC*, by all means, allows for the filing of an appeal to the registry of the appellate court alone; hence, any filing of the appeal with the trial court would, by all means, amount to improper procedure. However, it must be fairly stated that the trial court is now vested with jurisdiction to receive appeal petitions by force of Section 11 of the *Supreme Court Circular* dated June 17, 2015. To be specific, this is in instances where the High Court has no jurisdiction to entertain an appeal because there are no recorded objections to the decision of the Court, as provided under Section 110.2 of the *CCPC*. Moreover, Section 4 of the *Guidelines on Appeal* further clarifies the appeal registration process. It states that an appellant has the option to either file their appeal in the registry of the appellate court or submit a notice of appeal to the registry of the subordinate court, provided they include detailed grounds for the appeal. This provision eliminates any confusion surrounding the jurisdiction of appeal registration, affirming that appeals may appropriately be lodged in the appellate or subordinate courts.

Upon careful consideration of this issue, it becomes evident that the right to file an appeal petition in the trial court represents a significant advantage, especially for individuals who live far from Thimphu. This provision allows them to easily register their appeals, eliminating the need for arduous travel, all within a convenient ten-day duration. Moreover, the risk of missing miscellaneous hearings at the High Court poses a genuine threat to those undertaking long-distance travel. Such individuals may be unable to meet the critical ten-day deadline for appeals, potentially jeopardizing their cases. This situation is particularly pressing for

economically disadvantaged individuals, as the costs associated with traveling to and residing in Thimphu can be steep. The financial burden of expenses from the journey to the appeal process until the judgment at the High Court can swiftly drain their resources. Therefore, it is essential to recognize this provision not as a drawback but as a substantial benefit, enhancing access to justice and easing the financial strain on individuals. In this light, the ability to file appeals at the trial court emerges as a valuable opportunity, fostering fairness and equity in the judicial process.

3. E-LITIGATION

Several respondents have strongly articulated the urgent need for E-Litigation, pointing out that there is a troubling disparity among courts: some categorically reject its use, while others embrace it. Many individuals shared how E-Litigation would be invaluable when encountering unavoidable circumstances in distant locations that hinder their ability to attend court hearings. Thus, the call for remote participation through E-Litigation has gained momentum. Moreover, private practitioners stand to gain significantly from E-Litigation, as it would reduce their travel expenses and enhance their operational efficiency. This is particularly crucial, especially considering that government attorneys may see travel costs as insignificant due to their entitlement to daily subsistence allowances. Given these compelling perspectives, it is critical for courts nationwide to carefully assess the myriad benefits and essential role of E-Litigation. By adopting a more customer-oriented approach to delivering justice and services, the judiciary can more effectively address the needs of its citizens and ensure greater access to the legal system.

4. COURT LANGUAGE

A respondent expressed concern regarding the necessity for appellants to be permitted to present their cases in a comfortable dialect while also recognizing the importance of written submissions in Dzongkha. While this approach appears accommodating, it is crucial to consider the limited number of judges and justices proficient in the local language. Granting the option to submit in a local dialect may not effectively facilitate the pursuit of justice. When language is not accurately conveyed, it can obstruct the judicial process rather than enhance it. The potential for miscommunication could pose more

significant risks than the advantages of using a preferred dialect, especially if the opposing party does not possess the same level of proficiency. Notably, there are instances where courts have permitted parties to present their arguments in their preferred dialect, particularly when they encounter significant difficulties with the national language. This consideration underscores the importance of ensuring that all parties have equitable access to justice while highlighting the challenges of language barriers within the legal framework.

5. APPEAL PERIOD AND PETITION

The respondents expressed that they encountered an additional burden by being required to submit a complete appeal petition within the current ten-day filing period. They favour the previous appeal process, where they were only required to notify the registry of the High Court within this ten-day timeframe. The recent findings from the survey indicate that, under the new system, respondents must provide detailed submissions within the same ten days. Participants voiced their concerns that this timeframe needs to be revised. They noted that if they inadvertently overlook specific grounds for their appeal, they are not allowed to amend them, which may have been improperly articulated due to the tight deadline. Consequently, there is a call to revise the appeal filing period for a fairer and more thorough process.

6. LACK OF CLARITY ON THE NUMBER OF HEARINGS

Respondents have expressed concerns regarding the ambiguity surrounding the number of hearings conducted at the High Court. They noted that some judges restrict clients from accompanying their legal representatives (Jabmis) during these hearings and seem to allow Jabmis to carry their file bags. This has led to observations about a lack of uniformity and consistency in the policies being enforced. In general, the Appellate Court conducts three to four types of hearings: Miscellaneous/Review Hearing, which assesses the grounds for an appeal to decide whether to admit or dismiss the petition; the Opening Statement, where the appellant presents their arguments; the Rebuttal Hearing, which allows the respondent to respond; and finally, the Judgment Hearing, where the court delivers its ruling. In instances of significant importance, additional hearings may be scheduled as necessary.

While the latter two issues might pertain to various judicial interests and concerns, it is important to uphold the client-attorney relationship by allowing clients to accompany their lawyers. Furthermore, permitting all parties equal access to carry file bags—provided that security measures are strictly enforced—could enhance public trust and respect for the judiciary. Such practices not only foster a more inclusive atmosphere but also contribute positively to the overall integrity of the institution.

7. DELAY IN RECEIVING CASE FILE BY APPELLATE COURT

The respondents indicated that the Appellate Court occasionally encounters difficulties in promptly receiving case files from the subordinate courts. While the precise cause of these delays remains uncertain, it may likely stem from inadvertent oversights attributed to the substantial caseloads faced by the trial courts. In this context, the duration taken for appeals has also emerged as a concern. This timeframe can vary significantly depending on the specific nature of the cases involved, as well as various circumstantial factors that may influence the progression of each case. These concerns illuminate the critical challenges judicial personnel and legal practitioners face within the system. In addition to the three main issues specifically targeted in discussions with the survey participants, seven additional significant issues emerged from their responses, reflecting the complex and multifaceted nature of the legal landscape.

Recognizing the necessity for improvement, the respondents were invited and encouraged to share their constructive feedback and innovative ideas to address these pressing challenges. Their insights are invaluable for formulating effective strategies to enhance access to justice for all parties involved. Consequently, the following paragraphs will elaborate on the detailed recommendations that have been proposed, providing a clear pathway for potential reforms and improvements within the judicial process. These recommendations seek to address existing concerns and foster a more equitable and efficient legal system moving forward.

RECOMMENDATION OF THE ATTORNEYS & LAWYERS

Respondents have adequately shared their recommendations to improve the current appeal system. To begin with, a respondent shared a couple of recommendations backed by his/her experience, positing that it is of utmost importance to enhance the effectiveness of the fact-finding processes employed within the courts in the first instance. When factual disputes are resolved clearly and decisively at this level, it not only alleviates the burden on appellate courts by minimizing the number of contentious issues that need to be addressed but also allows appellate judges to allocate their time and expertise more efficiently. A thorough resolution of facts at the lower court level is instrumental in streamlining the judicial process, leading to quicker resolutions and more effective justice delivery. Presently, a significant concern is that lower courts often fail to give adequate weight to the arguments presented during hearings. This shortcoming can lead to a fundamental misunderstanding or neglect of the issues at stake, ultimately resulting in judgments that do not effectively resolve the matters brought before them. When lower courts overlook these critical aspects, the inevitable consequence is that cases are appealed based on the same factual disputes that should have been clarified initially. This redundancy not only consumes time and resources but also erodes public confidence in the legal system.

Furthermore, she/he added that there is a pressing need for the legal system to implement a more robust mechanism to evaluate the performance of judges and clerks, incorporating factors such as diligence and consistency in their roles. By integrating evaluations of habitual excellence and instances of negligence into promotion and reward considerations, we can cultivate a culture that recognizes and incentivizes hard work, ultimately motivating judges and clerks to perform with greater diligence. This approach would help build a Judiciary that is competent and committed to upholding the highest standards of justice. In addition to performance assessments, it is critical to have effective monitoring systems in place to ensure compliance with existing legal standards. For example, the legal principle that statements made to police must be supported by corroborative evidence is essential for maintaining the integrity of our criminal justice system. Upholding this principle would enhance police accountability and significantly reduce the risk of

wrongful convictions, protecting innocent individuals from unjust imprisonment while strengthening public trust in law enforcement.

In continuation, the respondent shared that it is essential that any actions taken by the judiciary, including the issuance of orders, are firmly grounded in established legal authority. Not grounding the established laws, such actions create a perception of inconsistency within the legal framework and challenge the judiciary's moral right to enforce compliance with the law. If the judiciary does not uphold legal standards, it undermines its authority and legitimacy. Furthermore, the respondent added that meticulous attention must be paid to the selection process for appellate judges. The candidates' proven integrity and ethical track record should be the primary consideration. A righteous individual with less formal education—such as a hardworking farmer—should be preferred over a highly educated candidate with a history of questionable ethics. This shift in focus would help ensure that the Judiciary's integrity is prioritized over mere academic qualifications. In reforming the justice system, we must emphasize accessibility, affordability, and uniformity. The right to appeal must be enshrined as a fundamental right, ensuring that it is not obstructed by procedural barriers that can deter individuals from seeking justice.

A couple of respondents shared that it is crucial to standardize procedural practices across all courts to avoid unnecessary confusion among legal practitioners. When different courts employ varied procedures, it creates complications for attorneys and their clients. They highlighted that legal professionals must be able to advise their clients confidently and consistently, ensuring that the judicial process is navigated smoothly. By establishing precise and uniform procedures, we enhance the overall functionality of the legal system and improve the effectiveness of legal representation, ultimately leading to better outcomes for all parties involved. They shared that Appellate Courts must steadfastly adhere to their designated role, focusing on reviewing cases rather than approaching them as if they are entirely new matters to be adjudicated afresh. The current provisions governing appeals, as outlined in the *CCPC*, explicitly establish that appeals should center primarily on legal questions. This foundational principle must be honoured and upheld, ensuring the integrity of the appellate process. By maintaining this focus,

the courts can provide meaningful oversight while safeguarding the legal standards established in prior rulings.

The respondents expressed that bail should be granted even during the appeal process, in accordance with the fundamental legal principle that individuals are presumed innocent until proven guilty. Upholding this doctrine not only reinforces the presumption of innocence but also ensures that the rights of the accused are protected throughout the legal proceedings. By allowing bail during this stage, the judicial system affirms its commitment to fairness and equity, recognizing that pre-trial detention should not become a punitive measure. This approach fosters a more humane legal system where individuals can maintain their freedom while their cases are under review, ultimately reinforcing the integrity of the justice process. Embracing the concept of accepting online appeals represents a progressive step towards modernizing the legal process. This advancement not only enhances accessibility for individuals seeking to challenge decisions but also streamlines the appeal procedure, making it more efficient and user-friendly. The judicial system can accommodate a broader range of voices by providing a platform for online submissions, ensuring that individuals facing barriers in traditional settings can still exercise their right to appeal. This initiative reflects a commitment to inclusivity and innovation, fostering a more responsive and adaptive legal environment.

To truly enhance the registration process for appeal cases, it is vital to eliminate bureaucratic obstacles and eradicate unnecessary requirements that impede progress. By addressing these complexities, we can create a more streamlined pathway for individuals who wish to assert their rights through appeals. This reform involves critically assessing the existing procedures to identify and remove any redundant steps that hinder swift action. By simplifying forms, reducing paperwork, and minimizing administrative delays, we can significantly accelerate the registration of appeals. It is essential to recognize that by prioritizing efficiency and removing these bureaucratic hurdles, we are not just improving a system but ensuring that justice is readily accessible and can be delivered promptly. Additionally, implementing user-friendly digital platforms for submissions will allow appellants to navigate the process with greater ease and convenience. Such advancements not only foster a more efficient judicial system but also reflect a profound commitment to

accessibility and responsiveness to the needs of the public. This effort will empower individuals to seek redress without undue frustration, reinforcing our legal framework's fundamental principles of fairness and equity.

According to the established rules of appeal, as articulated in the *CCPC,* appeals should be centered on specific questions of law rather than reassessing factual determinations made in earlier proceedings. This framework ensures that the appellate courts are not re-litigating matters but instead are examining potential legal errors or procedural irregularities that may have occurred during the initial trial. Adhering to this principle is vital for maintaining the judicial system's integrity. When appellate courts respect and follow the stipulated guidelines regarding the nature of appeals, they not only safeguard the consistency and reliability of legal precedents but also promote the efficient administration of justice. The respondents emphasized that by fulfilling their responsibilities with diligence and fidelity to the rule of law, appellate judges can provide meaningful oversight that contributes to legal proceedings' overall efficacy and fairness. This commitment to their defined role enhances public confidence in the judicial system, ensuring that justice is administered with respect for established legal frameworks.

RECOMMENDATIONS OF THE JUDICIAL PERSONNEL

This section of the paper solely presents the recommendations made by the judicial personnel based on the issues and challenges they have identified. These recommendations are means to mitigate the aforementioned issues and challenges. The first recommendation is on the registration jurisdiction of the appeal petition. The *CCPC* specifies that appeals should be submitted to the appropriate appellate court. Currently, however, there is the option to file an appeal either in the Appellate Court or the Trial Court. If this dual procedure proves effective, it would be advantageous to amend the *CCPC* to formally retain this flexibility for the parties involved, facilitating easier access to justice. The system can ensure a fair review of the original judgment by providing both parties with an equal opportunity to present their arguments. Appeals should primarily focus on questions of law rather than questions of fact unless it can be shown that relevant factual information was previously inaccessible to the parties. This approach emphasizes the importance of reversing decisions on legal grounds rather than on considerations of

charity or leniency, which could compromise the integrity of the judicial process.

Moreover, it is crucial that the appellate court's decisions clearly articulate the legal rationale underlying any reversals. By offering transparent and well-reasoned explanations, the court fosters a consistent and reliable precedent system while promoting uniformity and clarity in legal interpretations. Such transparency enhances public confidence in the judiciary, ensuring the law is applied fairly and consistently across similar cases. It is essential to modernize the appeals process by transitioning to a fully digital framework. This would involve eliminating the requirement for hard copy case file submissions, facilitating a more efficient and streamlined system. Appeals should be submitted directly to the registry of the appellate court rather than routed through the court of first instance. This practice can be cumbersome and counterproductive, and moving directly to the appellate court would enhance accessibility and efficiency.

Furthermore, appeals should be strictly confined to questions of law rather than addressing factual disputes. However, it is important to establish accessible avenues for review in cases where complaints are formally reported to a grievance cell regarding the original judgment. This approach balances the need for legal accuracy with opportunities for oversight, ensuring that the appeals process remains fair and just while leveraging technological advancements to improve overall effectiveness. The appellate court has a crucial responsibility to uphold the judicial system's integrity by strictly adhering to the established guidelines for appeals. It has been observed that there are instances where cases are registered, even when the guidelines specify that no appeals may be filed concerning particular types of judgments. This inconsistency not only leads to confusion for the parties involved but also undermines the foundational principles of the appellate process.

Maintaining clarity and consistency in applying these guidelines is paramount for fostering trust in the Judiciary. When the court does not enforce these rules rigorously, it can create an environment where litigants may feel uncertain about their rights and the parameters of the legal system. This lack of clarity can lead to unnecessary delays and inefficiencies within the appellate framework. Therefore, it is imperative that the appellate court actively ensures compliance with these guidelines. By doing so, the court helps to delineate clear boundaries concerning the

permissible grounds for appeal, allowing all parties to have a mutual understanding of when an appeal can legitimately be pursued. Such adherence not only promotes a more orderly and efficient legal process but also reinforces the overall credibility and reliability of the judicial system. Ensuring that appeals are registered solely in accordance with established protocols will ultimately lead to a more just and equitable legal environment for everyone involved.

Achieving consistency in judicial outcomes is vital for maintaining the integrity of the legal system. To this end, standardizing appeal cases and establishing uniform procedures across all courts can significantly enhance the efficiency of the appellate process. By streamlining these procedures, we can expedite services for litigants, ensuring they receive timely resolutions to their cases. Moreover, we can create a more effective appeals system by limiting the number of hearings required for each appeal and focusing on a thorough examination of the merits of the cases filed. While the current acceptance of blanket appeals offers a degree of fairness, refining the process through rigorous implementation of *CCPC* will strengthen its foundation. Ultimately, enforcing a cohesive procedural framework across all courts not only promotes equal treatment of all parties involved but also fosters public confidence in the Judiciary. A unified approach will ensure that the appeals process remains accessible and efficient, reinforcing the legal system's overarching principles of justice and fairness.

The existing Procedure Codes include appeals-related provisions; however, they fall short of outlining a comprehensive process. A respondent shared that there is a significant disparity between the appellate hearings conducted in the High Court and those in the Supreme Court. To address this inconsistency, the judiciary must establish clear guidelines or Standard Operating Procedures (SOPs) for the appeals process. Such guidelines should detail the number of hearings permissible and clarify the judges' or justices' roles and responsibilities overseeing these miscellaneous appeal hearings. By implementing structured guidelines, the Judiciary can enhance the clarity and efficiency of the appeals process, ensuring a more equitable experience for all parties involved. This initiative would streamline proceedings and help standardize practices across different courts, ultimately reinforcing public confidence in the judicial system.

Another respondent shared that it is essential to establish a more accommodating system for accepting appeal applications within the judicial process. Specifically, allowing appeal applications to be submitted between 9 AM and 5 PM, independent of the morning miscellaneous hearings, would significantly enhance accessibility for litigants. This approach would facilitate a more flexible filing system, ensuring that individuals can more readily engage with the appeals process without being constrained by the existing hearing schedule. By implementing such a structure, the Judiciary can promote greater efficiency and inclusivity, ultimately improving the experience for all parties seeking justice. To ensure a more efficient appellate process, it is imperative to implement a thorough filtration of appeal applications, focusing specifically on examining questions of law. A respondent proposed amending the *CCPC* to clarify the provisions related to appeals. Currently, numerous appeals lack a solid basis, consuming the appellate courts' valuable time, energy, and resources. In many instances, defendants resort to dragging plaintiffs to the highest court not for legitimate reasons but to buy time, delay payments, and cause undue harassment.

To remedy this issue, appeals should be permitted solely on grounds that raise questions of law, including instances of misinterpretation of the law, the application of irrelevant legal standards, or errors in quoting applicable statutes. It is essential that every appeal at any level is anchored in specific legal issues. Furthermore, while the current practice generally limits hearings to two, with only exceptional cases permitting a third, it may be beneficial to reassess this restriction. Allowing parties to seek the court's leave for additional hearings, based on their case's unique facts and circumstances, could foster a fairer process, provided that all adjustments remain in strict compliance with the *CCPC 2001* and the *Bench Book for Judicial Process*. Such reforms will ultimately lead to a more effective and just appeals system, ensuring that the rights of all parties are respected while preserving the integrity of the judicial process.

Another respondent recommended that establishing a uniform procedure would greatly benefit the adjudication of appeal cases in District Courts. Currently, there is a noticeable variation in how different courts approach these cases; some treat them as if they are being decided

at the court of first instance, while others specifically focus on the established grounds for appeal. This consistency can lead to clarity and unpredictability in the appeals process, ultimately affecting the experiences of the involved parties. To improve the judicial system's effectiveness and productivity, we need a standard way to handle appeal cases across all District Courts. This consistent approach would make things run more efficiently and speed up the process for both sides, leading to fair and quick resolutions. When courts deal with appeals the same way everywhere, it helps build trust and confidence in the legal system among those involved in lawsuits, ensuring everyone gets a fair shake and justice is served.

Matching the three key issues about the appeal bond’s effect, the High Court’s central spot, and looking into starting a Mobile Court, a respondent has offered three ideas. We need to implement some significant changes to make justice easier to get all over the country. First, setting up high courts in farther-off areas would make court services much more available so people in distant places could get legal help. Second, we need to eliminate the appeal bond rule for folks who don't have much money. By taking away this money hurdle, we can help more people fight for their rights without extra costs getting in the way. Additionally, making online hearings a must is essential to keep the judicial system current. This change should be supported by clear rules that spell out how virtual hearings should work. Putting these steps into action will not only make the judicial process smoother but also make sure justice is within reach and fair for all people, no matter where they live or how much money they have. Together, these efforts will strengthen the promise of a fair and quick legal system that works for everyone.

Another respondent shared that an effective appeal system must be characterized by uniformity, fairness, and transparency, ensuring that neither the litigants nor the trial court face biases. Establishing such a framework will foster an environment where justice prevails, and all parties feel respected and valued. Additionally, the specialization of judges within the appellate court will significantly strengthen this system, allowing for deeper expertise in specific areas of law. This targeted knowledge not only aids in more informed decision-making but also enhances public trust and confidence in the judicial process. By integrating these elements, we can cultivate a robust appellate system that

upholds the principles of justice and accountability while encouraging broader participation in legal proceedings.

Lastly, one of the senior judicial officials has shared that having engaged with our current processes for an extended period, he has developed a sense of comfort and familiarity with the existing system. However, as times change and the legal landscape evolves, he emphasized that we must embrace innovative ideas and reforms by newer generations. He adds that this openness to change will allow us to adapt, ensuring that our approach remains dynamic and progressive. Further, he adds that by integrating fresh perspectives and contemporary practices, we can foster continual improvement within our legal framework, ultimately enhancing our ability to meet the needs of society and uphold justice effectively.

To conclude the recommendations, the appeal system must be updated, incorporating new procedures effectively communicated to the general public. Currently, there is a troubling trend of treating appeals as an automatic right, often disregarding the specific grounds for appeal defined in both the *CCPC* and the *GoA*. To counteract this issue, we must implement robust educational and awareness programs that clarify the appeal process and promote the importance of bona fide appeals. By enhancing public understanding of these procedures, we can help prevent miscarriages of justice and empower individuals to engage responsibly with the legal system. This initiative will not only foster a more informed society but also ensure that appeals are pursued based on valid and justifiable grounds, ultimately strengthening the integrity of our judicial system.

CONCLUSION

This research paper, titled "*Assessment of the Current Appeal System,*" offers a comprehensive and detailed examination of the appeal process as it operates within the judicial framework of Bhutan. The study employs a multifaceted approach, employing a combination of anonymous surveys and private interviews to gather qualitative data. Additionally, extensive analysis of court records and relevant legislation has been incorporated to ensure a thorough understanding of the existing system. Beginning with a discussion of the nature of appeals, the paper meticulously outlines the procedural steps involved in filing and processing an appeal in Bhutan. It details the structure of the appeal

system, including the key actors involved—judicial officers, lawyers, and appellants—and their respective roles within the process. The research delves into the appeal filtration process, clarifying how cases are reviewed and prioritized, as well as the criteria that guide these decisions.

This paper's significant focus is assessing the current system's efficiency, effectiveness, consistency, and uniformity. It critically examines how well the appeal mechanisms function in practice, identifying potential bottlenecks and areas where delays or inconsistencies may arise. Through careful analysis and comparison, the study brings to light specific issues and challenges faced by judicial personnel and legal practitioners. These challenges encompass procedural inadequacies and broader systemic concerns that may undermine the integrity and accessibility of justice. Moreover, the collected insights from the participants highlight their recommendations for improving the current appeal system. By synthesizing these perspectives, the paper aims to suggest actionable strategies to enhance the overall function of appeals in Bhutan, fostering a more transparent and equitable judicial process.

The findings of this extensive research contribute significantly to the discourse surrounding the appeal system in Bhutan, offering a diagnostic lens through which to assess its strengths and weaknesses. The research team is pleased to report that the study has yielded valuable outputs that could serve as a foundation for future reforms to enhance the appeal system. In recognizing the collaborative effort behind this research, the team extends profound gratitude to all judicial staff, attorneys, and lawyers who participated in the surveys and interviews. Their willingness to share their experiences and insights has immensely enriched the findings of this paper. Their generous support, cooperation, and commitment to improving Bhutan's judicial system are greatly appreciated, and the Institute thank them sincerely for their indispensable contributions to this research endeavour.

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JUDICIAL REFORMS: AN APPRAISAL OF POTENTIAL JUDICIAL TRANSFORMATION APPROACHES IN BHUTAN

ABSTRACT

Judicial reform is a significant judicial endeavor that recognizes the transition of a legal system. Bhutan is slowly transitioning its legal system by adopting a new judicial transformation approach in the Royal Courts of Justices, including systemic transformation. This research explores the development perspectives of the Royal Courts of Justice and highlights the development needs of the Judiciary and the judicial apparatuses. With the growing impetus for changed judicial thinking, respondents from different social and professional backgrounds were interviewed (n=50) to get their perspectives on the change. Findings highlight the need for technological innovation in the Judiciary and strategic interventions in HRM through strategic legal reforms to make the courts more accessible, responsive, transparent, and efficient justice institutions that better serve the needs of the people. These findings highlight the importance of transformative change in the Royal Courts of Justice that is geared towards a cohesive justice delivery approach and infrastructure.

Keywords: Judicial reforms, legal engineering, transformation

INTRODUCTION

Bhutan has made a commendable journey in developing legal infrastructure and strengthening the Judiciary. The foundations of the *rule of law* were based on strict legal principles that ensured that justice met the aspirations of the society, enhanced social cohesion, and strengthened the nation's sovereignty. The firm foundations of the *rule of law* and the administration of justice have received the highest efforts and priority based on the Buddhist legal principle of the *Golden Yoke* and the *Silken Knot* (French, 2002). The laws promoted peace and well-being and served as a functional symbol of unity. The legal system and the Judiciary revolve around intrinsic human morality that brings happiness and determines the karmic outcomes of virtue. Besides these theological connections, legal realism and the thesis of law provide a clear *emphasis*

on the transparent rule of law' and effective administration of justice. Bhutan made notable progress in law-making, and as part of the administration of justice, the Judiciary has always remained a quintessential component for a fair society to positively engineer the Bhutanese society through laws that reinforce social cohesion and unity.

Bhutan has made great strides in judicial transformations, and as Thimphu was developing in the 1970s, there are stories of people ferrying rations for the litigants from Trashigang. These oral anecdotes relate to how the access to justice component has transformed exponentially, evidencing how people in the past accessed justice as a means to remedy their contestations. It is said that courts symbolize justice, and judges, back then, were strictly monitored on their professionalism and essential elements of judgeship and judicial decisions. There are rich traditional anecdotes of how the Judiciary has transformed, and today, as in the past, the Judiciary represents the epitome of justice and fairness. The expansion of the economic sphere and the traditional transformation of the Bhutanese socio-legal ecology, especially in jurisprudence, law-making, and administration of justice, have significantly impacted the Bhutanese societies for good. The Judiciary of Bhutan has set itself on the path to transformation, and it has largely redefined the concept of justice, the idealism of Courts, and the idea of access to justice.

Today, Courts represent the firm bastions of justice, and the concept of justice has become a multifaceted with many directions. To some extent, justice has become a contested field of judicial and human experiment, and the justice perspective arises from different fields of law and social intercourse. The social, technological, and legal dimensions of law are changing rapidly, positing the need to transform the Judiciary in various aspects, including reinforced technology integration. The need to do what other judiciaries do in law and science applies equally to the Bhutanese Judiciary. The genesis of the expanding scope of justice proves that the Royal Courts of Justice have to face emerging scopes of law and justice that may interweave with technological expansion and new judicial thoughts. As the bastion of justice now, the Judiciary should empower the people through transformative endeavours that enable easy access through technology and re-align the services through a people-centric approach. It is premised that a data-driven approach and digital accessibility of information, the use of a 'holistic approach' based on

enhanced hearing procedures are prerequisites for encapsulating the 'expanded notion of judicial prudence.'

The paper computes the Judiciary's position from an 'external eye.' The findings represent the requirement for a paradigm shift, and these findings collaborate with the recent judicial findings in other jurisdictions. The paper intends to bring the context of concerns among differing judicial variables by integrating internal and external perspectives. Our aim is very modest, and we acknowledge that judicial decision-making is a complex process, and safeguarding the ideals of the Judiciary is the most challenging task in light of the decisions it has to make and the social scrutiny the Judiciary has to face from all corners of society. Creating and growing the Judiciary requires intuition, judicial analysis, and applying the best judicial mindsets, learning, experience, and knowledge. The analysis brings the synthesis of 'externalities', which is beyond the specific variables of judicial decision-making and therefore draws no conclusive references but merely posits the 'reformative perspective' that may require the Judiciary to bolster effective judicial reforms. These plausible explanations for effective judicial interventions are primarily based on the premise that while the numbers can be revealing, they often give partial accounts, and their value depends on the analytical and data collection methods and the transparency of the explanation (Ghezelbash et al., 2022). This endeavour is a singular approach to our research, and we lack the best research synthesis approach. Therefore, our findings are merely representative and never conclusive.

The study represents the preliminary approach by the Bhutan National Legal Institute (BNLI) to collect and examine the various 'contexts of judicial reforms.' The data has been compiled through semi-structured interviews and questionnaires with document research on multiple aspects of judicial reforms in other countries in 2024. The findings do not necessarily represent a matter of concern. However, we argue that 'few of them' are imperative to enhance judicial robustness and transform its relevance in the context of time to facilitate public confidence in the judicial system and improve the 'moving forward of the Judiciary.' However, it has to be noted that it is important to reiterate that we do not purport to draw any conclusive or casual references in judicial decision-making, judicial temperament, or judicial institution. We

provide referential context to judicial reforms. This echoes the words of Chief Justice Allsop of the Federal Court of Australia, who provided that the cherry-picking of the data point metrics and the worth of the courts as an institution is not metrically derivable or measurable. Further, we note that the data is not an objective measurement of the Judiciary. We deeply respect the sacrosanct nature of the institution as the emanation of justice. Instead, it is only a single piece of evidence to support the broader evaluation of how justice and judicial institutions can be enhanced through the perspective of reformation.

We acknowledge the potential risks in such analyses and affirm the firm belief in core judicial values of judicial independence. Our analyses are drawn from examples of empirical and jurimetric studies carried out in other jurisdictions, thus positing the need to align the development of the Judiciary by drawing inferences from different views, literature, and jurisdictions so that it mirrors the 'growing trends in judicial development, including the technology-assisted justice systems.' The paper also examines the perspectives of various research participants, the idea of what must be changed to enhance judicial efficiency and the positive externalities so that a predictable environment supports justice (Fauvrelle, & Almeidia, 2018). This paper analyzes the variables of judicial transformation and incorporates new dimensions so institutions evolve, revealing the determinants of judicial growth. The paper explores the 'core aspects' of judicial reformation and its variables, including technical evolution and the relevant change variables to enhance the Judiciary and judicial institutions. Further, the idea of legal tech and courts as the cornerstone of liberal-democratic values mandates that courts serve as the islands of technocratic wisdom, uphold legal purity, and apply technocratic expertise (Belov, 2022).

LITERATURE REVIEW

The concept of an innovative judicial ecosystem and the use of legal tech have been established as one of the cardinal components of access to justice and judicial innovation. It requires the congruence of society and the Judiciary. At the same time, it has to be recognized that the Judiciary has pressure from many sides, whether from parties or the legal professionals representing the case. In line with the research in other fields and jurisdictions, it can be acknowledged that the Judiciary in different countries, including Bhutan, can be vulnerable. This is in line

with the arguments of Hamilton (2009) that the functioning of the Judiciary can be frustrated by many barriers, including financial support and the degree of respect for judicial independence. It is acknowledged that the perception of the Judiciary in the eyes of the public always differs; therefore, alignment between the Judiciary and the citizens is an essential judicial imperative (Dijk, 2021).

In contemporary leadership and management, judicial resilience is one of the significant attributes of a strong Judiciary. Resilience has emerged as a prerequisite that influences the theoretical paradigm of stimulating various interdisciplinary approaches to bolster risk management and effective response (Seeger & Seeger, 2023). The concept of 'resilient advantage' manoeuvres the ideas that change the course of leadership and business and act as a stress management model (Citrin & Weiss, 2016). Conceptually, judicial resilience is defined within its domains of thinking and can be conclusively restricted to reinforce the capacity of individuals or an organization to perform better, drive positive change, and enhance inclusion.

For a few, judicial resilience is defined as a strict focus on creating unshakeable calmness, strength, and happiness (Belasan, 2022). Fortitude, attitude, agility and deftness, and self-awareness constitute the core concept of resilience, and, colloquially, 'it is understood as rebounding from adversity.' In line with another branch of science, judicial science and resilience are critical competencies in the Judiciary that provide a differentiated focus with practical strategies and transform organizational goals that leverage development.

Further, within this setting, understanding judicial resilience is imperative, aimed at producing a more nuanced and precise understanding of resilience and reform (Maltby, 2023). Significantly, the concepts of 'engineered judicial resilience, ecological resilience, adaptive capacity resilience, and social cohesion' posit positive interactions and resolution of the challenges. On the other hand, Morgan (2023) notes the existence of critical resilience and thriving, which may include critical psychology, which helps to understand the perspectives of society and the Judiciary. Durst et al., (2024) note that environmental turbulence requires risk management, and as such, the organizational structures should be designed to suit the contingencies (Durst, & Zieba, 2024).

Aligning it is imperative to posit judicial innovation. The context of innovation is understood as technology, invention, and easy mechanization. Understanding how innovation is viewed, analyzed, and interpreted depends on the national development scenarios and social conscience on innovation and innovative designs. However, by capturing innovation with the judicial ecosystem and aligning it with the cosmological connotations of the Judiciary, Chasi & Gumede (2020) mention that innovation is a process by which improved knowledge, services, and products are introduced. Ingeniously, this definition of innovation underscores the 'physical nature of innovation' (Chasi, & Gumede, 2020). In modern times, in any sphere, including the Judiciary, innovation must be integrated with physical and non-physical developments. While physical development is related to 'outer technological developments,' the social context of innovation is closely associated with integration with the changing and evolving social values. Considering the growing social constructs and development, an innovation without society's values can remain muted and underappreciated. Further, Klaß (2020) discusses 'open innovation' as a necessary tool in the Judiciary.

Recently, innovation has become a technical contestation and the exhibition of technology-based improvements in news settings, display, and media broadcast streams. Some authors posit that 'changes to technology and media innovation' must be based on 'inclusion and exclusion'- that perceptively defines itself within the reasonableness of need and analysis. Person-centric judicial care is an updated version of patient-centric care (Deniz, et al., 2024). Analyzing the person-centric approach to judicial service with the client-centric approach and the strength-based service approach is imperative to integrate knowledge and skills acquisition and the systemic analysis of the above concepts to facilitate navigation. It also creates a supportive environment and enhances staff communication skills for holistic judicial service (Da Costa, et al., 2020). Further, this intends to promote the understanding of client-centred care in advancing judicial services to provide quality, flexible, and need-focused judicial services based on the pillars of planning, designing, and giving client-centred services. This also aims to provide strategic responses espousing the core principles of person-centeredness and person-centred philosophies (Cook et al., 2022).

Reflecting the person-centric care philosophy, it can be described that it has a unique value that respects personal dignity and respect. Further, it embraces therapeutic and compassionate relationships between providers and clients (Da Costa et al., 2020) and between staff. It can be recalled that the person-centric approach is significantly based on the language increasingly embedded in policy and practice, research, and quality strategies across organizations and systems, including the Judiciary (Health Foundation 2015; National Voices 2015). Now, we reflect on the principles and significance of adopting a person-centric approach in judicial services and how these can influence care and judicial management plans. It has been learned that 'these' practices provide an emancipatory development practice with transformative values and cultures.

The Medical Council Research (2008) demonstrates that these approaches use collaboration, inclusion, and participation (CIP) to facilitate shared values and beliefs among the stakeholders. Here, it is influenced by critical social science and creativity with action research approaches and evaluations so that it significantly influences person-centeredness and effective ways of working. A person-centric approach to community service provides an easy method for practice development through person-centeredness and the clarification of values. It also focuses on culture, facilitates ideas' reflection, and allows the ideas to flourish. It considerably uses effective strategies for communication and sharing and implements the process for sharing and disseminating (McCormack, 2006).

Therefore, reflectively, adopting a person-centric approach in judicial services provides scope for adaptability, innovation, and creativity. Further, appropriate judicial changes are driven by the needs of the communities. The judicial approach can influence the case and management plans by creating teamwork through empowerment and evaluation of workplace culture and practices. If integrated, the person-centric approach will help build a vision, identify stakeholder claims and concerns, and enable collaborative participation practices within the Judiciary. Moreover, the person-centric approach will embed a culture of change journey in which the personnel can embed shared purpose and values (Febriansyah, et al, 2022).

Conceptually, even with the transformative theory, client-centric engagement provides stages of development that promote the concept of 'meet and greet' and create an atmosphere of understanding. Interestingly, the stages of engagement, the idea of effective services, and the client-centric approach provide the basis to align the judicial responses in line with the expectations of the clients. Importantly, it can be stated that client-centric approaches offer services to people who are facing disadvantages. Studies suggest three key principles for addressing cycles of disadvantage, including empowerment, continuity, and removing structural barriers. The client-centred approach generally uses empathy and relationships as the basis for self-actualization. Further, it can be learned that the approach is closely associated with the social work paradigms (Kievišienė, 2020).

Holistically, it considers the whole person, engages in positive relationships and resilience-building, and creates hope and possibility for the future. Therefore, the client-based approach transpires to a strength-based approach. Another component is the use of stakeholder engagements. The Integrated Service Delivery (IDS) model provides a holistic approach to service delivery that considers the requirements of the people. The client-centred approach helps to streamline the services and supports by providing centralized points of entry, referrals, pathways, and navigation assistance for the clients. These help to reduce barriers to access and facilitate communication and sharing of data.

Further, communication is an important medium through which client interactions are affected. Human beings need services, and communication as a method of engagement has been serving to meet people's expectations (Febriansyah et al., 2022). Therefore, it was found that communication skills are essential when interacting with clients to enable effective client outcomes. Judicial communication strategies must be tailored to the people's needs and set communication parameters. Quantitative analysis by Rivas et al. (2016) shows that communication must be modelled toward change in mindset and focused through an ethnographic approach. Communicating with the client has to be in line with the trust placed in them, and they consider confidentiality as the key obligation; within this disclosure, they have to uphold the autonomy of the client and also should work within the strict practices of competencies (Rivas et al., 2022). These paradigms are brought in line so that the

general ecology of social intercourse applies to the Judiciary. The strength-based approach (SBA) in judicial service builds on the client's strength. It operates at an individual level, is problem-centred, and passively consumes support. If the SBA has to empower individuals and communities, it requires greater empirical support for effective SBA interventions (Rivas et al., 2022).

PURPOSE OF THE RESEARCH

The study aims to explore the various aspects of judicial reforms in Bhutan, including what needs to be 'done' as part of the judicial transformation to enhance judicial efficiency, effectiveness, and strategic judicial progress.

RESEARCH QUESTIONS

RQ: What judicial reforms are required for strategic judicial progress?

METHODS

One of the guiding academic research proposition is the framing of *research questions.* Simply put, a *research question* is a 'question' that a research project aims to answer (Mattick et al., 2018). A good research question can motivate one to learn and provide a well-informed answer. This is called the process of *'problematizing'* and indirectly directs how data is collected, interpreted, and analyzed, supported by the hypothesis theory (Mattick et al., 2018).

Aside from the research questions, the respondents were asked to indicate their name and gender. Following Tiggemann (2018), participants were asked to self-report on various aspects of judicial changes required, including the various aspects of judicial changes, through the experiential analysis of the respondents. The mixed approach was mediated by collecting the problems based on a research hypothesis that the Judiciary has to change with sustainable judicial mobility.

Conversely, in these specific studies, the research questions were explicitly aimed at answering scholarship questions constructed within the purviews of specific individual aspirations, research ideas, and propositions. Therefore, the choice of research intention[s] is limited within the literature and semi-structured interviews. In this light, the research ideas and questions are propositioned as an academic output that

will enhance the present literature contributions to judicial research trends in Bhutan.

It involved a purpose-driven inquiry (Mattick et al., 2018). In judicial change-making, the studies have to engage the analysis of human-judicial behaviourism and judicial critical thinking. The study is guided by the principles of science, scientific research, and scientific knowledge [that] is supported by observations and theories through inductions, deductions, generalized observations, and hypothesis testing. In these studies' analytics, the research designs, comparatively, qualitatively, and quantitatively show that the research designs are pitted against personal study ideologies, which are characteristically 'fitted' within the parameters of individual view basis providing a statistical description of trends through an interpretative procedure (Bhattacherjee, 2012). The research process involves collecting, collating, and interpreting data to look at individual responses and draw interpretative conclusions from the perspective of the research question (Fischer, n.d.).

The study analyzes various perspectives of the consumers of justice on the variables of justice and the judicial institution transformation perspectives. It explores what must be changed within the quantifiable primary and secondary data. The research was undertaken through a semi-structured empirical study, with questionnaires wherever possible. It involved a mixed approach in which, in some parts, the questions and semi-structured interviews were made among legal professionals and other consumers of justice, including personnel working in the Royal Court of Justice. The sample size is limited, which highlights the difficulties in collecting responses, given the critical aspect of the judicial institutions. The research also adopted the [desk review research] method in addition to the interviews. The parameters of respect and non-imposition principles were used as part of the interview protocols.

CONTENT ANALYSIS

Interestingly, data analysis aims to obtain usable and useful information. Data analysis brings order, structure, and meaning to the mass of collected data (James et al., 2017). Data analysis has been divided into two categories: data from research and desk review data. The use of data variables provides latitude for data incongruence. More importantly, there can be information incongruence and subjectivity in the information.

The data are relatively subjective and should be subjectively interpreted. Moreover, it supports the requirement for in-depth data collection models with specific research questions by broadening the research areas. This can widen the scope of triangulation and expand the use of variables for better data analytics and integration.

ETHICS

As part of the research, considering research ethics, the Bhutan National Legal Institute tendered letters seeking permission to undertake studies on various aspects of the administration of justice. The research was inclusively designed through a design thinking perspective that considered the needs of the respondents. Further, the research ethics of the Institute mandates the use of professional research designs and methods as provided in the *Research Guide Book.*

RESULTS AND DISCUSSION

1. Judiciary and Technology

Key discussions have been on judicial innovation and development within this study's parameters. The semi-structured interviews provided comprehensive details that specified various judicial development and innovation requirements in the context of the modern Judiciary. Presently, the Judiciary of Bhutan functions as the sentinels of justice and strengthens the *rule of law* paradigms. The Royal Courts of Justice serve as the bastions of justice and are mandated under the *Constitution of Bhutan* to safeguard, uphold, and administer justice fairly and independently without fear and favour. It further enshrines the inspiration of trust and confidence that enhances access to justice. *The Constitution* also mandates easy access to justice and the right to approach the courts (Constitution, 2008).

However, analysis of the judicial systems outside Bhutan shows that the 'Judiciary has to live with the age of technology and technological interventions and innovations.' Document automation, e-discovery, predictive analytics, and online dispute resolution are adopted as part of justice services in many jurisdictions. Many of the new judicial services are engineered toward enhanced judicial efficiency, productivity, and quality of judicial review and services (Souza & Sophr, 2023).

These technologies are deeply impacting the development of law and legal processes. In the 21st century, it is crucial to understand these changes as part of solving legal issues and understanding the challenges of the people. Therefore, mapping the changes mostly surrounds the concept of 'legal tech,' artificial intelligence, and adequate legal infrastructures. The analysis indicates that legal infrastructures in Bhutan have to be designed in line with technological developments and make them suitable to address the needs of ordinary citizens. It can be argued that the paradigm or the concept of access to justice is changing rapidly, and 'meeting the challenges of technological justice gaps' is imperative for judicial development.

The Judiciary Strategic Plan (2022 - 2032) has outlined key judicial development priorities with strategic goals. The Strategy does not specify the modern technology integration in the Judiciary beyond the scope of the Case Management System (CMS), which, like in other jurisdictions, should analyze the technological developments taking place in the Judiciary and emphasize these changes in the Judiciary (Judiciary Strategic Plan, 2022-2032).

The comparatives in technological development in other countries show that they:

a) Map the sites of innovation;
b) Embed access and empowerment; and
c) Plug in the gap.

Here, mapping the innovation sites and examining trends becomes a reference point for the Royal Courts of Justice. In other countries, they employ contract analysis tools like eBrevia, Kira, Luminance, or Leverton. E-discovery tools like relativity, legal expert systems like Neota Logic, or prognostic tools like Ravel, LexPredict, or IBM Watson (Souza, & Sophr, 2023). Most importantly, Bhutan has to begin to embrace legal tech. Many big accountancy firms are using that.

Many aspects of the research analysis indicated that the respondents do not specify the concept of legal tech as part of judicial innovation but specify that online platforms have to be developed so that disputes can be resolved online through accessible justice platforms. Further, some respondents shared about the need for 'responsive hearings.' The respondents also suggested the introduction of case

tracking systems and digital notifications for updates. They suggested online dispute resolution systems. They also specified digital judicial data assets to sustain long-term judicial goals.

In other jurisdictions, online platforms in the Netherlands, Canada, and the UK have helped solve marriage, landlord-tenant, and other disputes through projects like Rechtwijzer by HiiL, MyLawBC, or Relate (Smith, 2017). Further, the legal tech should be able to translate the documents. However, the document research shows that these endeavours are complicated and complex. The legal tech component is beyond the scope of digitization, and in many jurisdictions, legal tech is integrated as a dispute resolution mechanism. In short, in countries like British Colombia, the process helps individuals to diagnose a problem, provides them with legal information, and guides them through an online dispute resolution process, followed by links to a formal tribunal process. It also alters the application of the law, and the idea of enabling technologies can help drive radical changes in the capabilities of the users, which will help to develop subsequent derivative technologies.

[T]he legal industry generally has to introduce cloud services. Cloud computing technology can be defined as software or services that can be accessed and used online using a browser or an application (app), where the software itself is not installed locally on the device being used to access the service. Further, artificial intelligence, machine learning, and deep learning also help automate knowledge work. Legal technology is imperative in the following technology spheres:

1. Practice Management
    - Matter management
    - Case management
    - Knowledge management
    - Timekeeping, Billing & Accounting
    - Expertise automation
    - Task management
    - Scheduling & Calendaring
2. Document Automation
    - Drafting
    - Review

- Due diligence
- Extraction
- Analytics
- Digital signature

3. Analytics and Search
    - Legal research
    - Investigation & Intelligence
    - Due diligence
    - Electronic discovery
    - Prediction
    - Litigation analytics.
4. Online Legal Services
    - Online delivery
    - Automated rendering
5. E-Learning
    - Legal Education
    - Client Education
    - Technological Competence
6. Automatic Judicial Procedures
    - Docketing
    - E-filing
    - E-service of process
    - E-payments
    - Document management
    - Case management
    - Statutory information
    - Scheduling & Calendaring
    - Evidence and media presentation
    - Video conferencing
    - Digital recording
    - Publication of judgments
    - Online dispute resolution
7. Others
    - Digital Notarization

- Litigation financing.

However, the respondents shared that the present legal market and judicial procedures require legal automation, including practice management and prediction tools, that may include analytics in teleworking and judicial mobility (Kahale, 2023). There should be a digital transformation in the Judiciary with improvements in infrastructure and case processing. Respondents argued the need for modern technology and adequate Information Technology (IT) infrastructure. It is pointed out that most of the Courts have old laptops, and to ensure quicker resolution of cases, technology and infrastructure in the courts must be improved. This reduces delay, enhances speedier resolution of cases, and improves case management, transparency, and speed.

2. Judiciary and Human Resource Management (HRM)

As part of the research, another essential element of questions was the imperatives of judicial strategic planning. Many respondents shared that the Judiciary should have strategic planning in human resource management (HRM). This includes equal opportunities for *Drangpon* appointments through open appointments for *Dzongkhag* and *Dungkhag Drangpons* to government lawyers and *Jabmis* if they are capable. This is to promote inclusivity, fairness, and professionalism in HRM at the Judiciary.

Further, they explained the need for a structured reform process in the Judiciary, with an open and year-wise evaluation of the reforms so that they are cumulative. Respondent **X** also suggested the removal of the Court Registrar requirement for *Rabjam* appointments, which shall instead include experience requirements under the sections of the *Judicial Service Act, 2007,* so that there is an enabling environment and merit-based competition to attract diverse and qualified professionals. In enabling the changes, they should be consistently monitored for a few years to assess their impacts.

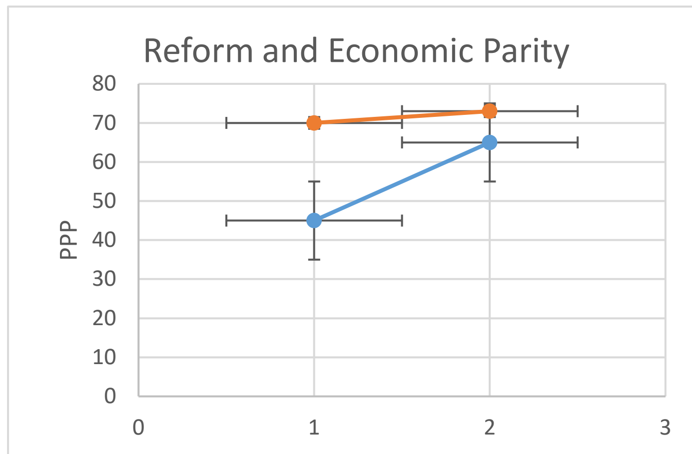
The relationship between human resources, human resource management, and the Judiciary is practically relevant to upholding the economics of the Judiciary and judicial products. In addition, some respondents suggested broadening the entry pathways for legal professionals so that it enhances the entry of legal professionals who have

not passed the Bar Examinations (Common Examination for Law Graduates) to be appointed as Legal Officers as well as Bench Clerks, thus enhancing judicial efficiency and inclusivity. Moreover, there should be merit-based promotion and promotion opportunities that are transparent, merit-based, and non-biased approaches to advance people's career opportunities, including bench clerks and paralegals. This is to support career development and professionalization in the Judiciary.

Some respondents suggested there should not be any ineffective promotion and promotion supports, which may derail the sense of justice, equity, and fairness in human resource management. There should be a strategic Human Resource Master Plan (HRMP). The idea of sustainable human resource management and strategic human resource management is critical in light of the 'exodus of experienced personnel' from different government sectors. Nurturing human resources is a value that reflects organizational culture, employment policies, and behaviours that 'go beyond financial benefits' and should incorporate neoliberal policies to enhance strategic human resource management (SHRM). In some instances, effective HRM can promote effective access to justice and human resource motivations and improve judicial services. In addition, it can amplify judicial governance and strengthen the rule of law (Chemin, 2020).

Research hypotheses indicate the perception of judicial efficiency through various variables of judicial reforms in general and HRM in particular. In one instance, the research results show that labour productivity greatly improves with judicial efficiency. These studies were undertaken as part of a specific support analysis of the Judiciary in line with the value added through the reforms. Therefore, critically, judicial efficiency is measured within the key terms of fairness and impartiality [with other factors] that are measured within the value added per worker, which is expressed through purchasing power parity (PPP).

With such research findings, SHRM must be seen through enhanced judicial efficiency. Therefore, effective HRM within the Judiciary is of great importance. The analysis by Chemin (2020) shows the following relations:



In this study, the comparatives of the economic parity and the benefits of reforms indicate that reforms help to bolster parity and motivation, including positive economic benefits. This country-wise analysis indicates that judicial reforms enhance human resource productivity. Therefore, these studies collaborate to provide coherence and relational statistics for effective HRM and judicial reforms. The HRMP should be able to forecast New Public Management Systems that help to manage human and financial resources better.

Research in other jurisdictions shows that judges undertake court-of-law judge management. The moderating variable of stress management and uncertainties can create and generate conflicts. The judge is the central individual who is tasked with the administration of justice. Further, today, they have become the managers, and with the reforms driven by accountability and new public management principles, it is imperative to enhance the physiological environment at work and recognize the consequential psychological risks, which are recognized globally as a public health concern.

These issues have to be considered as an important HRM issue by identifying the risks and challenges that involve work stress and mental health. In addition, the Judiciary risks public criticism and the role of the judge has become a pivot to attend to social expectations and implement social justice. This increases occupational burnout and the role of stress management is pivotal and timely. In 2023, the *Dzongkhag* Courts decided 7128 cases and the *Dungkhag* Courts decided 1996 cases. Many

researchers who are undertaking studies in human physiology and stress measure oxidative stress. Now, it is imperative to conceptualize 'stress' in the Judiciary through a methodological and practical perspective. Here, the Task Demand Scale (TDS) is relatively high for judges and judicial personnel. This is analyzed through the Task Control Scale (TCS), which shows the probability of change. Further, Job Stressors and Job Strain also affect Job-Related Affective Well-Being (JAW). The measurement of work stress has to be undertaken as a different research initiative (Pereira et al., 2022).

The respondents shared that with the judicial transformation initiatives, judges, as well as the judicial personnel, have lost the 'job security veil' and 'attraction.' This has increased the rate of judicial attritions. More so, the judicial institution, which has existed as a central institution that attracted human resources viewing the judicial cadre and professional attractions, has gradually waned. People choose to be employed in institutions other than the Judiciary and, in many instances, they look for other better professional avenues that provide competent financial benefits. The respondents argued that these key issues, in addition to non-transparent appointments and promotions, act as institutional retardants. They also pointed out the lack of *Standard Operating Procedures* (SOP) specifying the qualifications and merits of promotion and appointments.

The Judiciary was delinked from the Royal Civil Service Commission (RCSC). However, the *Judicial Service Act, 2007* and the *Rules and Regulations* are not responsive to the needs of the employees working in the Judiciary. In one way or the other, this seemingly resulted in personnel demotivation and the loss of high-performing personnel from the Royal Court of Justice. Further, they added that there is no retention policy. One of the respondents' **C,** mentioned the need for strategic human resource management that is based on the theory of evolution, strategic human capacitation. This is to enable the progressive building of human resources. Respondent **Z** stated that proper screening should be undertaken, including the appointment of older and seasoned judges through an effective pre-appointment screening and review process, with an effective background check. Additionally, they shared that the Judiciary should mandate publications as one of the criteria for judicial appointments.

3. Judiciary and Access to Justice

The spatiality of justice and access to justice is a constitutional right as well as a right deeply enshrined in the *Civil and Criminal Procedure Code of Bhutan 2001,* and its amendments. Access to justice is a people-centric principle imbued with the fundamental human ideal of accessible justice and the strengthened *rule of law* (Sabatino, 2020). Access to justice has to be divided into two paradigms: rural and urban. While in the urban areas, there are services of law firms and the ability to compensate the law firms for their legal representation services and defence, access to justice perspective is mostly measured through a traditional lens that imbibes the concept of physical access and current institutional response. The rural-urban justice gap and the idea that technology serves as the effective mediator of justice and access to justice is seen, across various international settings, as an ineffective idea. The rural justice pipeline, as they call it in other jurisdictions, has to be simplified or made relevant to the rural people. Now, conceptually, access to justice is the diversification of the justice approach that reduces physical and psychological costs. Some research argues that it reduces the opportunity for rich, real-time communication between parties and the judge, which includes ongoing dialogue, body language, and tone of voice that is supplanted by thin, one-directional written communication (Mentovich et al., 2021).

In this case, respondents shared that the Courts should help to remove economic, geographic, and cultural barriers to access to justice. It is pointed out that legal services are expensive, making it difficult for individuals with limited financial resources to access the help they need. Further, respondent **Y** stated that people living in remote areas face significant travel expenses. Here, they cited systemic reforms, technology adoption and advancement, and procedural enhancement. To meet the justice needs of the people, the respondents shared that the Judiciary should adapt to the evolving societal needs and contexts while upholding its core principles and fairness.

As part of access to justice, respondent **A** stated the need to reform appeal procedures by allowing a direct appeal from the *Dungkhag* Court to the High Court, removing unnecessary steps of appealing to the *Dzongkhag* Courts for fairness and efficiency for the litigants. Few opined that the voices of the respondents may not be heard; as many interventions

fail to ensure an improved architecture of the laws or the legal system. As part of the discussion on access to justice, the respondents noted that 'prolonged hearings' notably stifle access to the justice concept. They stated that the time frame within the *Civil and Criminal Procedure Code of Bhutan 2001* and its amendments have to be the guide to ensure that access to justice is equitable and fair.

One of the notable observations in the interviews showed that the lack of 'absentia case registration' tremendously hinders access to justice. Narratively, if one of the spouses has travelled to Australia and lives there, there is no way for the grievances of the person living in Bhutan to be heard through a judicial apparatus. This issue is mostly experienced in civil cases and in criminal cases; they also suggested the need for expanding institutional collaboration through *The International Criminal Police Organization* (INTERPOL), thus forging an understanding between the law enforcement agencies in Bhutan and the INTERPOL services outside Bhutan. Although these strategies are initiated in a few instances, it has to be strengthened. One of the key components of access to justice issues the respondents pointed out was the proper record-keeping processes. Here, they stated that digital data has to be managed to track the cases as well as expedite the process of document sharing. Further, the Grievance Cell has to be enhanced as a strategic endpoint for disputes through accountable processes.

Few of the respondents felt that the Judiciary should develop *Standard Operating Procedures* (SOP) for virtual hearings to enable effective access to justice. As part of the access to justice paradigm, new legislation in print versions has to be made available to all Bench Clerks and judicial personnel to enable easy access to laws and legal information. One of the cardinal issues that has been noted by the respondents was the delay in the enforcement of judgments. Practically, default in the execution of the judgments happens when the judgment debtor flees or absconds. [T]his handicaps the Royal Courts of Justice and directly impedes access to the realization of justice. The service of contempt of court has to be accelerated so that it serves as the correct point of deterrence to the parties. Presently, it is observed that contempt of court provision is sparingly used.

With the expanding access to justice concepts, the digital innovation perspectives with online judgment copies would enable people

with effective judicial information. Access to justice can be termed as the availability of legal and judicial information. Another stumbling block that has been observed in the dimension of access to justice is the provision of 'additional time by the Judges' that impairs the timely execution of the Judgments. Some respondents observed that 'these time spaces' are used by the litigants to exploit the judicial loopholes. Moreover, the additional time awarded by the Supreme Court also posits the lack of judicial tenacity in many cases. One of the significant observations gathered in this research is the issuance of multiple enforcement orders.

This mystifies the operability of the judgments and stirs controversies about independence and impartiality in the decisions. It is postulated that navigating these challenges requires strategic judicial planning and transparent judicial intercourses. With technology adaptation, the courts, as part of the process reform, need to screen the petitions effectively and shorten the process of rebuttals. In some instances, the evidence and witness hearings can be summated together to ease the constraints of time faced in the Royal Courts of Justice.

It is observed that the website of the Royal Court of Justice, as part of the far-reaching transformative endeavour toward enhancing access to justice, has to be revamped to enable adequate and correct information and make it people-friendly. Now, with the engagement of the transformative approach in judicial tasking, it is observed that the judges are stringent in the application of Conflict of Interest (CoI) principles, and the recusal of the judges from sensitive cases affects the effective administration of justice, as well as stumbles the access to justice principle. Regional High Courts have been suggested along with the *Judiciary Strategic Plan (2022 - 2032)* to increase the enabling environment to enhance access to Justice.

In many courts, there needs to be more Bench Clerks. *Dungkhag* Courts need a Judge and a Clerk, thus directly impeding access to justice and the timely administration of justice. The respondents posited that this is both an access to justice and an HRM issue in the Royal Courts of Justice. HRM has to be strategic, and it should encompass holistic visioning and mapping. The respondents shared that 'there should be the restructuring of the courts within' so that it manages caseloads, improves governance, and enhances overall efficiency. To enable access to justice,

they must streamline the processes, allow online filing, and improve digital court records. Legal awareness is seen as an integral part of legal education and access to justice so that people can navigate the system.

4. Judicial Protection and Judicial Security

Presently, the question of the protection of judges revolves around the theory of competence. The concept of care and protection of the judges and judicial security stems from the task and nature of judicial obligations. One of the significant impetuses of judicial protection for judges stems from task-related repercussions. Financially speaking, some respondents calculated it in terms of *Judiciary Risk Allowance,* which is competitive with *Prosecution Allowance* and allowances that other professionals working in the Anti-Corruption Commission (ACC) get. Therefore, judicial protection must be translated through financial benefits since all Justice Sector Institutions (JSI) who undertake similar decision tasks involving the same risks get it. It is noted that personnel working in the Royal Courts of Justice (RCoJ), Royal Bhutan Police (RBP), Office of the Attorney General (OAG), and the ACC face almost similar degrees of risk and challenges. Judicial independence requires the protection of the rights of the judges and personnel working in the Judiciary. Further, respondents shared that the *Judicial Service Act of 2007* does not stipulate any protection of the judges and judicial support personnel from external threats, harm, and interference.

In countries like India, they enacted the *Judicial Officers Protection Act of 1850,* dating back hundreds of years. These legislations enhanced the judges' protection and supported the cardinal roles of judges as the Officers of the Court. This is based on the premise that the independence of the Judiciary is indispensable for the *rule of law* and that the attacks on the Judiciary cannot be withstood. In many cases, the judges are the ‘last shoulder standing’ in the defense of judicial independence, and this does not mandate the maximalist approach. However, some respondents pointed out that judicial remuneration and protection should play a central play in safeguarding the *rule of law.* Effective judicial protection is essential to the *rule of law* (Jelic & & Kapetankis, 2022). This reform approach needs to be consolidated.

5. Judicial Robustness and Enhanced Judicial Speed

As part of enhancing judicial speed and building a robust Judiciary, the respondents identified that globalization and learning from global practices are imperative, including judicial exchange and collaboration with partners. Further, they also stressed the concept of glocalization, which mandates global solutions to be resolved locally by fitting them into the local contexts. Notably, the respondents stressed technological innovation and creating a digital system that improves user accessibility. As part of the reformation, they discussed the importance of establishing Specialized Courts that handle specific cases efficiently, thus reducing delays. They also stressed judicial training and the use of Alternative Dispute Resolution (ADR) to facilitate amicable settlement of disputes and ease the congestion of the courts. They stated the need for systemic reforms, technological advancement, and procedural enhancement to administer justice effectively. One of the critical components of a robust Judiciary is the requirement for restructuring strategies. The respondents shared that improved legal aid services, user-friendly legal resources, and enhanced legal literacy of the people are a must.

One of the significant observations in this research is the requirement for financial independence for the Royal Courts of Justice. Resource constraints have significantly hindered capacity-building initiatives, impeded judicial mobility, and obstructed effective judicial reforms in the country. One of the lessons shared is the inadequate financial support to the Judiciary. They attribute these to the lack of proper planning by the Judiciary, which preempts the Judiciary from making an inclusive, advanced, and influential proposition to the Ministry of Finance (MoF).

The respondents considered adopting cloud computing, Artificial Intelligence (AI), and big data analytics. They also suggested upgrading the systems and creating a new database that enables reliable and secure operations. Data integration is also seen as an instrumental mechanism in informed decision-making. Upskilling and re-skilling on emerging technologies, management practices, and knowledge sharing and creating a culture of continuous learning is also suggested as a reform paradigm. Within the dimension of ‘structuring within the approach,’ to reduce caseloads, they suggested the establishment of Night Courts, like in

Singapore, to streamline the legal processes and prioritize urgent cases. Further, increasing the number of judges and judicial personnel with non-judicial decision-making methods can promote a responsive judicial system.

Some respondents stressed the requirements of 'reasoned Judgments', which are premised on the principles of clarity and practical judicial jurisprudence. The concepts of 'questions of law' and streamlined appeal processes are a dichotomy in the judicial process. The creation of the robust Judiciary rests on the principles of finality and effective and right interpretations of the law. Therefore, a jurisprudential question revolves around judicial decision-making. They suggested that proper and adequate research needs to be done before making decisions. They shared that to enhance trust and confidence, judges must be receptive and flexible. The judges should be of the highest integrity and encourage the system to be professional. The respondents 'stressed systemic reform' and shared that there should be positive ways to implement the law by looking at the people's plights. Some respondents suggested the removal of hierarchy. They shared that clear communication between the judges and the people and judicial accountability is necessary.

They also stressed the importance of fair judgments based on the principles of equity. Significantly, the litigations should be unrestricted on verbal contestations, which, in many instances, are won by people who can make effective verbal submissions. Further, respondents mentioned that Judges should be thoroughly versed in the provisions of the laws to enhance trust and confidence. Respondents often opined that strong ethical rules should demonstrate and guide the Judges in various management principles, including in-house disciplines, of varying contexts. Some respondents, **D,** suggested the need for inclusive 'judicial settings' that encompass a respectful ambience and infrastructure. This includes appropriate 'sitting amenities' to facilitate 'effective court infrastructure.'

Respondents stated the need for online charge sheeting to enhance judicial processes to save time. Further, it is studied that virtual hearings are not accepted in the Courts, and few shared that the 'sentencing paradigm' in the *Penal Code, 2004* has loopholes, which contradicts the doctrine of proportionality and uniformity in sentencing. Legal ambiguities arise due to differential interpretation and 'non-consensus' in

various aspects of law. For example, there is a legal lacuna in enhancing punishment. This legal predicament[s] requires understanding between the Office of the Attorney General and the Royal Courts of Justice.

Most respondents stated that the judicial process must be streamlined with a hearing calendar fixed before the hearings. They suggested increased virtual hearings and the need to lessen the hassle by non-collating additional documents whenever necessary. The interpretation argues that 'there should be clear specifics' on what constitutes the judicial reference points. For example, in financial matters, the 'concept of law' within the financial perspective has to be streamlined, not including manuals and guidelines, since they are intra-institutional documents that guide institutions' daily state of affairs. The concept of the legal and justice arm has to be examined within the principles of due process and legal necessity.

They also suggested integrating international standards that promote fairness and that judicial processes be responsive to globalization. Connecting with the communities and sharing the judicial perspective of the *rule of law* and the administration of justice is seen as a necessary tool that envisages ways to enhance trust and confidence. The Judiciary has to simplify the processes to navigate the legal system for the public. The Judiciary should strengthen community outreach and enable prompt, equitable case resolutions to enhance trust and confidence. They shared that the Judiciary should push for legal reforms that tackle the social and economic challenges of the people.

6. Business and Judicial Reforms

The inclusion of justice in business design with future thinking approaches is critical. The process of design thinking postulates that methodology and design concepts enable the design of a product or a service. The initiation of justice design thinking\ is a method that helps to improve the design process by considering various variables that influence the acceptance of the design. This innovative approach to business and justice management generates creative solutions and a model that contains elements of individual processes in improving Justice innovation for enhancing business and the business environments (Alston., & DeKerchove, 2024).

The idea of a humanistic engineering framework through human-centric justice designs requires human system integrations (HIS). Designing new justice approaches that demonstrate innovation and competition requires creative design thinking. It enables the exploration of new ideas that lead to novel inventions in the justice approach and encourages futuristic design thinking. The concept of inclusive design is premised on equitable, consequential, and culturally calibrated that is helpful to the people. The perception of justice has to be aligned with strategic management, goals, policies, and plans. These three key components help formulate a combined basis for managing a service. This has to be undertaken by controlling the internal environment and assessing the value chain, including judicial resources, HRM, technology enhancement, and service (Dess & Miller, 1990). Business education and concept of Social Justice, and justice in business: equity in distribution, and justice in business communicative processes are important. It includes three dimensions of Social Justice: business, business justice, and business education.

The researchers note the positive organizational scholarship and suggest institutional redesigning through disruptive institutional works (Toubiana, 2014). This is based on the theory of access to business justice, corporate accountability perspective, and transnational litigations. If we examine the recent happening, the Global E-Commerce scheme, considered a pyramid scheme, has victimized many innocent investors in Bhutan and elsewhere, including Bhutanese citizens in Australia. This shows the urgent necessity of business education and justice in light of expanding e-commerce and online trading mechanisms (Dolkar, 2024).

In business, law is a tool to manage the unpredictability of the world. The application of the laws should protect business rights and meet obligations. Business competition is a common thing that occurs in a business or business. This is a consequence of business being synonymous with competition. Competition in the business context can be seen from two aspects, namely, positive aspects and negative aspects. On the positive aspect, competition in business is oriented to increase competition between business people so that they can improve their quality, capacity, and creativity to compete while winning business competition with competitors. On the negative side, business competition can impact efforts to destroy each other made by each competitor so that

the strong party increasingly monopolizes the business. In contrast, the weak party is increasingly marginalized in business (Asmah et al., 2023).

Therefore, intervention in business justice with a reformative aspect of justice and competition law is imperative and a serious requirement. The justice system has to be adaptive. Global justice demands that when people enter the global community, an adequate toolkit designed to provide justice based on principles of cosmopolitanism and global justice dimensions is required. Contemporary liberalism suggests the existence of the concept of freedom, and it entails that all social aspects must be acceptable to all individuals (Valenti, 2011). [The] efficiency of justice in business contexts has to be aligned with the economic theory, particularly in the idea that, within a larger scheme of social cooperation, markets ought to pursue efficiency and leave the pursuit of equality to the welfare state. The business ethics and market approach puts business ethics in its rightful context that one cannot do business ethics without some appreciation of what justifies the system of private enterprise we need to understand why corporations should be entitled to pursue profits, to understand the responsibilities of managers (Singer, 2018).

In this context, to ensure that 'business justice' prevails, the respondents shared that to promote judicial leadership in business, trade, and finance and meet the diverse needs of the changing world, the Judiciary should adopt several strategic approaches, including direct actions and fostering an environment that supports growth and investment. This can be done through the process of legal certainty that has been fostered through consistent rulings to build trust among investors and businesses. Here, they argued that clear and stable legal precedents reduce investment risks.

Further, they identified the role of a transparent process in the judicial process, including case management and decision-making, to enhance confidence in the legal system. To promote the business environment and conception of justice in business, it is imperative to streamline and harmonize business and trade regulations. Further, reducing red tape to facilitate easier compliance is found critical. Research shows that 'keeping an open mind' is also significant. In another, respondents shared that the Judiciary should introduce reforms to encourage investments by safeguarding the investors' rights. Timely resolution of commercial disputes can bolster investor confidence while

collaborating with industry stakeholders to develop supportive legal infrastructures. This proactive strategy will enhance the attraction of economic growth in a dynamic environment.

In addition, it is submitted that the Judiciary must support a legal environment for business innovation and entrepreneurship. This involves simplifying the regulations and offering clear guidelines by promoting ethical compliance and practices to achieve sustainable development. There should be adequate reskilling of judges in business and justice. Creating specialized courts to address specific issues will ensure tailored solutions to meet diverse justice needs in business. As part of enhancing strategic thinking and a business-based approach toward creating a vision change, the Judiciary can hold collaborative planning sessions with legal experts and stakeholders to pinpoint areas for improvement. A business-based approach should include setting measurable goals, using data analytics for decision-making, and promoting a culture of judicial innovation. Creating a clear vision for change that aligns with the community's needs will also help to guide the strategic initiatives. The respondents also focused on enhanced ADR mechanisms to resolve commercial disputes quickly and fairly.

As part of capacity development, the respondents shared that sector-specific training should be on business, trade, and financial matters to enhance their understanding and decision-making capabilities. There should be a system of continuous learning and professional development to keep abreast of evolving business practices and financial regulations. The Judiciary can offer insights on legal reforms and practices that can enhance business and investment climate. As part of the policy input, the Judiciary should provide feedback on proposed legislation and policies that impact business, trade, and finance. It should advocate a legal framework that supports economic development and investment.

As part of the new initiative, the Judiciary can collaborate with economic institutions, such as trade bodies and investment agencies, within and outside Bhutan, to align the judicial practices with financial goals. Importantly, it is noted that the Judiciary should expand beyond the traditional roles of administering justice and begin to take proactive roles to create a favourable environment for economic development, encourage investment, and support broader societal progress. Legal education and awareness in business laws and finance can help bolster overall legal and

judicial literacy on various aspects of business and its models. The Judiciary can be a strong driver of economic change. Respondents shared that advocating legal reforms that enable ease of doing business and foster a climate of change is essential. Hence, they suggested creating judicial capacity through continuous training and resource allocation as a new step. Further, creating a culture of public service can build public trust and confidence.

7. New Design Thinking and Approaches

New design thinking, as studied before, is critical. In many jurisdictions, judicial service is a product that embraces the concept of futuristic thinking: keeping abreast of trends, seeking mentoring, acting as a change agent, keeping an eye on the bigger picture, and visualizing the present while looking into the future (Alston, & DeKerchove, 2024). Here, through humanistic legal engineering processes, new ideas should be generated, and strengths and weaknesses should be evaluated. The concept of new product development in the justice area embraces cross-functional collaboration that integrates the disciplines of human society and relationships, human qualities, and product quality besides the legal and social science disciplines.

Narrative-driven innovation helps develop a customer-focused justice service. Here, helping to win hearts, changing minds, and getting results should emphasize embedding values in design, and this should be followed by cultural development and maintenance. Collaboration and communication, creativity and innovation, and continuous improvement are essential to embrace loyalty and trust. The design thinking has to be based on engineering management through leading by engaging. The organizational system and deployment have to be based on a functional and matrix-based development strategy that motivates employees to achieve the tasks to support the goals of the Judiciary. Critical thinking with attention to detail, logical evaluation, alternative fact recognition, and information synthesis is imperative to ensure a critical-ACT approach [Aspects of Critical Thinking].

In asking what management thinking has to be changed in the Judiciary to harness the new opportunities in management practices, the respondents shared that data-driven decisions have to be calculated as part of new judicial decision-making processes, with new performance metrics

to improve accountability and knowledge-sharing. It echoes the aspiration of His Majesty the King in creating a society where people are happy, healthy, and prosperous. It also reflected the entrenched mindsets and internal resistance as a barrier to change. Limited resources for training are also seen as a barrier to judicial capacity-building. Some respondents argued that the Judiciary can adopt a vision for change with a continuum effect. New knowledge capture requires continued communication between the judges, legal professionals, and judicial personnel. This is to keep a channel of communication. Also, as a transformative strategy, they can facilitate as mediators to promote non-legal methods in administering justice. Notably, the respondents suggested that the Judiciary could advocate policy change by advising the lawmakers on legal reforms to enhance the justice ecosystem.

Inter-agency cooperation between law enforcement and the Judiciary should be there to ensure a cohesive approach to justice. Strengthening the independence of the Judiciary is found to be critical. The respondents argued that there should be clear accountability mechanisms for holding judges accountable while protecting them from arbitrary dismissal. There should be monitoring and evaluation of the performance by establishing clear metrics to assess the efficiency of the judicial system with an opportunity for regular review. They should conduct periodic reviews of the judicial processes to identify the successes and areas needing improvement. They contended that no judges should face political pressures and that the Judiciary should be focused on long-term goals for judicial innovations. They state that initiatives must be sustainable, and this could be done through adequate funding and resource allocations.

One of the new design thinking that needs to be engaged includes incorporating modern infrastructure in the courts. The courts must invest in state-of-the-art facilities that are accessible, equipped with the necessary technology, and conducive to efficient proceedings. There should be adequate security measures to protect the court personnel and other participants in the judicial processes. Further, the court can engage in research and data collection and also engage communities and community legal education to enhance their impact on society. One significant observation in this research is the need to promote the Judiciary's role in supporting growth and investment climate by public

speaking and participating in public forums. They should develop a platform to resolve minor disputes to make justice more accessible. A channel for public feedback should be created on judicial services to identify areas of improvement.

CONCLUSION

In conclusion, it can be observed that the Judiciary, as a pivot of justice institutions, has to reshape its development and justice ideals significantly. This aligns with the emphasis on technological judicial innovation and new design thinking in the administration of justice. Notably, the cardinal issues of the administration of justice have to slowly share the symbiosis with the emerging justice model based on the Singaporean common law. In this, judicial clarity and impetuses to the growth of financial institutions are vital to providing renewed legal and judicial reforms in the country. Further, as stressed in the research findings, judicial innovation and technology integration, accessibility, and speed by removing traditional judicial barriers and aligning them with the evolving scenarios of globalization and technological innovation are critical. The 'restructuring within approach' has to revitalize the governance frameworks significantly and align the justice delivery system towards businesses and finance by ensuring legal certainty, simplifying legal procedures, and slowly sharing the legal symbiosis with developing legal architectures. In pursuit of these, sector-specific training on business trade and financial matters has to be advanced with continuous learning and professional development to keep abreast with the changing business practices and financial regulations. The Judiciary should adopt modernization strategies, including digital transformation, data integration and capacity building, along with efficient HRM and HR policies.

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ALIGNING WITH THE COMMON LAW: A RESEARCH APPRAISAL

ABSTRACT

Few studies have been carried out on the culmination of legal system principles. However, even from the judicial perspective, the Singaporean legal system is considered one of the significant legal systems that promote stability and growth. In line with this, the research article tries to fill the vacuum of legal infrastructure and legal system through a comparative legal system analysis by positing financial growth and stability as one of the critical research questions. Drawing upon the empirical analysis undertaken in other jurisdictions, it analyzes the key aspects of the common law, and the civil law system pivoted through the environment of business creation, business management, and investor growth to provide a new dimension of legal development. The study analyses the key formulations of the *rule of law* within the key determinants of trust, stability, accountability, and growth. While the civil law system has its advantages, specific lights on the common law system have been provided with a view that it is a viable legal alternative to advance the spirit of growth.

Keywords: Common law, civil law, business

INTRODUCTION

The Bhutanese legal system is supposedly premised on the culmination of two legal systems based on jurisprudential and legal practices today. This is mainly mirrored through the practice of the *laws, judicial decision-making modus, and other judicial practices* based on the principles of the *Judicial Service Act, 2007,* and *The Civil and Criminal Procedure Code, 2001*, including its amendments. This mixed system, as they supposedly say, provides a mediated approach to appropriate legal interventions that befit the needs of the Bhutanese people. Based on the primacy, this system is a conduit to assist the people through the process of the laws. In many instances, our legal processes help to educate the parties on key aspects of the administration of justice, as well as the rights and duties of a person appearing before the court of law. The dual role of the Royal Courts of Justice as an arbiter and interventionist helps secure justice by marrying the delicate facets of the administration of justice and enhancing the *rule of law*. Somewhat, the justice principles echo the

aspirations of the Bhutanese people. Beyond the normative naming of the justice system, Bhutan pivots on the key principles of fairness and the *rule of law* dimensions. The differentials of the legal systems are only a little felt beyond the legal narratives that have been propounded by legal scholars differentiating the two system approaches.

When we analyze the interactions between the two legal systems, we see the need for sustainable legal practice based on the most widespread and influential legal traditions. *The Civil and Criminal Procedure Code of Bhutan, 2001,* and its amendments provide an emphasis on global legal traditions: borrowing all good legal processes and practices so that the laws and legal traditions are responsive and contextual. This legal opportunism adds virtue to the Bhutanese legal traditions, thus enabling it to position itself on the principles of legal prudence and flexibility. The comparison between common law and civil law in other jurisdictions is scholarly cross-purposed, and its internal differentiation is largely unknown (Hang & Jacobson, 2017). Scholars argue that in the common law system, they are self-referencing and sovereigntist in their legal temperament, which is cosmopolitan and outward-looking. For example, one study based on the Canadian legal system examines the persuasive authority borrowed from abroad and its amalgamation with other traditions.

Scholars argue that when we examine the legal systems, assessing the common law systems in Asia is vital in light of plurality and globalization. This is key in comparative legal history, comparative law, and legal theory. If we examine the common law in China and the judicial reforms they have initiated, the use of 'guiding cases' has greatly enhanced judicial decision-making and judicial competencies. Here, perceptibly, the common law perspective enhances the use of the guiding cases for significant discussions among scholars. Pitting the differentials between the two systems as well as aligning the core legal traditions and the *rule of law* approach to Singapore, the study tries to assess the two competing legal traditions and advance a comparative analysis of these legal traditions to provide the best legal tradition solution. In this, the *rule of law* and *rule by law,* even within the Singapore legal paradigm, offers the exhibits of virtues and precepts implemented to enhance socio-economic policies to overcome the natural deficits of land, people, and resources. In the common law tradition, the idea of legal flexibility,

professionalism, and integrity has significantly shaped and characterized the nuances of the development of legal tradition (Keong, 2012).

On the other hand, in the new global economy, corporate financial performance, amongst other emerging issues, has become a central issue. The concept of corporate value has been increasing, and many corporate performances are viewed through environmental, social, and governance (ESG) practices. The mediating role between ESG and corporate performance, competitive advantage, investment climate, and investment decision-making provide crucial modus to decide which legal tradition to adopt and apply. From the development perspective, the differences between the common law and civil law traditions must be significant to bolster a framework for innovation and change. Perceptibly, the civil law is based on legislation. Here, the Judge's decision does not affect the country's laws, and it is mostly a code-based legal practice (Chouaibi & Chouaibi, 2022).

Graff (2008) states that the theory of law and finance has to determine the legal system to ensure that financial development is seen as a significant driving force. Here, the legal system is seen as one of the causes of economic development. It is empirically related through the conceptual framework of the legal system as the forerunner of economic development. Assessing the taxonomy of the legal systems and analysis shows that common law is a better basis for economic development and financial growth. Here, the main context of the argument and hypothesis is based on the principle of economic development and legal system nexus. The singular development approach reinforces a robust approach to development and advances economic, commercial, and financial progress with global development ecology. In many aspects, the theory of finance and economic growth are the reasons why few countries have 'well-developed growth-enhancing financial systems, while others do not' and why 'some countries developed the necessary investor protection laws and contract-enforcement mechanisms to support financial institutions and markets, while others have not.'

The theory's explanatory power is attributed to the hypothesis: [I]n countries where legal systems enforce private property rights, support private contractual arrangements, and protect the legal rights of investors, savers are more willing to finance firms, and the financial markets flourish. The international legal traditions that emerged and spread

through conquest, colonization, and imitation help explain the cross-country differences in investor protection, the contracting environment, and financial development today. The hypothesis posits the necessity of adopting a legal system after analyzing its advantages and benefits. This is influenced by the *political* and *adaptability mechanism,* which refers to the formalism that impairs the legal system's capability to minimize the gap between the contracting needs of the economy and the normative *status quo.* Besides other imperatives, one of the significant preconditions that should support the growth of a robust business culture and microeconomic foundations is the theory of 'willingness to invest in the legal culture' (Graff, 2008).

Let's examine the legal traditions of common law and civil law. It is said that laws in the United States and England share the same roots, retaining the same fundamental concepts, principles, and respect for precedents. However, their versions of the common law now differ significantly. In the United States, the United States *Constitution* guides the working of the legal system and in the United Kingdom, it mostly depends on the Parliament (Halloran, 2024). So, even in the common law model, there are significant differences. Common law is a judge-made law, which means that the Judiciary has considerable independence from the government and the Parliament. So, the key principle lies in the judicial interpretation.

However, despite the thesis [that] both the legal systems are sound, in one way or another, cardinal differentials exist as part of legal traditional history. It says the legal system must look at the future and the society it serves. The common law provides this through the reliance on case precedents, which allow principles or doctrines that have proven effective in the past to continue to do so in the future. These are supported by the doctrine of *stare decisis* that perpetuates significant conditions for legal determination. On the contrary, civil law is a Romano-Germanic tradition. As the civil law traditions say, they do not have a singular pure civil law model that confirms uniform specifications.

Further, Halloran (2024) argues that civil law is primarily secularized, influenced by local customs and traditions, and further influenced by religion. Therefore, common law and civil law have different parameters of legal jurisprudence. While the civil law systems are less centralized, accessibility to courts is less formal and ceremony

than is found in the common law. It is said that judgments, in keeping with the prescriptive nature of the codified rules, tend to be reduced to terse answers to the questions framed about whether or not a particular rule was breached. In France, the decision-making practice is that the rationale for a decision will be briefly stated without exploring the relative merits of contesting arguments and usually with no reference to previous judgments on similar issues. However, in Germany, there is a greater probability of a judgment, including judicial opinions, referencing academic texts and prior case law. In analyzing this, the differentials are arguably centered around judgments, codification of the laws, and the modification in reliance on the precedent. Civil law is primarily a deductive approach to judging from the broad statement of rules applied to a particular case.

The paper is structured to provide the appropriate legal system for Bhutan, presumably in line with the environment for investment and financial growth. This takes into account the description of the legal systems and the differences between the two systems by aligning them to the priorities of modern economic and financial infrastructure development. The desk review, with the analysis of the empirical studies on the legal systems, explores the emphasis on promoting strategies that best facilitate the growth of an apt legal tradition and infrastructure.

LITERATURE REVIEW AND RESEARCH QUESTIONS

The development of legal theory and the challenges of legal pluralism dictate using specific legal traditions rather than keeping them fluid and anti-conceptual (Noseda, 2024). A standard claim made by comparative law experts is that even legal systems with markedly different doctrines often reach quite similar practical outcomes. Here, the legal transformation in the Bhutanese context has to be undertaken through the economic and financial analysis of the law and beyond that captures the empirical study of the economics of law and legal doctrines (Anidhar et al., 2020). In many jurisdictions, the case-law revolution, as they call it historically, had to guide the essential questions of development, the right answer to every legal problem, and the concept of legal certainty that supports the notions of justice. This is one paradigm of legal setting theory. The relationship between two legal traditions must be assessed to examine the various aspects of judicial competence and legal tradition practice.

The comparisons of the two legal traditions evidence the existence of long-standing traditional legal customs. As part of this research, we will have to explore beyond the metaphors of classical jurisprudence and include modern legal thoughts through a comparative method. Some researchers suggest that the concept of trust through common law spectacles is a patrimonial description. The implementation of the legal system itself is an unprecedented legal experiment that will provide a valuable lens to observe whether the legal system can accommodate and promote economic growth and support the constitutional and legal basis of development. The literature review section deploys a comparative and a series of legal analyses based on the preliminary sovereignty principle and framework that supports legal autonomy. This is a significant development in jurisprudence.

The legal debate over which system of law may be helpful to support fundamental growth and development can persist with multifarious legal views and opinions. With a singular focus on the Singaporean law as a law that is beyond defects and the most accepted common law system in an English-speaking environment, it is hypothesized that it is the most appropriate legal system for Bhutan to enhance ease of doing business and facilitate growth. The common law system has been transplanted into societies with a pluralistic legal environment in countries like Malaysia and Singapore. Common law is of general application in legal parlance and tends to serve the general population. Significantly, in other countries, the common law has reshaped Islamic laws by transposing its institutional procedure onto these systems, and the case law tradition, *stare decisis,* and the adversarial setup of the litigation process have shaped judicial interpretations (Hang., & Jacobson, 2017). Further, in Singapore, the judicial system is regarded as an effective, vibrant, and professionalized legal institution. Singapore's legal system is among the most effective and professional worldwide. It is considered one of the cleanest systems, with a very low level of corruption.

On the contrary, scholars have stressed many good things about the civil law system and what constitutes a 'good' or 'bad society.' Nonetheless, the African experience from Ethiopia shows the limits of a good law. Scholars, through an analysis of the African legal system, mainly from the legal experiences of Ethiopia, show that it follows a civil

law system, which was marked by the institution of self-regulation. However, in the normative sense, this comparative study approach should not be seen as a 'handoff approach' by the state (Lupin, 2022).

However, if we take the legal instances of China, (Zhai & Chang, 2019) suggest that the civil law system in China has begun to respond to environmental conservation challenges through the 'green principle.' From the Chinese perspective, the ecological civilization initiative emphasized the 'speeding up reform of the ecological civilization system and building a beautiful China.' In addition to creating more material and cultural wealth to meet people's ever-increasing needs for a better life, it also requires providing more high-quality ecological products to meet people's ever-growing demands for a beautiful environment (Zhai & Chang, 2019). In the Chinese development dimension, they have focused on creating the ecological civilization system through the 'green principle.' Hence, the civil law system in the Chinese paradigm is manifested by a highly developed legal culture.

When we analyze the legal system and its suitability, it necessitates examining it through conceptual appraisal to determine which best supports the economic growth and expansion of a strong financial system. If we look at the civil law system of China, it has yet to be responsive to issues concerning rules on property, contracts, personality rights, and civil liability. Therefore, the progression of the civil law system, especially in matters that allow deep-seated reform, has yet to be responsive. It is postulated that the reasonable governance boundaries between governance and markets rest on the logic of governance and development. This aligns with sustainable economic growth, social harmony, and long-lasting national order. From the legal system perspective, scholars argue that the key premise of determination lies in the positioning of the government and the legal system. It is stated that three key components are essential: inclusive economic institutions, state capacity to plan and implement the policies and laws clearly and transparently, and the creation of an inclusive and transparent civil society with democracy, *rule of law,* fairness, and justice (Tian., & Chen, 2022).

In this context, China's civil law experience shows that the civil law system is [only] responsive to domestic requirements and circumstances. They have partly endeavoured to transplant the civil law system to suit the growing market system and have formulated economic

laws through solid legal foundations for economic reforms. Further, they have also made the civil law system to meet the ever-increasing market economy through specific rules for promoting market exchanges (Wang, 2019). Significantly, in China, the standardized and institutionalized socialist core values directly affect people's ideology, advance a solid socialist ideological and ethical foundation, promote universally consistent values, noble social practices, and positive energy throughout society, and rectify any distorted outlook on life, values, honour, and disgrace under the impact of economic reforms (Xinyan, 2024). Therefore, the legal system is influenced by socialist values, in which legal and socialist values co-exist, thus reshaping how the civil law works there.

On the contrary, the Singaporean legal system and architecture provide a firm basis for the *rule of law* that the world has to learn. Further, Singapore's governance model allows for the strong independence of the judge and the judicial system. Here, the concept of judges dispensing justice and not politics is a critical epithet of a strong legal system that allows the *rule of law* to address legal issues. The *Singapore Constitution* strongly emphasizes the separation of powers and limits the use of discretionary powers. There is a clear nexus between power-justice-culture elements in which 'everyone is subject to the law,' and procedural justice is the twin pillar of the *rule of law*, including the law of contempt (Keong, 2012). Accordingly, justice and a robust evolving legal system are based on the principles of sustainable justice and a *firm rule of law* that enables the creation and promotion of a modern-day business environment. Contextually, Bhutan has to adopt a win-win legal system that considers sustainable competitive advantage in business, finance, and the *rule of law* based on the argument that Singapore's legal system is effective and is primarily based on the common law system, the following two empirically-based Research Questions (RQ) are proposed:

RQ1: Is the common law system effective for Bhutan?

RQ2: Is the common law system positively associated with financial performance?

METHOD

In most studies of the common law and the civil law system, the scope of the research is limited to the core analysis of the different facets of legal development, legal theory, and legal practices. Unlike other academic research, our analysis is different in that the scope encapsulates the entire body of legal research on the common law systems of many jurisdictions with empirical analysis and comparatives. The study consisted of two stages: First, we identified the prevalence of the legal traditions in various jurisdictions, and the legal practices of Singapore. In this context, we used search terms in internationally accessible websites, including the websites for the University of Canberra, that would indicate the legal traditions. We produced all necessary search lists from the most recent documents on the legal traditions.

In the next stage, we conducted an in-depth analysis of the documents using empirical analysis. Most importantly, we focused on the common law system aligning with the Singaporean legal doctrines and practices, and random samples of the documents were maintained. All cases and documents were thoroughly read and analyzed. We sampled 30 documents on the topic with cases from Hong Kong, Malaysia, and Singapore. Further, empirically analyzed legal documents on the comparatives of these two legal traditions, which were maintained and referred to. Qualitative analysis of the documents provided a broad picture of the common law and the civil law traditions, and this has helped to identify and compare the distinction between the two with acute emphasis on business culture, exponential business management, and financial growth. Where appropriate, we provided a quantitative analysis to facilitate more in-depth comparisons of the legal systems through a data-based comparison. These empirical analyses, based on various formulations of research designs and empirical calculations, helped to enhance data-based research, comparison, and analysis.

FINDINGS

(A) The relationship between common law and Bhutan

In line with the hypothesis and research questions, we examine the relationship between the common law system and its governance, as well as the paradigm of common law with effective financial performance in line with emerging development in Bhutan. First, we examine the

common law system with the Bhutanese culture of development paradigm and modern development thinking principles. The concept of responsive state and vulnerability theory provides the basis for the re-conception of the liberal ideas of autonomy, equality, and freedom. The vulnerability legal theory suggests that the focus should be on replacing the right-based notion of state responsibility, which requires new thinking for state formation.

As part of the development, scholars suggest that understanding vulnerability is the cornerstone for conceptualizing the nature and perspective of the legal transition and legal development. This theory posits the understanding of the necessary infrastructure and justifies the development of social and institutional structures. These key features have to be weighed within the paradigm comprising educational, financial, health, employment, development, and social welfare systems (Fineman., & Spitz,2024). Neoliberalism uses the ideals of autonomy to institutionalize governance and enhance human well-being. The re-conceptualized state requires a richer conceptualization of the state than the one provided by the liberal legal tradition. The liberal tradition views the state as deriving from a tacit social contract (Hu, 2024). In many examples, adopting the legal system has to capture the global discourse.

Further, the legal paradigm supporting these future societies has to be resilient with strong institutions that organize and facilitate productivity (Elmqvist et al., 2013). With the growth ecology, creating a supporting environment that maintains growth and other internalities and externalities of development is imperative. In the era of globalization, constitutionalism and good governance are increasingly seen as vital. Comparing the constitutional development of Bhutan and other countries that follow or may follow the common law tradition shows that the laws need to be strong and adaptive.

One of the significant aspects of common law, drawing examples from Singapore, demonstrates the application of claims in common law in financial service contracts. Within this dimension, the common law provides a robust approach to interpreting contracts and upholding common law statutory rights (Neo, 2020). The evolution of the Singaporean common law indicates that ***certainty*** has been singularly used as a legal catalyst. In this, it is domineering that as a developing city, certainty is one of the most significant legal assets tightly imbued with

trust. Certainty and predictability are described as one of the greatest virtues of a common law system. [T]hese characteristics are said to place it ahead of any code-based system of law because its structure of fundamental principles and rules can more easily be applied to fast-changing commercial situations and new technologies such as smart contracts and artificial intelligence. In contrast, any code-based system depends on interpreting something written in a past age for the circumstances of that past age, which makes it less predictable and certain when applied. The scope of the common law is expandable. Many countries remain aligned with the singular legal systems, mostly civil law traditions, so their development is not explicitly affected by different commercial or cultural environments (Geoffrey, 2019).

So, the tentacles of the common law are rather more far-reaching than one might at first sight think, and this makes it all the more important that we understand what it is about its certainty and predictability that we value and how that fits into the national and the international context. One-third of the world's citizens live in common-law countries - that is many people, and we should think carefully about the legal approach that underpins their governance (Geoffrey, 2019). In line with this, Lord Sumption stated that common law is not an uninhabited island where judges can plant whatever suits their tastes. It is a body of instincts and principles developed organically, building on what was there before. It provides a pragmatic limit to what law can achieve without becoming arbitrary, incoherent, and unpredictable. Therefore, within this perimeter, pragmatism and certainty are basic rules that govern the interest in the common law system. The laws support the policy-based tests and are anchored to the principle of proportionality legal principle. It supports the meaning of judicial certainty and developing trust and certainty, which are very relevant factors for the judicial system of Bhutan. In all business and financial contexts, they use the common law to attract business and finances worldwide. It can be argued that certainty is a crucial aspect of commercial life in Bhutan.

First, business, finance, and legal relationships are more global and borderless than ever before. Presently, many corporations have no meaningful home jurisdiction. They operate internationally. Companies like Amazon, Google, and Apple Inc. are the classic examples, but many others exist. Business and finance are becoming more international.

Secondly, the new technologies that will undoubtedly infiltrate every aspect of domestic business and financial operations are borderless. A digital ledger is, by definition, cross-border since any node can join the network provided it meets the stated criteria. Smart contracts operated on the blockchain are likewise borderless.

We can expect digital ledger technology to find applications across the gamut of business life in the coming months and years. Against this backdrop, the common law supports the legal foundation for international business activities. Here, the common law aspects of contracts, insolvency laws, competition law, financial regulation, and corporate governance, amongst others, provide a rich basis for the common law paradigm in Bhutan. Moreover, cross-border business and the new borderless financial service technologies mean that the common law jurisdictions should bear a heavy responsibility for ensuring that the common law is adequate. In the modern commercial environment, the common laws should be aligned with effective and responsive financial growth and expansion. Further, the consistency of the common law across jurisdictions is a great benefit not only to international companies but also to the populations that they serve. It allows them to take a holistic view of their business and its performance without seeking legal advice in multiple jurisdictions and take a different legal approach to each area of their operations.

Research in law and finance suggests that the judiciary must deal with innovative financial phenomena. Generally, it undergoes the pioneering, development, and passive response stages in such instances. After this, specialized financial adjudication institutions are set. The economic law reforms in the ASEAN region (Cambodia, Laos, Myanmar, and Vietnam) in their effort to materialize the market economy show that many things must be given up in order to adopt a legal system. However, for legal clarity and transparent judicial decisions, Cheng (2016) notes the need to give reasons for the decisions to guide the decision-makers. This is to support the careful examination of the relevant issues, the elimination of extraneous considerations, and consistency in decision-making.

Moreover, it controls administrative discretions and enhances public confidence in the administrative system, in addition to the legal system. So, the common law system provides dignity-based decisions and strongly emphasizes that the judiciary should give reasons for their

decisions. Makoto Cheng (2016) argues that these legal and administrative requirements provide a solid basis for a culture of effective governance and place a burden on the decision-makers. Therefore, if Bhutan has to boost its business and effective financial culture, then common law is the best system Bhutan can adopt.

(B) The common law system is positively associated with financial performance

Financial performance and legal environment tend to operate in a complex environment. The nature of the legal system highlights the increasing 'suites of services' to meet the client-target needs with a managerial focus. The common law argument protects the capital market, which includes supporting investors. Corporations in common-law countries are subject to better shareholder governance, motivating managers to provide greater disclosure on a timely basis to avoid shareholder litigation (Shakil., & Joseph, 2017). In contrast, the civil law systems are generally less friendly to investors, where the prevailing laws do not provide strong support to property rights and do not safeguard existing rights by setting precedents. In line with this, scholars argue that a lack of trust in an environment of civil law may encumber the free flow of funds for investments. The problem of adequate governance, which is the hallmark of good management, is also critical. The incentive systems that support the stakeholder–manager relationships are likely to be better protected within the common law systems and can prevent opportunistic behaviour (Shakil., & Joseph, 2017).

Corporate governance (CG) is a critical monitoring mechanism that assists businesses in achieving higher firm performance. Comparing financial performance in countries in line with the jurisdictional system on the relationship and the two legal systems offers a very different approach towards the rights of the corporate parties and shareholder protection. Therefore, the legal system under which a firm or a business operates serves as another layer of governance that contributes to its overall governance quality. For example, common law jurisdictions provide shareholder-driven markets with a greater likelihood of external investment, higher fiduciary duties, and active and flexible capital markets with a more dispersed ownership. In contrast, a civil law jurisdiction has a stakeholder-driven environment, less investor protection, and concentrated capital markets (i.e., bank-based long-term

financing) with less dispersed ownership and a lower chance of external investment (Xu et al., 2023).

Conflict occurs mainly between owners (principals) and management (agents) in common law countries due to information asymmetries and managerial appropriations. In contrast, principal–principal problems predominate in civil law countries, where conflicts arise between majority and minority shareholders because of weak shareholder protection and significant information asymmetry. From this relation perspective, the researchers used the following research models to test the hypothesis that establishes the relationship between the common law and financial performance:

$$FP = \alpha + \beta_1 IBoDs\ (SBs) + \beta_2 CGI + X \sum Controls + Industry\ FE + Year\ FE + \varepsilon$$

They used pairwise regressions with three criteria to examine the hypothesis based on the model above. First, it compares the magnitudes of the estimated coefficients for $\beta 1$and $\beta 2$ with the control variables for pairwise jurisdictions. Here, **FP** stands for *financial performance*, **IBoDs** show *Independent Board of Directors*, and **CGI** shows the *corporate governance index*. It establishes these correlational indexes. Here, financial performance depends on the **IBoDs** who influences Corporate Governance Index. Further, the mechanisms of internal controls, and year-wise financial evaluations, promote the systems of financial growth. This is better in the common law.

The *dependent variables* for firm performance include market and operating performance, two critical aspects. The market performance is measured and computed as the ratio of the sum of long-term debt and market capitalization divided by the book value of total assets. The operating firm is measured through the *Return on Assets (ROA),* computed as earnings before interests and taxes. The independence of the board influences this. So how a firm, say **A,** performs within the financial performance perspective depends on indicators like general governance and management, board and committees, compliance, legislation, and the legal system.

The institutional quality controls are voice and accountability (VOA) and regulatory quality (REQ). The VOA captures the perceptions of freedom of the countries' citizens in selecting their government,

expression, association, and media. On the other hand, the REQ captures the perceptions of the government's ability to formulate and implement sound policies and regulations that permit and promote private sector development. The empirical analysis indicates that the performance variables in finance and financial growth are better in common law countries than in civil law countries. The independent variables of board independence, board gender diversity, and CGI show that the role of oversight and monitoring is stronger in common law than in civil law countries. Further, the score of board independence is higher in common law countries than in civil law countries. The role of CG is greater in common law than in civil law.

Based on the agency and resource-based view (RBV) theories, the investigation of CG shows that a higher level of board independence increases a firm's market and operating performance. This relationship is more common than in civil law countries. This confirms the studies by other scholars, which suggest that board independence can mitigate agency conflict and align managers' interests with those of shareholders, consequently reducing agency costs. In contrast, supervisory boards in civil law countries may not actively carry out their fiduciary duties, which can weaken the expected oversight and monitoring roles in business management.

Findings by Adams & Feira (2009) suggest that a higher percentage of women on the board may create more conflict because female directors may hold more diverse opinions and ask critical questions, making the decision-making process less efficient and thus hindering firm performance. On the CGI, neither legal system makes any statistical difference. These findings have practical relevance to the financial performance in the legal system. In this, the hypothesis and the research question of which legal system has the best economic performance point out that the common law system best supports a more robust financial system and performance.

In addition, when viewed through the ESG principles, which are contrasted with the legal jurisdictions, it is provided that ESG has to be seriously followed to promote financial performance and environmental governance. The financial performance and its relationships are directly influenced by regulatory, legal, and business orientations (Das Gupta, & Roy, 2023). The examples of firms in some countries provide the

opportunity to analyze financial performance in a legal system. Under the classical approach to business economics analysis, managers should focus on maximizing shareholder wealth through profits. On a different level, the institutional theory contends that companies are influenced by institutional and social country-level structures, such as laws and authorities that monitor firms' behaviour. Thus, this shapes their strategies, business models, and decisions. Some scholars say that the country's legal origins support the financial performance by promoting sustainable policies (Merino., & Pérez., 2021).

Corporate governance emerges as a regulation mechanism to enhance sustainable behaviour in common-law countries. Research on the matter shows that legal origins directly affect financial performance. Thus, the nature of differences in the efficiency of financial institutions and their systems worldwide is measured by legal origins and the quality of law enforcement. Additionally, the legal rules protecting investors and their enforcement quality differ significantly around countries. These important rules also vary based on the country's legal origin. Therefore, the legal origin theory suggests that it strongly impacts financial performance and economic results. Researchers indicate that common-law countries perform better economically. The research analysis shows that variables in firm performance and financial capital performance are correlated with the legal system. This was in line with the economic crisis of 2008.

For common-law countries, the research studies show that the financial performance of the firms is statistically significant and has positive effects (Akgun, & Turkolu, 2024). Regarding bank stability and bank governance, studies by La Porta (1998) show that the perspective of financial compensation and stability across countries is essential. Using panel data from 74 banks operating in 10 OECD countries during the period 2009–2016, a study that employed the generalized comment method (GMM) test provides that in the common law countries, stock options and bonuses have the same positive effect on bank stability, while big banks have higher bank stability and corruption control which creates an adequate environment for bank stability (Jardak, K.M., Sallemi & Hamad., 2023). These paradigms are very relevant, and the context of legal development has to be viewed through various windows, including economic apertures and economic law lenses. Analyzing the capital

structure in the two legal traditions clearly emphasizes which legal traditions to follow. Examining the goodwill assets mirrors that the common law legal system protects the creditor's rights better than the civil law. Here, creditors may provide more debt capital to firms in countries practicing common law legal systems. Due to this difference in creditors' rights protection, a country's legal system impacts the creditors' attitude towards goodwill as a collateralizable asset of the firms. Here, it compares the investors' rights and directly depends on the legal institutions and system to determine how these legal systems protect and advance the security holding of the investors. On the investors' protection, even though empirical studies have established the fact that creditor's rights are more protected in common law countries than in civil law, there is still a debate going on.

La Porta et al., (1998) concluded that in countries where the common law system prevails, the creditors' right is highly protected compared to those countries where civil law is practiced. Due to this difference in creditors' rights protection, a country's legal system might impact lenders' attitudes towards the collateralizable firms' assets. It is suggested that higher investor protection may attract more investors to the financial market. Goodwill assets are intangible and more sensitive to investors' participation in the financial market, which is influenced by their confidence in the legal system of the country where that financial market exists (Thakur et al., 2023). Based on the supply-side theory, we argue that the common law legal system offers better protection of the creditor's rights, and they would be more willing to lend debt capital to the firms. Any company's debt and equity funding mix significantly impacts its success. In other words, a more efficient legal system would increase creditors' level of confidence and thus encourage them to lend money to firms (Thakur et al., 2023).

In addition, higher investor protection may attract more investors to the financial market. The law and finance theory also supports and emphasizes the relationship between countries' legal systems and financial market development. Further, the corporate governance system analysis provides that the protection of outside investors in common law countries is stronger than in civil law countries with poor law enforcement. Therefore, these indicators support the common law paradigm, and the legal system moderate governance and financial

relationships. These questions have been experimented with through empirical research and show that governance scores of companies operating within common law countries are high and significant within the governance index (GI). However, the governance scores for firms operating within civil law countries within the GI are negative (Ghabhri, 2022). Therefore, national corporate governance is also directly dependent on the legal system, and the legal and institutional environment makes the difference in corporate governance systems, thus creating differentials in legal obligations. In addition, it also determines how the courts interpret and enforce these obligations.

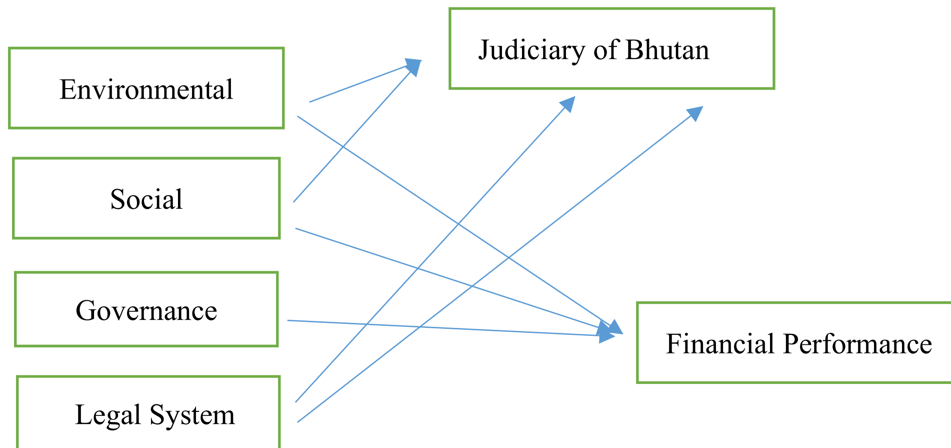
The equivalence in financial markets suggests that legal regulation, as an essential means and form of financial regulation, is bound to play an increasingly important role in financial development and innovation. Strong financial markets are widely thought to propel economic growth, with many in finance seeing legal tradition as fundamental to protecting investors sufficiently for finance to flourish. Kenneth Dam has examined the law and economic development and the growth nexus. For finance to thrive, legal institutions must protect investors. To safeguard investors well, the law must bar insiders from systematically tunneling value out from the firm and into insiders' pockets (Roe., & Siegel, 2009). Ozer & Cam (2021) state that institutional frictions increase or decrease and affect financial decisions. For example, following the institutional theory, which predicts that transaction and information costs in any economy depend on the institutional environment, the law and finance literature indicates that countries with strong institutional environments have higher regulatory protection, the efficiency of the judicial system and accounting standards while having lower risk of expropriation, agency conflicts and asymmetric information problems.

Thus, the financial decisions of the firms, the legal system, and corporate financing methods are analyzed in relation to the two legal traditions. Following the law and finance literature, it is surmised that firms operating in countries with a common law system will rely more on equity financing than those in civil law countries. The fundamental reasons underlying this prediction are that strong institutions, including legal institutions, may enable more efficient financial contracts related to equity, and the impact of information asymmetry on financing decisions

decreases in common law countries. Thus, as asymmetric information decreases, equity issuance may increase (Ozer & Cam, 2023). Therefore, the strength of the legal system and the support mechanisms towards financial growth help to strengthen corporate financing and reduce market friction. Creditor rights and institutional environment, for this matter, either impede or expedite economic development by enabling lower-cost external financing. The legal system and financial decisions correlate and correlate linearly between law variables and financing.

Here, we only take the financial perspectives, and besides the growth of financial institutions, the legal system also affects mortgage finances. Hyiamen & Ghartey (2016) state that law is the main driver of differences in financial development across countries. Within this perspective, in the common law system, the nexus between institutions and the expected economic outcomes, with procedure formalism, judicial independence, regulation of entry, and other aspects of governance, provides a different approach toward legal realism in financing. Scholars suggest that the institutional autopsy model signifies that although countries may have the same or similar legal rules on the books as dictated by their legal origins, variations in understanding and implementation of the same legal rules may differ, although geared towards the same or similar ends. These legal and institutional change variations are likely to be associated with different economic outcomes (Hyiaman & Ghartey, 2016). Therefore, within these limits of legal orientation and legal praxis, the descriptive correlation analysis has been developed, with the legal system as a mediating variable in financial development. As part of the development, to drive long-term economic and social development, we premised on the non-negotiability of finance as the core national vision.

Within these key variables, a legal system analysis has been made, and it indicates Bhutan is the best fit for a common legal system if we analyze it from the dimension of creating viable and robust financial institutions. This is posited to transform Bhutan, enhance its engagement in international markets, and make space for holistic living. Further, ESG and the legal system are directly related to financial performance.



CONCLUSION

The paper attempted to analyze the relationship between the legal systems by building a logical and plausible relationship between the two legal systems and financial performance. The analysis indicates that the common law system provides a stable foundation for effective financial performance and governance. The results and analysis further suggest that the common law system provides a more robust environment for enhanced economic performance, and there is a spatial difference between the two legal systems. Our research enables the analysis of the legal systems from a financial perspective to better assess the growth opportunities in line with ESG mandates and approach to legal system orientation as a central business valuation. This work serves as a point to promote the implementation of the common law system and other key aspects of the legal system, including ESG requirements to promote and protect the legal culture through judicial innovation. However, the research has its limitations, and as done in other research, there should be a more robust and empirical-based analysis of the legal system, which is beyond the professional capacity of the writers, and these may require more re-skilling in data gathering, knowledge management, and empirical data analysis.

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COMPARATIVE ANALYSIS OF CYBERBULLYING LEGISLATION: GAPS IN BHUTANESE LAWS AND LESSONS FROM SINGAPORE'S POHA AND THE UK'S PROTECTION FROM HARASSMENT ACT

ABSTRACT

This research examines the gaps in Bhutan's current legislative framework for addressing cyberbullying and proposes improvements inspired by effective models from Singapore and the United Kingdom. Further, it is aimed at examining Bhutan's current laws, including the *Penal Code of Bhutan*, *2004*, the *Child Care and Protection Act, 2011* and the *Information, Communications, and Media Act, 2018* to pinpoint gaps in addressing the specific challenges posed by digital harassment. Employing a comparative legal analysis method, the study reviews protective measures available under Singapore's *Protection from Harassment Act (POHA)* and the UK's *Protection from Harassment Act* and *Online Safety Act*, focusing on the effectiveness of Protection Orders, digital platform accountability, and graded penalties. Findings reveal significant gaps in Bhutan's approach to cyberbullying, including the lack of immediate protective remedies, insufficient penalties for online offences, and limited accountability for digital platforms. The study suggests that Bhutan would benefit from implementing stronger cyberbullying legislation with specific protections for minors, structured penalties for recurring offences, and mechanisms for platform responsibility. These recommendations suggest a safer digital environment, greater public trust in legal protections, and alignment with global standards for online security.

Keywords: Cyberbullying, Digital harassment, Protection orders, Platform accountability, Legal framework comparison, Child protection, Singapore Protection from Harassment Act, UK Online Safety Act, Legislative gaps, Cyberlaw reform.

INTRODUCTION AND BACKGROUND

The swift proliferation of Internet connectivity and social media in the digital era has fundamentally altered communication, generating

novel opportunities and conveniences. Nonetheless, technology has also led to cyberbullying, a considerable global concern (Hinduja & Patchin, 2015). Cyberbullying refers to harassment, intimidation, and abuse occurring online. Everyone is affected, although teens and young adults are more likely to experience it than anyone else. According to Kowalski et al. (2014), there are severe psychological effects of this digital abuse, such as anxiety, depression, and even suicidal thoughts.

As Internet usage in Bhutan grows swiftly, cases of cyberbullying are becoming more common, raising concerns nationwide. With expanded Internet access, young people in Bhutan are increasingly exposed to both the positive and negative aspects of online interactions. Cyberbullying has emerged as a significant concern, affecting students and raising questions about adequate protections in Bhutan's legal framework, underscoring the urgent need for robust legal frameworks to address these challenges (Kuensel, June 27, 2024). The Bhutan Computer Incident Response Team (BtCIRT) under the GovTech Agency launched the National Cybersecurity Strategy 2024-2029 on 25 October 2024, to strengthen cybersecurity infrastructure, in line with Bhutan's growing commitment to secure digital interactions (Kuensel, November 6, 2024). This strategy forms part of the broader landscape of initiatives aimed at addressing modern digital threats, highlighting the importance of developing targeted legal frameworks to combat specific challenges like cyberbullying. Although cyberbullying is increasingly widespread, Bhutan's legislative measures to address and prevent it are still underdeveloped and need targeted frameworks suited to meet the challenges of digital harassments.

RATIONALE

Legislation against cyberbullying is essential to ensure the protection and safety of citizens online. Bhutan's current legal provisions mainly focus on general harassment and abuse, failing to capture the specific nature of online abuse fully. Cyberbullying in Bhutan often involves anonymous offenders, spreads quickly, and leaves victims with lasting emotional and social effects (Choden, Sherab, & Howard, 2019). Bhutanese laws do not provide immediate protections, such as protection orders, for victims or impose specific responsibilities on digital platforms to control abusive content. As Kuensel (2024, June 27) pointed out, reporting cyberbullying incidents is particularly difficult when perpetrators hide behind fake accounts, making them hard to trace. Also,

the parents' and teachers' lack of awareness of the threat from cyberspace makes this grimmer, and it also limits effective intervention. Therefore, there is an urgent need for comprehensive legal reforms that could provide adequate responses against the instances of cyberbullying.

RESEARCH QUESTIONS

This research seeks to address the following questions:

- What are the gaps in Bhutan's current cyberbullying legislation?
- How do Singapore's Protection from Harassment Act (POHA) and the UK's Protection from Harassment Act address cyberbullying effectively?
- What lessons can Bhutan learn from these countries to improve its legislative response to cyberbullying?

OBJECTIVES

This research aims to identify and analyze deficiencies in Bhutan's current cyberbullying legislation and to suggest enhancements informed by effective models from Singapore and the UK. This research seeks to offer Bhutan definitive legislative proposals by analyzing foreign models to enhance citizens' protection from cyberbullying and establish safer digital environments for everyone.

LITERATURE REVIEW

While social media and digital communication changed the world, they also at the same time increased the rates of cyberbullying all around the world. Numerous studies underscore the psychological effects of cyberbullying on victims, such as anxiety, depression, and, in severe instances, suicidal thoughts (Patchin & Hinduja, 2015). The paper examines the global outlook on legislation related to cyberbullying. Then, it focuses on Singapore and the United Kingdom's legal frameworks on cyberbullying to identify areas for possible improvements to Bhutanese law.

1. Global Perspectives on Cyberbullying Legislation

Cyberbullying is recognized globally as a significant threat, particularly to minors. Nations have adopted various legislative strategies to reduce its impact, underscoring the importance of legal frameworks that protect victims and discourage offenders. According to Hinduja &

Patchin (2015), some forms of legislation are needed directly toward online harassment because the broader harassment laws mostly fail to provide specificity in the uniqueness of digital abuse. The effect of cyberbullying on mental health has resulted in a notable rise in awareness campaigns and policy efforts from educational institutions, government bodies, and NGOs. Research by Smith & Slonje (2010) highlights the importance of schools in teaching students about online safety, proposing that legal measures should support educational efforts to create a well-rounded approach to combating cyberbullying.

2. Cyberbullying in Bhutan

Research on cyberbullying, such as that of Choden, Sherab, & Howard (2019) shows that online harassment indeed is an emerging major concern for adolescents. Evidence reveals that cyberbullying has a detrimental effect on youngsters by contributing to problems such as anxiety, depression, and social withdrawal. Nonetheless, Bhutan's legislation is insufficient to confront these concerns directly.

A report by Kuensel (2024, November 4) indicates that 94% of Bhutanese households are connected to the Internet, with 93% of students accessing it at home, school, or community centers. This high connectivity has correlated with increased vulnerability to cyberbullying, with the schools in Thimphu *Thromde* reporting 14 out of 41 bullying cases as cyber-related incidents in 2024. This data suggests that as more young people in Bhutan engage online, they become more exposed to cyberbullying risks, highlighting a need for more specific protections in Bhutan's legal framework.

The *Penal Code of Bhutan, 2004* covers harassment in general terms, with sections 462 and 463 categorizing it as a petty misdemeanour, though it does not explicitly address digital harassment. Likewise, the *Information, Communications, and Media Act, 2018* includes a provision (section 426) for online harassment, penalizing harassing communications through ICT devices. Under the *Act,* the offence is limited to a petty misdemeanour, and it does not offer immediate protective measures, such as Protection Orders, for victim support.

The Child Care and Protection Act of Bhutan, *2011* is focused on child welfare and general protection from abuse, with no direct provisions for digital harassment or cyberbullying. The absence of specific cyberbullying provisions restricts the efficacy of the legislation in

safeguarding minors from online abuse despite its emphasis on rehabilitation and support for affected children.

3. Singapore's Protection from Harassment Act (POHA)

Singapore's *Protection from Harassment Act (POHA),* enacted in 2014 and amended in 2019, is considered a comprehensive legislative response to online harassment, including cyberbullying. Singapore's *Protection from Harassment Act*, enacted in 2014 and amended in 2019, has been hailed as one of the most comprehensive legislative responses to online harassment, including cyberbullying. *POHA* came into being to provide even more protection from physical and digital harassment and enabled individuals to take legal action against persistent or harmful online behaviour.

A very important feature of *POHA* is that it provides protection orders, which enable victims of online harassment to seek immediate protection by applying for an order to prevent further contact with the harasser. *Expedited Protection Orders (EPOs)* can be granted summarily in urgent situations. This one-stop process increased access to the vulnerable class, who could now easily report incidents and get protection from the law. Known for its focus on victim safety and privacy, the Act includes specific provisions prohibiting perpetrators from distributing harmful content online.

POHA also prescribes punishments for persons whose behaviour online constitutes harassment or cyberbullying and hence serves as a deterrent against digital abuse. The added protection is provided by *POHA* to minors, inasmuch as, under the terms of the said Act, applications can be made on behalf of children by their parents, guardians, or schools, reflecting commitment in Singapore to protect young people from harm in digital spaces. This feature of *POHA* has been influential, inspiring other jurisdictions to adopt similar measures, as it underscores the importance of direct, accessible remedies for victims of cyberbullying.

Singapore's approach with *POHA* demonstrates a proactive legislative stance on cyberbullying, emphasizing quick, enforceable legal remedies and clear definitions of online harassment. Through the integration of prompt protective measures, detailed definitions, and organized procedures for redress, *POHA* has emerged as a paradigm for effective digital harassment legislation worldwide.

4. The UK's Protection from Harassment Act, Malicious Communications Act, and Online Safety Act

The United Kingdom has developed a robust legal framework to combat cyberbullying and online harassment, combining the Protection from Harassment Act (1997), the *Malicious Communications Act,1988,* and the recent *Online Safety Act*, *2023.*

The *Protection from Harassment Act, 1997* establishes a broad definition of harassment that includes a "course of conduct" requirement, enabling effective legal responses to repeated cyberbullying and online abuse. This *Act* addresses patterns of harassment where ongoing digital abuse or repeated incidents cause significant distress, allowing courts to respond more effectively to prolonged cyberbullying.

This is further bolstered by the *Malicious Communications Act, 1988*, which also makes it an offence to send messages, whether threatening, obscene, or offensive, even as an isolated incident. In contrast, the Protection from Harassment Act requires incident ongoing conduct. The *Malicious Communications Act* applies to single incidents of harm caused by communications and thus extends the reach of protection against one-off online abuses.

The *Online Safety Act* (2023) further enhances digital protections by imposing a duty of care on digital platforms, especially social media and search engines, requiring them to assess, mitigate, and manage online risks. Under this *Act*, platforms must prevent illegal and harmful content, protect minors from age-inappropriate material, and implement robust content moderation measures. The *Act* empowers the regulatory authority, Ofcom, to conduct investigations and enforce compliance, imposing penalties that may include fines of up to 10% of global annual turnover and criminal charges against executives in instances of significant non-compliance. Furthermore, platforms are required to disclose their compliance practices, improving transparency and accountability.

The UK's holistic approach of having individual criminal penalties, protection orders, and platform accountability, with oversight by a regulator, is instructive in jurisdictions like Bhutan. The graded penalties, prompt protection mechanisms, and corporate liability provided under the *Online Safety Act* of the UK represent an aggressive effort toward digital safety and victim protection and cover both individual accountability and platform responsibilities.

METHODOLOGY

Using comparative legal analysis, this study reviews Bhutan's cyberbullying and harassment laws compared to those of Singapore and the United Kingdom. This approach identifies weaknesses in Bhutan's legal protections and suggests improvements by drawing from these regions' more comprehensive and progressive laws.

1. Comparative Legal Analysis

- The comparative legal analysis reviews key legislative elements in Bhutan, Singapore, and the United Kingdom. This examination contrasts Bhutan's approach with Singapore's *Protection from Harassment Act (POHA)* and the *UK's Protection from Harassment Act* (1997), *Malicious Communications Act* (1988), and *Online Safety Act* (2023), with a focus on specific provisions related to harassment definitions, protective measures, penalties, and platform accountability.

- The research examines how each jurisdiction defines cyberbullying, provides protective orders, holds platforms responsible, and punishes digital abuse. This comparative analysis can underline the effective approach but also some lines of weakness in the examined legislative frameworks, thus offering a broad view of the different degrees of legal response to cyberbullying.

2. Document Analysis

- **Primary Legal Documents**: The study examines the fundamental legislative texts of each jurisdiction:

  - **Bhutan**: *Penal Code of Bhutan (2004), Child Care and Protection Act of Bhutan (2011), and Information, Communications and Media Act (2018).*

  - **Singapore**: *The Protection from Harassment Act (POHA)* contains protective measures specifically designed to address digital harassment.

  - **United Kingdom**: *Protection from Harassment Act (1997), Malicious Communications Act (1988), and Online Safety Act (2023),* which emphasize a combination of individual and platform accountability for online safety.

The study reviews each document's definitions, scope, enforcement mechanisms, and protective measures about cyberbullying and online harassment.

DATA COLLECTION

The study analysis is undertaken through secondary data analyses. The study depends on government information, legal databases, and scholarly publications offering perceptions of the efficacy and reception of this legislation. Studies by Hinduja & Patchin (2015), Kowalski et al. (2014), and Smith & Slonje (2010), among other sources, address the psychological and social effects of cyberbullying and the need for legislative protections. This would involve a comparative analysis based on a document review to systematically establish the legislative lacuna in Bhutan's framework and derive specific recommendations from Singapore and the UK's practices that will put a more robust and victim-centred approach to cyberbullying legislation.

CURRENT CYBERBULLYING LEGISLATION IN BHUTAN

Bhutan addresses cyberbullying through a mix of institutional policies, legal regulations, and mental health resources. The main legal frameworks are the *Information, Communications*, *and Media Act*, *2018* the *Child Care and Protection Act, 2011,* and the *Penal Code of Bhutan, 2004.*

1. Penal Code of Bhutan, 2004 and its amendments

The *Penal Code of Bhutan* uses broad provisions related to harassment, defamation, and threats to address cyberbullying indirectly:

- **Harassment**: Section 462 defines it as a pattern of behaviour that instils fear of emotional or psychological distress in a person. The classification of this law as a petty misdemeanour may be insufficient to address severe or recurring instances of cyberbullying, and it does not explicitly cover digital environments.
- **Defamation and Threats**: General provisions for defamation and threats may theoretically cover some cyberbullying actions but are not designed to address online harassment. The lack of specific language for digital environments limits the applicability of these provisions to cyberbullying cases.

2. Child Care and Protection Act of Bhutan, 2011

Designed to shield children from mistreatment and neglect, the Child Care *and Protection Act*, 2011 lacks specific clauses addressing online abuse.

- **Child Welfare Provisions**: Although the *Act* provides general child protection, it fails to address issues like cyberbullying and digital harassment, which can have a significant effect on children's mental and emotional health. This omission leaves minors at risk of online abuse without dedicated safeguards.

3. Information, Communications, and Media Act of Bhutan, 2018

While the B*hutan Information, Communications, and Media Act, 2018* has some provisions related to online harassment, it does not entirely address the issue of cyberbullying.

4. Identified Gaps in Bhutan's Legal and Support Framework

Despite the available resources, Bhutan's strategy for tackling cyberbullying has several vital shortcomings:

- **Anonymity and Accountability of Offenders**: In a Kuensel (4 November 2024) it was recognized that there was a big deal of difficulty in addressing cyberbullying in Bhutan, including creating fake accounts, making it difficult to trace for justice. There has been mental anguish among victims of anonymous harassment; nevertheless, victims, as the journalist stated in the article, have difficulty effectively reporting these occurrences due to the lack of identification of the perpetrators. The issue becomes even more complex when there is no cooperation with the Internet Service Providers (ISPs), making it harder to trace and prosecute anonymous perpetrators.

- **Lack of immediate legal protective measures:** There is no protection order or expedited protection order available, like in other jurisdictions, such as Singapore, whereby the victim can prevent further contact with the harasser.

- **Insufficient Accountability of Platforms:** Although section 427 of the *Information, Communications, and*

Media Act, *2018* holds them liable in case they knowingly allow harassment, that does not require the monitoring or removal of such harmful content, hence making it quite hard to regulate anonymous abuse.

- **Non-Enforceable Child Online Protection (COP) Guidelines:** *The 2023 Child Online Protection (COP) Guidelines* developed by Bhutan's GovTech Agency in collaboration with ITU and UNICEF Bhutan encourage stakeholder cooperation to enhance online safety. However, since these guidelines are advisory, their enforceability is limited, leaving victims without strong legal protections (Kuensel, November 4, 2024).

- **Insufficient Penalties for Online Harassment:** Currently regarded as a petty misdemeanour, harassment might not carry adequate punishment in cases of severe or repeated cyberbullying. A graded penalty system could lead to stricter consequences for more serious infractions.

Case Studies: Singapore's POHA and the UK's Protection from Harassment Act

Singapore's Protection from Harassment Act (POHA)

Overview

To protect its citizens from workplace bullying and online harassment, including cyberbullying and physical intimidation, Singapore enacted the *Protection from Harassment Act (POHA*) in 2014 and updated it in 2019. The *Act* is recognized as one of the most comprehensive legal frameworks in the region and serves as a benchmark for other nations.

Key Clauses

1. **Protection Orders (POs) and Expedited Protection Orders (EPOs)**

The POHA sets up a system that enables victims to obtain protective orders to reduce ongoing harassment. *Expedited Protection Orders* are those types of protection provided immediately with an urgent requirement for protection. Hence, a swift and efficient remedy exists under the law for the victim (Singapore Statutes Online, 2019).

2. Definition of Harassment and Digital Accountability

POHA characterizes harassment as actions that induce distress or fear of harm.
It recognizes a range of acts as harassment, including physical threats, abusive messages, and online stalking. It would also allow a court to order digital platforms to remove offensive content, restrict hurtful posts, and force social media platforms to block access to abusive material when required.

3. Monetary and Penal Consequences

Under *POHA,* cyber offenders may be convicted of a criminal offence; where serious or repeated harassment occurs, this may involve financial penalties and prison sentences. These actions form a deterrent by providing real legal repercussions for cyberbullying and harassment.

Effectiveness

Research on *POHA* indicates that it holds immense importance in handling harassment issues and cyberbullying. Notably, the availability of POs and EPOs has been incredibly effective in providing immediate relief to victims. Studies have proved that such protective measures reduce the rate of recurrence of harassment and embolden victims by providing them with a legal tool against further harassment or abuse. Its provisions on making digital platforms accountable have made managing harmful content for a victim easier, hence making digital spaces responsible for the moderation of abuse.

The UK's Protection from Harassment Act and the Malicious Communications Act

Overview

The *Protection from Harassment Act,* which originated in the UK back in 1997 for causing distress or fear in others, evolved from an initial narrowing of focus on stalking and domestic harassment to further expansion with digital harassment that would encompass behaviours now recognized as cyberbullying, according to a report by the Department for Digital, Culture, Media & Sport. *The Malicious Communications Act* of 1988 targets harmful messages, offering robust protections against harassment in both online and offline contexts.

Key Clauses

1. **Definition of Harassment and Course of Conduct**

The United Kingdom's *Protection from Harassment Act* sets a "course of conduct" standard, broadly defining harassment as behaviour typically identified through a pattern of incidents rather than isolated acts (*Protection from Harassment Act, 1997*). This is particularly applicable to online harassment, where a series of digital abuses can accumulate to cause significant harm.

2. **Malicious Communications Act (1988)**

The M*alicious Communications Act* criminalizes the sending of offensive or threatening messages intended to cause distress or anxiety. Unlike the Protection from *Harassment Act*, it addresses single acts, making it effective for dealing with individual instances of harmful online communication (*Malicious Communications Act, 1988*).

3. **Online Safety Act 2023 and Ofcom's Regulatory Role**:

The *Online Safety Act, 2023* strengthens these protections by requiring digital platforms to take responsibility for user safety, especially for protecting minors from harmful content. This act has demanded the installation of reporting mechanisms on each platform, alongside the obligation to take down harmful content, especially regarding cyberbullying. Ofcom**,** the UK's communications regulator, has powers to ensure compliance under the *Online Safety Act*, including issuing penalties, such as fines, against those in breach of standards, up to 10% of global revenue for severe non-compliance.

EFFECTIVENESS

A multilayered legal framework supports the effectiveness of dealing with harassment and cyberbullying in the UK. The *Protection from Harassment Act* has been applied to resolve issues of continuous harassment-e.g., the "course of conduct" provision, which should help address incidents of continued digital abuse. The *Malicious Communications Act* enables flexibility in treating harmful communications incidents to strengthen the legal response for one-off cyberbullying incidents. *Online Safety Act 2023*: More Protection Holding digital platforms accountable and raising the bar regarding safety through regulation.

COMPARATIVE LEGAL ANALYSIS AND GAPS

1. Protection Orders and Accessibility

The current legislative framework in Bhutan is deficient in providing swift legal remedies, such as Protection Orders, undermining the protection of victims of cyberbullying and online harassment. Conversely, Singapore's *Protection from Harassment Act (POHA)* offers both Protection Orders (POs) and *Expedited Protection Orders (EPOs),* enabling victims to secure immediate protection from further contact or harassment from the perpetrator (Ministry of Law, Singapore, 2019). Likewise, the UK's *Protection from Harassment Act* permits victims to obtain court-ordered safeguards to avert ongoing harassment (*Protection from Harassment Act, 1997*). The availability of fast remedial options in Singapore and the UK highlights a substantial legislative deficiency in Bhutan, where victims of cyberbullying must depend on general legal processes that are often protracted and inadequate in providing prompt protection.

2. Digital Platform Accountability

There are currently no provisions in Bhutan's legislation, specifically the *Information, Communications, and Media Act* (2018), that mandate digital platforms to moderate or eliminate detrimental content associated with cyberbullying. In contrast, the *UK's Online Safety Act (2023)* mandates that digital platforms establish rigorous content moderation and reporting mechanisms to safeguard users from detrimental content. Ofcom, the UK's regulatory authority, ensures that platforms comply with these duties, imposing penalties for non-compliance (Ofcom, 2023). Similarly, Singapore's *POHA* grants the court the power to order digital platforms to take down or disable harmful content, placing responsibility on platforms to control abusive behaviour. Particularly in cases involving anonymous or untraceable users on social media, Bhutan's lack of platform responsibility hampers the ability to handle cyberbullying adequately.

3. Penalties and Enforcement

In Bhutan, cyberbullying is categorized as a petty misdemeanour under general harassment law, resulting in penalties that may lack sufficient deterrent effect. The Singaporean *POHA* applies graded penalties, where the sanctions can be increased in case of aggravation of the offence or the case of a minor victim. The UK also applies graded

penalties, especially under the *Malicious Communications Act* and the *Protection from Harassment Act*, when the punishment for serious or subsequent digital harassment shall be increased. These graduated, tiered sanctions in Singapore and the UK are better at deterring cyberbullying than Bhutan's current single-tier penalty structures.

4. Support for Minors

Although Bhutan has the *Child Care and Protection Act of 2011* that broadly looks at child welfare, it does not cover protection from digital abuse or even support structures for minors who might be going through cyberbullying. In turn, *POHA* provides the opportunity in Singapore for any guardian or school authorities to apply for Protection Orders on behalf of minors, thereby providing a more feasible way for children to seek protection. The UK also goes one step further to support this cause for minors through the *Online Safety Act* by placing additional restrictions on platform content availability, ensuring that young users are protected from age-inappropriate and harmful content. Bhutan does not have legislation that specifically addresses the protection of minors in digital contexts, which results in the absence of organized support systems or legal intervention for victims of cyberbullying.

5. Establish a Dedicated Protection from Harassment Unit

The absence of a specialized unit in Bhutan's judicial system for handling harassment and cyberbullying cases means that victims must navigate the general legal system, which can be less effective for specific cyberbullying cases. Inspired by Singapore's Protection from Harassment Court, Bhutan could benefit from establishing a similar dedicated unit to handle harassment-related cases, streamlining legal processes for victims and ensuring that harassment cases receive focused attention from specialists trained in cyber-related harassment (Ministry of Law, Singapore, 2019).

6. Challenges in Identifying Anonymous Offenders

Anonymity in most cases of cyberbullying poses a significant challenge to law enforcement in Bhutan, as current legislation lacks provisions to help unmask anonymous cyberbullies through necessary cooperation with ISPs or digital platforms. Bhutan could benefit from provisions requiring ISP cooperation to help identify anonymous offenders. The Kuensel (2024, November 4) report emphasizes the rising cyberbullying cases in schools, underscoring the urgent need for targeted,

enforceable measures to address the challenges that victims face when perpetrators remain anonymous.

In jurisdictions like the UK, the *Online Safety Act* and supportive legislation allow law enforcement to work with ISPs and platforms when necessary to identify perpetrators. This ability to trace and hold anonymous offenders accountable is essential for an effective legal response to cyberbullying. Implementing similar protections in Bhutan's legal framework would enhance its capacity to address anonymous user incidents, thereby providing stronger protections for victims.

RECOMMENDATIONS

1. Establish Protection Orders for Victims

To improve protection for cyberbullying victims, Bhutan should introduce a Protection Order system accessible to people of all ages, especially minors, who are often more vulnerable to online harassment. The Bhutanese version could be patterned after Singapore's *Expedited Protection Orders (EPOs),* which provide an avenue for immediate legal protection to stop further contact or harassment by the perpetrator. As highlighted by Kuensel (2024, November 4), a system similar to Singapore's *Protection from Harassment Act (POHA),* where Protection Orders are readily available, could offer critical support to Bhutanese victims and reinforce legal safeguards.

2. Enhance Platform Responsibility

Introduce legal mandates requiring digital platforms to eliminate abusive or dangerous content expeditiously. According to the UK's *Online Safety Act 2023*, platforms must have accessible reporting systems, content moderation protocols, and compliance measures that ensure accountability for the content disseminated on their networks (Ofcom, 2023). By requiring platforms to take responsibility for creating safer online spaces and swiftly addressing instances of cyberbullying, this approach will encourage a proactive stance from them. The Kuensel report underscores the need for enforceable guidelines on platform accountability, which would compel platforms to act responsibly in monitoring and removing harmful content.

3. Strengthen Penalties for Online Offences

The current penalties for cyberbullying in Bhutan have been limited, with harassment defined as a petty misdemeanour. A graded

penalty structure, in response to the varied levels of severity and repetition, would better address the different forms of cyberbullying. Stricter punishments for repeated or anonymous offenders and more severe penalties in cases where minors are targeted would serve as a greater deterrent to online abuses and reinforce the seriousness of cyber offences (*Singapore Statutes Online, 2019*; *Protection from Harassment Act, 1997).*

4. **Support for Minors**

The protection of minors is critical, as they are particularly susceptible to the psychological harm caused by cyberbullying. To address this, specific provisions should be added to the *Child Care and Protection Act (2011)* that explicitly cover digital harassment and online abuse. Protection Orders should be accessible through parents or guardians.

5. **Establish a Protection from Harassment Unit**

Bhutan has no specific division within the justice system that deals with harassment and cyberbullying incidents. Therefore, victims would have to rely on the general legal framework, which may not be able to address specific cases of cyberbullying effectively. Following the example of the Protection from Harassment Court in Singapore, it is recommended that a similar designated unit be created in Bhutan to handle harassment cases. This would streamline the legal process for victims and ensure that harassment cases receive appropriate attention from professionals knowledgeable in electronic harassment (Ministry of Law, Singapore, 2019).

6. **Challenges in Identifying Anonymous Offenders**

Cyberbullying frequently relies on anonymity, complicating the process of holding offenders accountable. Bhutan's legislation could include provisions that require ISPs and digital platforms to cooperate in identifying anonymous offenders, especially in severe or recurring cases of cyber harassment. Addressing the challenges posed by anonymous perpetrators through ISP cooperation would significantly strengthen Bhutan's capacity to tackle cyberbullying effectively. Such provisions would enable law enforcement agencies to trace perpetrators and support victims in obtaining justice, even when the offender initially appears anonymous (Department for Digital, Culture, Media, & Sport, 2023).

7. **Implications**

Strengthening Bhutan's cyberbullying legislation would greatly enhance digital safety, providing better online protection, particularly for minors, with greater clarity and robustness. Protection Orders and increased sanctions will not only offer immediate support for victims but will also act as effective deterrents against cyberbullying. Establishing clear responsibilities for various digital platforms will expedite the handling of harmful content, fostering a safer online environment. As this study suggests, adopting more robust legal frameworks in Bhutan can help align the country's digital safety standards with international best practices, ultimately providing a more secure digital environment. These legal developments will collectively enhance public trust in Bhutan's ability to address cyberbullying issues effectively, protecting its increasingly connected youth from the specific challenges they face online (Ofcom, 2023).

CONCLUSION AND SUMMARY OF THE FINDINGS

This study highlights significant deficiencies in the existing legislation regulating cyberbullying in Bhutan. Chief among these is the absence of immediate protections, like Protection Orders, limited accountability requirements for digital platforms, and a lack of graded penalties, all of which reduce the deterrent effect against cyber harassment. Moreover, support mechanisms for minors, including dedicated legal protections and psychological resources, need to be more developed. As highlighted by recent reports in Kuensel (2024, November 4), the rise in Internet connectivity has correlated with increased incidents of cyberbullying, particularly among students, underscoring the urgency for enhanced legal protections. By examining Singapore's *Protection from Harassment Act (POHA)* and the UK's comprehensive approach, including the Online Safety Act and regulatory enforcement by Ofcom, Bhutan can learn from structured systems that integrate swift protective orders, platform accountability, and strong legal deterrents tailored to the digital environment (Ministry of Law, Singapore, 2019; Department for Digital, Culture, Media & Sport, 2023).

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