"All persons are equal before the law and are entitled to equal and effective protection of the law..."\(^1\)

The constitution of Bhutan guarantees equal and effective protection of the law to all persons without discrimination against race, sex, language, religion, politics or other status. It is geared towards catering to the needs and welfare of the people of Bhutan. However, considering the inevitable circumstances, there are categories of people in the society whose demand exceeds the supply. Therefore, this paper addresses disadvantaged people who are deprived of their rights by the barriers which stand in front of their way to justice.

Barriers for Disadvantaged People to access to Justice are a common problem encountered by the SAARC Region. No single SAARC country could be an exception to this practical predicament. In view of this common concern of the SAARC Regions, this paper is designed to:

"Identifying Pathways and Barriers for Disadvantaged People to Access to Justice."

This paper, however, does not intend to disseminate information but is presented with a view to inviting additional contributions for further enhancement.

It has 2 components viz:

1. Identifying Pathways and Barriers
2. Enforcement of Rule of Law.

Under these components, two further important aspects are ascertained for deliberation. They are:

1. Barriers to access to justice
2. Pathways to access to justice

The underlying aspect of this paper is on the barriers to access to justice confronted by vulnerable or disadvantaged people.

There are 'privileged' people in terms of both intellectually and economically and there are disadvantaged people in the communities too. Similarly, there are people living in the urban cities and towns where the entire modern infrastructure is readily available. And there are people

\(^1\) Article 7 Section 15 of The Constitution of the Kingdom of Bhutan.” Pp 27; All persons are equal before the law and are entitled to equal and effective protection of the law and shall not be discriminated against on the grounds of race, sex, language, religion, politics or status.”
living in far flung areas where existence of law is hardly known. For now I would set aside the
discussion on those of the elite societies and would like to highlight the disadvantaged and
vulnerable people. So far as is reasonably practicable this paper endeavors to identify
disadvantaged people in context to our country, Bhutan.

Bhutan is a small country with people of diverse background influenced by several factors like
the geographical terrain, language diversity, heterogeneous culture and traditional lifestyle in the
community.

In view of these facts there are economically or socially disadvantaged people who are barred
from the access to justice.

These people are:

✓ with intellectual disabilities,
✓ physical disabilities,
✓ sensory disabilities – such as hearing impairment, vision disability, speech degradation,
  ability to comprehend,
✓ linguistically diverse backgrounds,
✓ children and young people,
✓ older people,
✓ people living in remote rural areas,
✓ people with low levels of education and literacy,
✓ people living in institutions (i.e. prisoners, people detained by relevant authorities, and
✓ People with low income.

The following are the few rhetorical questions we normally ask ourselves:

a. In what ways the disadvantaged people are overlooked in terms of access to justice?
b. What are the difficulties encountered by those disadvantaged people in getting easy
   access to justice?
c. How can the government reform the system which would cater to the needs of
   disadvantaged people?
d. What role can the judiciary play in catering justice to the disabled people?

“Access to justice”

The expression ‘access to justice’ needs elaborate discussion. Access to justice is an essential
element of the rule of law and therefore of democracy. It is a fundamental right\footnote{Article 7 Section 15 of The Constitution of the Kingdom of Bhutan.} as set out in our
Constitution.
It says that:

"All persons are equal before the law and are entitled to equal and effective protection of the law and shall not be discriminated against on the grounds of race, sex, language, religion, politics or other status."

Similarly, Article 21 Section 18 states that, "Every person has the right to approach the courts in matters arising out of the Constitution or other laws."

Access to justice provides an opportunity to address and resolve people’s justice needs. These needs may arise out of legal problems or other social, economic and cultural issues that pose problems and create disputes among people.³

Access to justice is much more than improving individual’s access to courts, or guaranteeing legal representative. It is about ensuring that legal and judicial outcomes are just and equitable.⁴

**Article 13⁵ of the Human Rights Convention states that:**

- Disabled people must have the same rights to go to court, take other people to court, act as witnesses and take part in what happens in courts as anyone else.
- Disabled people must be given support to do this which may include the provision of sign language.
- There should be appropriate training for courts, police and prison staff to support this right.

**Access to justice is defined by UNDP⁶ as:**

"the ability of people to seek and obtain a remedy through formal or informal institutions of justice, in conformity with human rights standards."

It further says that access to justice does not necessarily mean an access to the courts or the availability of legal assistance. In this present day there are hordes of settlement machineries in place. Most disputes can be resolved without recourse to formal legal institutions.

The courts must treat disabled people fairly and render the best possible assistance to take part on an equal basis. The court must arrange to provide information in advance so that they don’t feel threatened and intimidated. Familiarization of the court and its premises is equally important that they are not confused when the actual court case takes place.

³ Access to Justice Assessment in Asia Pacific; UNDP pp.11
⁴ Access to Justice Assessment in Asia Pacific; UNDP pp.14
⁵ Access to Justice and Legal Needs
⁶ Access to Justice and Legal Needs pp 23
There are people from far away communities who have never participated in the courts. They are unfamiliar with the court proceedings and may not know how to proceed and where to go and who to approach. In such circumstances, they should be given extra help to enable them to participate in the court, as claimant, defendant and witness. This support could be, for example, through legal aid and services.

**Barriers to access to justice for socially and economically disadvantaged people**

The Civil and Criminal Procedure Code, 2001 of Bhutan\(^7\) allows the litigants to institute a suit either by themselves or by the *Jabmis* (Lawyers) of their choice.

It states that a suit may be initiated by a litigant himself/herself; member of his/her joint family; or *Jabmis* (Lawyer) of his/her choice.

However, there are several impediments to the way to justice for the disadvantaged people. In Bhutan, at present, we have few legal firms. In addition to this constraint the retired *drangpon* (Judge) cannot practice before any Court. Consequent to these deficits there is inadequate legal-aid-service provider.

Section 24 of the Jabmi Act, 2003 states that:

> “No retired *drangpon* (Judge) shall practice before any Court of law as a *Jabmi*.”

Other barriers that need to be addressed are that court procedures are complicated and courts are generally not user-friendly.

Every court is flanked by security personnel. In some advanced courts electronic gadgets like metal detectors are used for security clearance. Metallic gates are imbedded at the entrance gate to let through the parties to ensure safety. There is intimidating ambience in-and-around the court premises.

In the situation where children are required to appear before the court, delays and lengthy proceedings is one barrier to access to justice. The setting of the court is unapproachable. There is no free and conducive atmosphere because of which the children cannot submit anything freely. So far the elderly people are concerned and despite the old age being an accepted natural barrier to access to justice they are accorded comparatively less attention to their needs.

Because of the physical disabilities, firstly, it is hard for them to appeal to any court to address their grievances and seek judicial remedy. Secondly, even if they could make their way through

\(^7\) Section 116 of the Civil and Criminal Procedure Code of Bhutan, 2001 states that A suit may be initiated in accordance with the Code by a litigant himself/herself; a member of his/her joint family; or a *Jabmis* (Lawyers) of his/her choice. Section 148 states that, “a person lacking in capacity to sue or be sued is one who has a direct stake in the outcome of the litigation but is unable to prosecute or defend an action due to mental or physical incapacity, being a minor or absent.
to court owing to old age they have poor audibility. Consequently so they are deprived of important and necessary information.

Visibility is another impediment that they are deprived of their right to information. They cannot access the online information nor through any print media.

In Bhutan not all remote communities and villages have road infrastructure. The people from such areas have to walk days to appeal to the Higher Courts in the event he desires to challenge the decisions of the subordinate courts.

Those people being generally illiterate are literally handicapped to write neither plaints nor do they have ability to identify legal issues. They also fear of retribution.

The landmark judgments of the High Court and the Supreme Court are generally posted in the judiciary website. Hearing calendars are also posted on the website on a regular basis. The process has been simplified for the convenience of the people. Yet, sensory disadvantaged people are unable to access all these legal information so easily. Being deprived of such legal information, disadvantaged people are unaware of legal services catered at their door steps. Therefore, they are unable to either assert or defend their legal rights.

Pathways

A fair and efficient system for providing justice is crucial to the proper functioning of society. And courts are not only the primary means to resolve the disputes. To this effect, mechanisms are available for dispute resolution - from informal to formal.

Mechanisms include:

- Private legal firms
- ADR, including mediation, negotiation
- Community-led process such as village headman and village elders and finally
- The courts.

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