

# Building a Just and Harmonious Society: Key Roles for Bhutan's Legal Institutions

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Bhutan's unique approach to development, embodied in the concept of Gross National Happiness (GNH), emphasises fostering a just and harmonious society.<sup>1</sup> This vision encompasses a range of social, economic, and political considerations, including legal institutions in Bhutan, which can play a pivotal role, as they can serve as a bridge between traditional societal structures and the evolving democratic framework.

As Bhutan charts its development path, guided by the philosophy of GNH, His Majesty The King is a central imperative. His Royal vision requires the efforts of all the legal and judicial institutions working in concert. From the courts to law enforcement, each plays an indispensable part in entrenching justice, equality and social cohesion.

Bhutan's legal institutions are working to integrate Buddhist principles into the legal system, a unique approach that balances traditional values with modern jurisprudence. This is evident in the courts' efforts to consider concepts such as virtue and compassion when adjudicating cases. The judiciary, in particular, is striving to harmonise ancient traditions rooted in Buddhist jurisprudence with the needs of a rapidly modernising society, ensuring that justice is served in a manner that resonates with Bhutan's cultural heritage.

The concept of *nangkha nangdrik* (mediation) is an ancient legal practice rooted in Buddhist jurisprudence that Bhutan has incorporated into its modern legal system. *Nangkha nangdrik* roughly translates as "internal settlement of disputes". This practice emphasises mediation and reconciliation over adversarial court proceedings.

In Bhutan's traditional dispute resolution system, village elders or respected

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<sup>1</sup> Schmidt, Johannes Dragsbaek, Development Challenges in Bhutan, Springer International Publishing, 2017.

community members would serve as mediators, guiding parties toward a mutually acceptable resolution. This approach aligns with Buddhist principles of harmony and interconnectedness.

Today, Bhutan's Alternative Dispute Resolution Act of 2013 formally recognises and regulates mediation as a legal process. The Act incorporates elements of the traditional *nangkha nangdrik* system, encouraging parties to resolve disputes amicably before resorting to formal court proceedings.

While modern Bhutanese courts obviously rely primarily on codified laws and established legal precedents, there are instances where judges consider the broader karmic implications of their rulings. For example, in some cases involving minor offences, judges might opt for rehabilitative measures or community service rather than punitive sentences, reflecting the Buddhist emphasis on compassion and the potential for personal transformation.<sup>2</sup>

There is a strong emphasis on alternative dispute resolution methods throughout the legal system. The judiciary has institutionalised court-annexed mediation where litigants are encouraged to mediate up to the highest appellate court. Lawyers<sup>3</sup> are encouraged to resolve disputes through negotiation and mediation wherever possible, aligning with Buddhist principles of non-violence and compassion. This approach not only helps to reduce the burden on the court system but also promotes more harmonious resolutions to conflicts, contributing to social cohesion.

Additionally, law enforcement agencies are adopting a community-oriented, service-minded philosophy, focusing on de-escalation and understanding rather than purely punitive measures. The Royal Bhutan Police (RBP) has implemented community policing programmes that emphasise building relationships with local communities.<sup>4</sup> The police work with local residents to establish neighbourhood watch groups, encouraging community members to play an active role in maintaining safety and reporting suspicious activities.<sup>5</sup>

Efforts to enhance public legal literacy are underway across various legal

2 <https://kuenselonline.com/trongsa-court-gives-reformative-sentencing-to-minor-monks/>

3 The Bhutan National Institute conducts training for local leaders and court officers

4 <https://businessbhutan.bt/rbp-pledge-to-adopt-new-strategies-to-avert-crimes/>

5 <https://thebhutanese.bt/rbp-to-start-neighborhood-watch-program/>

institutions. The judiciary and lawyers are involved in outreach programmes to educate citizens about their rights and responsibilities. There is also a concerted focus on protecting vulnerable groups, with law enforcement and legal professionals working to safeguard the rights of women, children, and the impoverished. These efforts, combined with the promotion of transparency and accountability by organisations like the ACC, are contributing to the development of a more informed and engaged citizenry which is crucial for the realisation of a just and harmonious society.

While Bhutan's legal system has made significant strides, there are areas that require further attention and development. One such area is the implementation of inter-generational equity in environmental cases. Despite Bhutan's strong commitment to environmental conservation, it is unclear how the legal system is addressing long-term environmental concerns that may impact future generations.

Inter-generational equity in environmental law refers to the principle that present generations have a responsibility to manage and protect the environment for the benefit of future generations. It is based on the idea that we hold the natural environment in trust for future generations and should pass it on in no worse condition than we received it.

While Bhutan has strong environmental protections enshrined in its Constitution and various laws, there may be a need for more specific legislation. This could include several laws: Inter-generational Environmental Rights, explicitly defining the rights of future generations to a healthy environment; law on a Future Generations Commissioner to represent the interests of future generations in environmental decision-making; law on a long-term Environmental Impact Assessment, mandating consideration of very long-term impacts in major development projects; a law on Sustainable Resource Management, setting stringent standards for resource extraction and use; and a law on Climate Change Adaptation and Mitigation, requiring regular updates to climate change plans with explicit consideration of impacts on future generations. This gap in the current legal framework could potentially undermine the country's efforts to achieve sustainable development and maintain its unique ecological balance for years to come.

The rapid pace of technological advancement presents another challenge

that the legal system has yet to address fully. Issues surrounding data privacy, digital rights and cybercrime are emerging as critical concerns, yet Bhutan's legal institutions appear to lack clear strategies for dealing with these new realities.

Similarly, as Bhutan becomes more diverse and inter-connected with the global community, there may be gaps in addressing the rights and protection of minority groups. The legal system's ability to adapt to these emerging issues while maintaining its traditional values will be crucial for ensuring justice and harmony in an evolving society.

Perhaps most critically, there seems to be a lack of robust coordination mechanisms between different legal institutions. While each entity - the judiciary, the Office of the Attorney General, law enforcement, and the Anti-Corruption Commission - has its specific role, there is little indication of how these bodies work together systematically to address complex legal and social issues, potentially leading to inefficiencies, overlaps, or gaps in the administration of justice.

Furthermore, as Bhutan continues to modernise rapidly, it is not entirely clear how the legal system is strategically balancing the preservation of traditional values with the demands of a modern, democratic society. This delicate balance is essential to maintain social harmony while facilitating progress and development.

## **The Judiciary**

There are barriers that hinder equal access to legal services for all citizens, especially rural and economically disadvantaged populations who often face difficulties due to geographical and financial constraints. There is a shortage of legal professionals, especially in remote areas.

Though appeal courts have encouraged e-hearing for appeals, yet litigants - by and large- prefer appealing in person. The appeal courts should function as circuit courts, which would significantly improve access to higher-level judicial services for remote and under-served areas, reducing travel costs and time for litigants. It could help alleviate the shortage of legal professionals in remote areas by bringing experienced judges to these regions periodically.

It is important to note that the judiciary's previous attempt at implementing an e-litigation platform in early 2019 faced significant challenges. Due to a lack of effective leadership and inadequate user knowledge, this potentially transformative initiative was unfortunately shelved.<sup>6</sup> This setback highlights the critical need for comprehensive planning, sustained commitment from leadership, and robust user training programmes to ensure the successful adoption of any future technological solutions in the judicial system.

The issue of language in Bhutan's judicial system, particularly the use of Dzongkha in court proceedings and judgements, presents a complex challenge that intersects with transparency, accessibility and cultural preservation. This language barrier extends beyond the uneducated populace to include even literate citizens who struggle to comprehend court judgements. This situation undermines the fundamental principle of open justice and public understanding of legal processes.

A carefully balanced approach that respects cultural preservation while prioritising public understanding and access to justice is crucial. The use of English in higher courts, possibly alongside Dzongkha, could be a significant step towards greater transparency and public trust in the judicial system. However, this must be part of a broader strategy that includes improved legal education, public awareness and potentially technological solutions to ensure that justice is not only done but is also seen and understood to be done by all citizens of Bhutan.<sup>7</sup>

## Lawyers

The role of lawyers in Bhutan's legal system is crucial, with expectations set high for their ethical conduct and commitment to justice. Ideally, lawyers should act as seekers of truth, providing full disclosure to the courts while vigorously defending their clients' rights. They are expected to give voice to marginalised groups and work towards the ambitious goals of eradicating poverty, reducing inequalities, and ending discrimination, as outlined in the Sustainable Development Goals of 2030.

<sup>6</sup> <https://www.bbs.bt/news/?p=147854>

<sup>7</sup> <https://youtu.be/138-B3kr9gs?si=BPu1T2wRcBKRH1fk>

However, the reality of legal practice in Bhutan may not always align with these lofty ideals<sup>8</sup>. There are criticisms suggesting that some lawyers may prioritise winning cases over uncovering the truth, potentially leading to the obfuscation of facts.<sup>9</sup> Additionally, concerns have been raised about access to justice for vulnerable and marginalised groups, questioning whether all segments of society are receiving adequate legal representation and protection.

The Legal Aid Centre currently serves only a minuscule portion of the total caseload, indicating a vast disparity between the need for legal assistance and the services actually provided.<sup>10</sup> The Legal Aid Centre's establishment in October 2022 partially explains its limited reach, as new institutions typically require time to become fully functional and widely recognised.

The under-utilisation of legal aid services may stem from multiple factors, including limited public awareness, geographic constraints, strict eligibility requirements, resource limitations, and potential sociocultural barriers to seeking legal assistance. The substantial gap between total court cases (>9000) and those receiving legal aid (13 numbers) suggests that a significant number of vulnerable and marginalised individuals are likely navigating the complex legal system without proper representation or support.<sup>11</sup>

## **Office of the Attorney General**

As the State's legal representative, the Office of the Attorney General (OAG) provides guidance to ministries, handles litigation, and prosecutes criminal cases with a commitment to fairness and due process. Beyond these core functions, the OAG actively contributes to legislative reforms, advocating for advancements in justice, and societal harmony, as evidenced by its substantial work in 2023 drafting, amending and reviewing numerous bills and regulations.<sup>12</sup>

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8 <https://kuenselonline.com/bar-council-hands-lawyer-1-year-suspension-for-unethical-conduct/>

9 <https://kuenselonline.com/bar-council-takes-stern-action-against-four-legal-firms/>

10 <https://bnli.bt/wp-content/uploads/2024/02/Annual-Report-2023.pdf>

11 <https://www.judiciary.gov.bt/archives/1708483780-.pdf>

12 OAG Annual Report, 2023

The OAG of Bhutan appears to be actively engaged in legislative work, as evidenced by its drafting of four bills, finalisation of 41 amendment bills, and review of 156 draft laws and regulations in 2023. This level of activity suggests a commitment to ensuring legal compliance and providing proactive guidance to government bodies. However, the impact and quality of these legislative efforts remain unclear without more detailed information on their substance and outcomes.

There are significant gaps in the reported activities of the OAG. Notably absent is any mention of its performance in criminal prosecutions or representation of the government in litigation, both of which are described as key functions of the office. Additionally, there is no information provided on the OAG's efforts to advocate for specific legal reforms in areas such as disability rights, data privacy, or environmental protection, which were highlighted as important areas for the office to address.

## Law Enforcement

On the front lines of maintaining law and order, the police and law enforcement agencies play an integral part in creating a just and harmonious society in Bhutan. Their duties span crime prevention, investigation, apprehension of suspects, and ensuring public safety.

There was an incident where law enforcement was criticised for shoddy investigations, leading to wrongful convictions or the release of perpetrators. These failures can have devastating consequences for victims and their families, as well as for the justice system as a whole.<sup>13</sup>

Bhutan's law enforcement agencies have made commendable strides in adopting a community-oriented approach, emphasising compassion and non-violence in line with Buddhist principles. This shift toward a more service-minded philosophy has helped to foster positive relationships with the public and promote a sense of trust and cooperation.

However, victim protection services may not be accessible to all those in need, particularly in rural areas or for marginalised groups. The quality of support provided may also vary, and there may be concerns about

13 <https://thebhutanese.bt/rbp-accused-of-shoddy-investigation-in-water-terrorist-case/>

confidentiality and safety. To strengthen victim protection, Bhutan's law enforcement agencies have to expand access to services, enhance the quality of support, and prioritise confidentiality and safety. While law enforcement has made progress in safeguarding vulnerable groups, it's essential that the legal system treats them with empathy and avoids causing further trauma.

Community engagement efforts may not reach all sectors. To improve community engagement, Bhutan's law enforcement agencies could foster inclusive outreach, ensure meaningful dialogues, and strengthen community policing initiatives to a wider community.

### **Anti-Corruption Commission**

Few forces are more corrosive to justice and social harmony than the cancer of systemic corruption and abuse of entrusted powers. Bhutan's Anti-Corruption Commission (ACC) guards against such threats to the integrity of society and good governance. The ACC's efforts fortify citizens' trust that public resources and services are being properly managed for the greater welfare of society, not siphoned off by graft. This breeds social cohesion and harmony by creating a sense of shared vision and destiny.

In 2022, the ACC investigated 87 cases of alleged corruption, leading to 23 prosecutions.<sup>14</sup> The commission's efforts have contributed to Bhutan's relatively high ranking (25th out of 180 countries) in the 2022 Corruption Perceptions Index.<sup>15</sup>

The ACC's commitment to transparency and accountability could be further enhanced through the regular publication of operational reports and the implementation of independent oversight mechanisms. This approach would not only reinforce public trust but also provide valuable insights into the agency's processes and achievements.

While the ACC has made commendable strides in addressing public sector integrity, there may be opportunities to expand its focus to include private sector practices. The complex nature of corruption investigations, including the nuanced task of evidence gathering, presents ongoing challenges that the ACC continues to navigate with diligence. Additionally, the ACC

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14 Anti-Corruption Commission of Bhutan. (2023). Annual report 2022.

15 Transparency International. (2023). Corruption Perceptions Index 2022. <https://www.transparency.org/en/cpi/2022>



should consider the influence of cultural and social dynamics on corruption, particularly within informal networks.

## **Path Forward**

As Bhutan progresses rapidly, its legal and judicial institutions face immense challenges in charting a path that harmonises traditional Buddhist principles, modern human rights precepts, and evolving societal needs. Emerging issues like environmental rights, Data Privacy/Securities, women's empowerment and minority protections, Artificial Intelligence (AI), blockchain, Internet of Things (IoT), and Intellectual Property (IP) will test these bodies.

While each legal institution has its specific roles, achieving Bhutan's vision requires close partnership and collaboration between them all. Open communication channels, data sharing, and operational coordination are vital.

For instance, the OAG depends on law enforcement for thorough investigations to prosecute cases successfully. Law enforcement requires judicial monitoring against over-reach and guidance on operating within constitutional bounds. The judiciary relies on ethical advocacy from qualified lawyers to surface all relevant arguments. The ACC needs cooperation from prosecutors, police, and the OAG to pursue anti-corruption cases effectively. By working in concert, these institutions become a well-orchestrated force for justice, equity and social harmony in Bhutan. No one element can realise the vision of “a just and harmonious society” on its own.

Investing in capacity building and technological integration is crucial for modernising the legal system while preserving its unique cultural foundations. Comprehensive training programmes should be developed for legal professionals, focusing on emerging issues such as environmental rights, data privacy and security, minority protections, and corporations, among others.

Legal education should include both traditional Buddhist principles and modern legal concepts, ensuring that future legal professionals are well-equipped to navigate Bhutan's unique legal landscape. Simultaneously, the integration of digital systems can improve case management, enhance

transparency, and increase public access to legal information and services.

Public engagement and legislative reform are essential components of an effective legal system. Expanding outreach programmes to educate the public about their rights and responsibilities can foster a more legally literate society. Establishing robust feedback mechanisms would allow legal institutions to understand and respond to public perceptions, ensuring that the system remains responsive to societal needs.

On the legislative front, proactively identifying and addressing legal gaps in emerging areas like technology and environmental protection is crucial. Laws should be regularly updated to reflect both traditional values and modern realities, ensuring that the legal framework remains relevant and effective in addressing contemporary challenges.

Finally, implementing performance metrics and fostering international cooperation can drive continuous improvement in the legal system. Developing and implementing realistic key performance indicators for legal institutions would allow for regular assessment of their effectiveness. These metrics should be transparently reported, holding institutions accountable and identifying areas for improvement. Simultaneously, engaging with international legal bodies can provide opportunities to share Bhutan's unique approach and learn from global best practices,

The fundamental mission remains clear. "The vision of a future Bhutan is that within the sovereign, peaceful, and prosperous nation will exist a 'just and harmonious society'." -- (His Majesty The King). The focus is on community and interdependence as opposed to individualism. This quest for the greater good of the whole through compassion, equality and lawful governance is the purest embodiment of Gross National Happiness.

Bhutan's legal institutions have an opportunity to showcase to the world a holistic conception of justice rooted in age-old Buddhist wisdom. By upholding the rule of law impartially and defending the rights of all citizens equitably, these bodies can forge a national bond of social harmony serving as a beacon for humanity.

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