

# Specific Justice Needs of Under-privileged People: Legal Services and Legal Aid interventions.

Bhutanese perspective

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## Introduction

Few societies have placed the ideal of justice on so high a pedestal as has been in Bhutan. From the day of establishment of monarchy, the ideals of justice have been extolled as a major, if not the supreme virtue by our hereditary monarchs and redress has been stipulated as a primary duty. The equitable treatment of all classes of society has constantly been advanced as the foundation of the economic and political stability of the state. The principle, the 'circle of Justice' has been the keynote that our past rulers have proven to be the fountain head of justice protecting the innocent from the transgressions of the powerful and mighty.

The Bhutanese legal system is primarily based on Buddhist natural law. All are treated equal before the law and safeguards exist to ensure that people are not treated arbitrarily or unfairly by the government or officials<sup>1</sup>. Principles such as procedural fairness and separation of powers are fundamental to the Bhutanese legal system. The judiciary of Bhutan is independent from other branches of government<sup>2</sup> and independently interprets and applies the laws. Its decisions are not subordinate to any non-judicial authority.

The judicial authority of Bhutan is vested in the Royal Court of justice comprising of the Supreme Court, the High Court, District and Sub-Divisional Courts and other tribunals<sup>3</sup>. Each court has its jurisdiction defined under the Civil and Criminal procedure Code of Bhutan. The constitution of Bhutan is the Supreme law of the kingdom of Bhutan. The Royal Court of Justice applies International Convention, Covenant, treaty and protocol that are duly acceded to by the Royal Government of Bhutan and ratified by the parliament of Bhutan<sup>4</sup>.

What does legal aid mean in Bhutanese context? Do we actually have underprivileged people? Who are those people that fall within this classification? On the onset, I would rather prefer the term 'people with low income and economically disadvantaged' to 'underprivileged people' in Bhutanese perspective. The national survey conducted by the National Statistical Bureau (NSB) confirmed that 23.2% of our population lives below the poverty line. The bureau chose to use 'poor people' over many other terminologies<sup>5</sup>.

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<sup>1</sup> Section 3 of the Civil and Criminal Procedure Code, 2001

<sup>2</sup> Article 1 Section 13 of the Constitution, 2008

<sup>3</sup> Article 21 Section 2 of the Constitution, 2008

<sup>4</sup> Article 10 Section 25 of the Constitution, 2008

<sup>5</sup> Poverty Analysis Report, conducted by National Statistical Bureau, 2007

Legal aid is the provision of assistance to people otherwise unable to afford to meet the legal cost or by reason of economic disadvantage cannot access the court system of the state. Bhutan is a social welfare state and all policies and legislations gear towards the fulfillment of people's aspiration for equal distribution of state resources.

While our counterparts are faced with the legal and constitutional dilemma in determining the rights of the underprivileged people against the force of economic dimension, Bhutan could be an honorable example in accruing individual rights provided in the laws. When the state adopts development philosophy in terms of *happiness*, there is no reason for the state to ignore effective enforcement of individual rights; including the *legal aid rights* for effective enforcement that adds vigor to happiness (measuring happiness in terms of enforcement of laws). But the issue is: can we have access to justice without legal aid?

### **Legal aid movement by the judiciary**

Bhutan is committed to the rule of law; the constitution provides fair trial rights, equal and effective protection of the law and equality of all persons before the law<sup>6</sup>. The laws are applied to all citizens without exception. The trials are conducted in public. A person charged with a penal offence has the right to be presumed innocent until proven guilty. He has the right to consult and be represented by a Bhutanese Jabmi of his choice.<sup>7</sup> The defendant has the right to access government held evidence. The state provides free legal service to an indigent accused where the interest of justice so requires. Defendants have right to be present in the trial and no trials are conducted in the absence of the defendant by the court of law.

Bhutan has a wise and independent judiciary. Bhutanese Judges independently apply reason and good judgment to any accusation of infringement of rights or attempts to restrict freedom. The independence of the judiciary is secured through its wise decisions. Bhutan's judiciary observes that the traditional demarcation between the international law and the domestic law is slowly eroding with the judges demonstrating and incorporating international standards in decision making.

Besides, the proactiveness of the judiciary and judicial movements towards delivering fair and transparent justice transpired into the enactment of the Civil and Criminal Procedure Code with the initiative of the judiciary. Judicial movement of drafting laws was never being taken as a transgression on the legislative powers. An era of judicial activism began.

The judiciary not only took a major step towards establishing a national system of legal aid without the state fund but recognized the relevant agency and civil society organizations (CSO)<sup>8</sup> to support the poor in meeting the costs of litigation. For example,

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<sup>6</sup> Article 7 Section 15 of the Constitution, 2008

<sup>7</sup> Article 7 Section 21 of the Constitution, 2008

<sup>8</sup> The Civil Society Organization Act, 2007 mandates to register all those organization or nongovernmental organizations that are established to provide services.

