

Bhutan: Access to Justice for a Just Society?

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“The law above is there for everyone, high and low, imposing obligations to be there, but also offering protections and benefits... It is, quite simply, our best hope for the future.”¹

Justice is a word that conjures up images of grand courtrooms, *drangpons* (judges), prosecutors, *jabmis* (lawyers), and its common symbolic representation of a balanced scale held up by a blindfolded figure, but it is so much more. It is the belief that people, no matter who they are or where they come from, deserve to have their voices heard and their rights respected. But what happens when this belief collides with the realities of economic inequality, social disparity and, sometimes, cultural difference?

In Bhutan, we pride ourselves on our unique approach to development, based on the concept of Gross National Happiness (GNH). Yet, for many, access to justice remains elusive, in the light of realities like economic disparity, geographical locations, and even our own cultural norms. Someone from a remote village such as Shingkhari Lauri in Samdrup Jongkhar, whose legal rights are crystal clear on paper, still faces a mountain of obstacles to access a court. His journey is not just a physical one across rugged terrain, but sometimes, also a symbolic one of overcoming deep-rooted barriers in the quest for fairness.

Working in the legal field, I have often asked myself: Can Bhutan’s legal system, shaped by the values of GNH, truly deliver justice for all? How do we ensure equal access to justice in a country like ours, where tradition meets modernity, and where the pursuit of happiness intertwines with the pursuit of fairness?

Bhutanese Legal System

In 2008, after a century of Monarchy, our small kingdom embraced

¹ Barber, Kathleen. *Truth Be Told*. New York: Gallery Books, 2019.

democracy, marked by the adoption of a Constitution and a newfound commitment to the rule of law. For many of us who witnessed this change, it was more than a political shift; it was a promise that every citizen, whether living in the bustling streets of Thimphu or in the far reaches of Shingkar Lauri, would be granted the same protections, the same rights.

Fulfilling this promise has not been without its challenges. Our legal system suddenly had to adapt to the complexities of modern life. The Parliament, with its newly drafted laws, set out to create a framework that was just and reflected our values. But justice is not only about laws; it is about access too. In that sense, Bhutan's economy, geography, and culture present unique hurdles.

In a courtroom, legal arguments are made in Dzongkha (the national language), yet many citizens in their respective communities speak their own dialects, making it difficult for them to engage with the legal system. The use of Choekey (Classical Dzongkha) in drafting many of the laws makes it more challenging for people to comprehend. Additionally, the translation and coining of new words for international legal principles and terminologies make it even more complex.

Imagine a villager who must choose between a long, expensive journey to seek legal redress and staying home to tend to a crop that provides his family's livelihood. These are not just theoretical issues but lived realities of many Bhutanese.

What is Access to Justice in Bhutan?

Equal access to justice in theory simply means that everyone, regardless of their status, has the same opportunity to seek and receive legal protection. But what does this actually look like on the ground in Bhutan?

For those of us living in urban areas, with courts and legal services nearby, access to justice might be as simple as a visit to a lawyer's office or a quick trip to the district court or the higher courts. But for many Bhutanese living in rural areas, this "access" becomes much more complex.

I recently met Pema (name changed) from Betekha, Chukha, who shared that when she faced a legal issue, a property dispute, her journey toward

justice was far from straightforward. Firstly, the courts are located in Phuentsholing and Chukha, far from her home, so there were costs involved, including travel, lodging, and time spent away from her means of livelihood.

Then there is the issue of familiarity. The legal system, with its formal procedures and intimidating structures, feels foreign to her, far removed from the communal dispute resolutions she grew up with. For many like Pema, the barriers to justice are not just logistical, they are deeply personal. They represent a gap between the ideal of justice and the lived experience of those on the margins who seek it.

The Barriers to Justice

In Bhutan, where most communities are isolated, access to justice has over the years become more feasible with improved roads and the construction of *dungkhag* (sub-district) courts. However, significant challenges remain. Beyond geography, economic, social, and legal barriers still prevent many from fully accessing their rights.

For example, while the Punakha district court is located within the dzongkhag administration, it is still difficult to reach. The court is not along the major routes and in the absence of public transportation, people without cars must look for alternatives such as taxis to get there.

Consider the financial cost of seeking justice. For many Bhutanese, the legal process can be expensive, not in terms of court fees, but in the time it takes away from earning a living. For some people, taking even a few days off to resolve a dispute in court could mean a lost harvest, which in turn could mean months of hardship for their families. Most people represent themselves in court due to the high fees a *jabmi* (private defence counsel) charges, or in some cases, unavailability of *jabmis* in their communities.

Then there are cultural factors. In Bhutan, as in many traditional societies, community and family ties play a significant role in dispute resolution. Many people, especially in rural areas, still turn to village elders or heads of families to mediate conflicts, rather than seek formal legal avenues.

While these informal systems are valuable and help in enhancing access to

justice, the mediators are not always equipped to handle the complexities of modern legal disputes, and mediation does not always provide equitable outcomes, particularly for women and marginalised groups.

There are a few cases where community leaders, who are mostly men, prioritise family harmony over justice for women, especially in domestic abuse cases, leaving women with unfavourable outcomes. Studies have also shown that mediation in traditional or informal justice systems often perpetuates existing power imbalances between men and women.

The social and cultural dimensions of accessing justice play a significant role, particularly in traditional societies. Engaging in a legal dispute can often bring a sense of shame or dishonour to a family, especially in closely-knit communities where reputation and social standing are paramount. Stigma can discourage individuals from pursuing legal remedies or defending their rights. Fear of public scrutiny or social backlash can discourage people from seeking legal representation altogether.

For those who do decide to engage with the formal legal system, the journey is often fraught with uncertainty. The legal language, the procedures, and the formality can feel like stepping into an unfamiliar world. And for many Bhutanese, particularly those with little education or limited exposure to the legal system, this world can feel hostile and inaccessible.

Bridging the Gap: Towards a Just and Equitable Society

One of the most impactful steps towards bridging the justice gap is the establishment of the Legal Aid Centre. While the need for legal aid was mentioned in both the Constitution and the Civil and Criminal Procedure Code (CCPC) years ago, it was not until 2022, under a Royal Charter, that the Legal Aid Centre, funded by the State, was fully established. This marked a turning point in our collective efforts to ensure legal access for all.

The Legal Aid Centre aims to provide legal services to indigents. It offers legal advice and assistance, while legal representation will only be granted in civil cases if the interest of justice demands it.

In criminal cases, however, legal advice, assistance, and representation will be provided. The Legal Aid Rule, 2022 clearly outlines the assessment

process, procedures, and other important details for receiving legal aid services.

Before the centre was set up, there were many stories of people who simply gave up on seeking justice because they could not afford the legal fees or did not know how to go about finding legal assistance. The Legal Aid Centre's mandate is straightforward to provide free legal services to those who need them the most. It has become a lifeline for many, having already helped about 100 people² who required assistance.

Yet the centre's services are not widely known and its reach remains limited. Moreover, as the number of cases increases, the centre risks becoming overburdened and underfunded. In view of the lack of an adequate number of lawyers at the centres, representation must depend on private practitioners around the country.

Unfortunately, the spread of lawyers across the country is uneven. For example, most private practitioners have their law firms in the towns of Thimphu, Paro and Phuentsholing, and not in the other districts, posing a huge problem for the centres in providing services efficiently.

Parallel to the work of the Legal Aid Centre is the growing culture of pro bono work among Bhutan's legal professionals. In recent years, the Bar Council of Bhutan has taken commendable steps to promote this ethos through the development of pro bono guidelines and initiatives for those who cannot afford legal representation. These efforts, while still in their infancy, offer a powerful example of how the legal community can contribute to bridging the justice gap.

Another important effort made towards addressing the justice gap was in 2019 when court-annexed mediation was established in all courts across the country. The practice of *nangkha nagdrik* (mediation) as an informal means of dispute resolution is deeply embedded in Bhutanese society.

Rooted in our cultural values of harmony and consensus-building, mediation has long provided an effective alternative to formal legal processes. It allows parties to resolve their conflicts in a manner that is not only amicable and expedient but also more accessible and less adversarial. For many, mediation

² As per the information received from the Legal Aid Center.

offers a safe space where individuals can openly address disputes without the intimidating environment of the courtroom, fostering outcomes that focus on restoring relationships and community ties.

By offering mediation as a structured, yet informal option within the courts, Bhutan seeks to enhance the efficiency of its legal processes while maintaining flexibility and responsiveness. The Bhutan National Legal Institute has, over the years, provided training for local leaders, bench clerks, and legal professionals, to equip them with the necessary skills for effective mediation. The effectiveness of these training initiatives needs further evaluation.

Community outreach and legal empowerment initiatives have also made significant strides. These programmes work at the grassroots level, helping individuals understand their rights and responsibilities, and demystifying the legal processes.

Legal literacy and outreach are critical, especially in rural areas where traditional dispute resolution systems often prevail. By bridging the gap between these customary systems and the formal legal systems, we empower communities to make informed choices and protect their rights more effectively. Such programmes must be conducted frequently, ensuring that these groups are active contributors in the justice process.

The rise of technological innovations in legal services is another exciting development. Technology offers a way to overcome geographical barriers that may have hindered access to justice. The COVID-19 pandemic accelerated our reliance on technology, with online platforms providing legal advice, virtual consultation, and even conducting hearings through e-litigation platforms.

These innovations have made it easier for many individuals to access legal information from the comfort of their homes, breaking down some of the longstanding barriers to justice. However, digital infrastructure is still developing in Bhutan, and not all courts are equipped to conduct virtual hearings. E-litigation platforms are available only in few courtrooms. Even where the technology is available, some judges are reluctant to embrace it fully.

There is also the issue of digital literacy. Many people, especially in rural areas, are unfamiliar with the technologies that are now an integral part of the legal landscape. Attention and resources must be focused on this issue, via the provision of training and support to ensure that under-served populations can use these digital tools effectively. Standard operating procedures need to be in place to ensure the smooth operations of virtual legal services, and legal professionals, including judges, must be encouraged to embrace these innovations.

Looking to other countries, we can learn from the successful models of legal assistance and support services that have emerged globally. Community-based paralegal services, law clinics, mobile legal clinics and other community initiatives must be encouraged. Such models have the potential to transform how we deliver justice.

Tailoring legal services to the specific needs of different communities is key, whether through mobile clinics that bring legal services to remote areas or programmes that train local leaders to provide basic legal advice.

To build a truly inclusive justice system, it is crucial to conduct more in-depth research on the impact of current training and advocacy programmes, legal frameworks and services, particularly in terms of how they serve vulnerable groups such as women, children, young people, persons with disabilities and the elderly. These vulnerable groups often face unique barriers to accessing justice and, without targeted data, it is difficult to fully understand the challenges they face. By investing in research that identifies these gaps, the State can tailor future programmes and services to address their specific needs more effectively.

At the core of all these efforts is a commitment to creating a holistic and sustainable approach for access to justice. It is not enough to provide legal services; we must also ensure that they are tailored to the specific needs of our communities. A person with disabilities will have a different need compared to that of others. This requires collaboration between government institutions, civil society organisations, legal professionals, and the communities themselves. Working together, we can share resources, pool expertise, and drive systemic change.

A Call to Action

Ensuring equitable access to justice is also a moral and societal duty. The rule of law, inclusive development, and equality rest upon a foundation of justice that is accessible to all. As mentioned above, achieving this requires a multifaceted approach.

While much has been done, there is still much more to do. Government, legal professionals, CSOs (civil society organisations), and communities must work together, to share resources and leverage collective expertise to drive systemic change. CSOs can play an important role by providing grassroots legal assistance, conducting legal awareness in collaboration with the relevant stakeholders such as the Law school, Judiciary, Office of the Attorney General, Bar Council, etc., and advocating for policy reforms that target marginalised and vulnerable groups. Their ability to operate at the local level and engage directly with affected communities makes them indispensable in enhancing access to justice. However, to maximise their impact, CSOs must be empowered through sustained government support, including providing capacity-building programmes, and a favorable regulatory environment that allows CSOs to flourish.

I remain hopeful, not only because of the advancements we have made but also because of the innovations we have yet to fully explore. The potential of technology to expand access to justice, for example, is vast. Mobile application, online dispute resolution platforms, and virtual courtrooms all have the potential to revolutionise how we approach legal access. But to realise this potential, the government must invest in the infrastructure and training necessary to ensure that these innovations are accessible to all.

Looking to the future, I believe that encouraging pro bono work among lawyers will remain a crucial part of the solution. Legal professionals who dedicate their time and expertise to those who cannot afford representation are making justice more accessible for everyone.

A Collective Responsibility for a Just Future

Access to justice is not a luxury or privilege reserved for a select few. It is a fundamental human right, the very cornerstone of a fair and just society. Without equal access to justice, the rule of law is undermined, human

rights are compromised, and social inequalities are allowed to fester.

We must continue to push forward with legal reforms that simplify legal processes and make them more accessible to ordinary people. Policy changes need to reflect the realities faced by marginalised communities, recognising that true access to justice cannot be achieved until every citizen, regardless of their financial or social standing, can navigate the legal system with confidence. At the heart of this effort is the need for increased collaboration between various stakeholders mentioned above.

By empowering individuals with the knowledge, tools and resources to seek justice, we create the conditions for a more equitable and inclusive society. When people have the means to protect their rights, demand accountability and resolve conflicts, they contribute to the strengthening of our social fabric. Where the rule of law prevails, human rights are protected, and social cohesion thrives. Bhutan's vision of GNH will be not just an ideal, but a reality that can be experienced by all.

The law cannot be an abstract that only lives in the chambers of the courts. If a daily minimum wage worker, living in a rural village, cannot afford to reach the *dungkhag* or the dzongkhag court to file a case, then our legal system has failed in its duty.

Bhutan's journey toward ensuring equal access to justice for all is ongoing, but with dedication, collaboration, and the will to address the gaps, we can build a future where justice is a right, not a privilege, and where every individual, regardless of their circumstances can stand equally before the law.

References

Barber, Kathleen. *Truth Be Told*. New York: Gallery Books, 2019.