

## **THE JUDICIAL SERVICE ACT OF BHUTAN, 2007**

### **Preamble**

In keeping with His Majesty the Druk Gyalpo's vision for enlightened laws to protect the society, to strengthen and promote the independence and accountability of the Judiciary, to ensure Fair Trial, and to promote the Rule of Law;

The National Assembly of Bhutan in its 86<sup>th</sup> Session held on 16<sup>th</sup> Day of the 11<sup>th</sup> Month of the Male Fire Dog Year of the Bhutanese Calendar, corresponding to 4<sup>th</sup> January, 2007 hereby enacts the Judicial Service Act of Bhutan as follows:

### **CHAPTER 1 Preliminary**

#### **Title, Commencement and Extent**

1. This Act shall:
  - (a) Be called The Judicial Service Act of Bhutan, 2007;
  - (b) Come into force in the year of the Female Fire Pig Year, 1<sup>st</sup> Month, the 3<sup>rd</sup> Day of the Bhutanese Calendar corresponding to the 20<sup>th</sup> day of the 2<sup>nd</sup> month, 2007; and
  - (c) Apply to all Judicial Service Personnel throughout the territory of Bhutan or otherwise within the Judicial reach of the Royal Courts of Justice of Bhutan.

#### **Personnel Administration System**

2. The Judiciary, with the primary aim of promoting the caliber, efficiency, and effectiveness of the Judicial Service Personnel in the administration of Justice has taken cognizance of the need for personnel administration system.
3. The personnel administration system shall ensure the maintenance of dignity, high competency and integrity of the Judicial Service Personnel to enable them to discharge their duties effectively, efficiently and independently in the administration of Justice.
4. Except for the Chief Justice of Bhutan, the Drangpons of the Supreme Court, the Chief Justice and Drangpons of the High Court, the Royal Judicial Council shall prescribe the service conditions and policies for the Judicial Service Personnel.

#### **Independence**

5. The Judiciary shall be independent from the Executive and the Legislature and no encroachment of each other's powers is permissible, except to the extent provided for by the laws of the land.

## **CHAPTER 2**

### **The National Judicial Commission**

#### **Appointment and Composition**

6. The National Judicial Commission (hereinafter referred to as the “Commission”) shall be composed of four members inclusive of a Chairperson and a Member-Secretary.
7. The Druk Gyalpo shall appoint members of the Commission by warrant under His hand and seal. The Commission shall comprise:
  - (a) The Chief Justice of Bhutan as Chairperson;
  - (b) The senior most Drangpon of the Supreme Court;
  - (c) The Chairperson of the Legislative Committee of the National Assembly; and
  - (d) The Attorney General.
8. The Chairperson shall appoint the Member-Secretary from among its members.
9. Whenever the Chairperson is unable to chair the meetings of the Commission, the senior member Drangpon of the Supreme Court shall chair the meetings.
10. Members of the Commission who may have or be reasonably construed to have conflict of interest shall refrain themselves from participating in the decision-making process of the Commission.

#### **Functions**

11. The Commission shall submit recommendation to His Majesty the Druk Gyalpo with regard to the appointment of:
  - (a) The Chief Justice of Bhutan and the Drangpons of the Supreme Court; and
  - (b) The Chief Justice and the Drangpons of the High Court.

#### **Establishment of Courts and Tribunals**

12. The Commission shall submit recommendation to His Majesty the Druk Gyalpo for the establishment of Courts and Tribunal from time to time.
13. The independence of the Drangpons of the Supreme Court and the High Court shall be guaranteed, provided that a Drangpon may be censured or suspended by a command of the Druk Gyalpo on the recommendation of the Commission for proven misbehaviour, which in the opinion of the Commission does not deserve impeachment.

#### **Procedures**

14. The quorum for any proceeding of the Commission shall be the total strength of the Commission.
15. The Commission may, by directions in writing and subject to such conditions, appoint any Committee headed by a member, to carry out any examination, evaluation, or inquiry

on the basis of which the Commission may arrive at a decision pertaining to its responsibilities.

16. The Commission shall meet twice a year, i.e. in June and December. Additional sessions may be convened, if the Chairperson deems necessary.
17. The Member-Secretary shall be responsible for the general working and the efficient conduct of business of the Commission.
18. Members shall be entitled to sitting fees in accordance with the applicable rules and regulations.

### **CHAPTER 3**

#### **The Royal Judicial Service Council**

#### **The Royal Judicial Service Council**

19. The Chief Justice of Bhutan in consultation with the Royal Judicial Service Council (hereinafter referred to as the “Council”) shall have the full authority to determine and administer the organizational structure, budgetary and personnel requirements of the Judiciary.
20. The powers and functions of the Council are as specified in this Act and the Council shall have jurisdiction over all the Judicial Service Personnel.

#### **Appointment and Composition**

21. The Chief Justice of Bhutan shall appoint members of the Council by warrant under his hand and seal.
22. The Council shall be composed of seven members consisting of:
  - (a) One sitting Drangpon of the Supreme Court on a two-year rotational basis, provided that no Drangpon shall simultaneously be a member of both the Commission and the Council;
  - (b) The Chief Justice of the High Court;
  - (c) The Registrar General of the Supreme Court;
  - (d) The Registrar General of the High Court;
  - (e) Two Drangpons of the Dzongkhag Courts on a two-year rotational basis; and
  - (f) One Drangpon of the Dungkhag Courts on a two-year rotational basis.
23. The Chairperson of the Council shall be the member Drangpon of the Supreme Court.
24. The Registrar General of the Supreme Court shall be the Member-Secretary of the Council.
25. Whenever the Chairperson is unable to chair the meetings of the Council, the senior most member shall chair the meetings.

26. Members of the Council who may have or be reasonably construed to have conflict of interest shall refrain themselves from participating in the decision-making process of the Council.

**Powers, Functions and Responsibilities**

27. The Council shall formulate personnel policies for the judicial bodies, institutions and Courts concerning:
- (a) Organization, administration, staffing pattern and strength, classification and gradation of services;
  - (b) Creation and abolition of posts other than that of the Supreme Court and the High Court Drangpons;
  - (c) Higher or continuing legal education;
  - (d) Performance evaluation and appraisal;
  - (e) Reward and incentive for meritorious and exemplary service;
  - (f) Improvement of efficient judicial process through Court management and material management;
  - (g) Judicial Service Selection Examinations; and
  - (h) Any other matters which may be prescribed.
28. While formulating policies, the Council shall pay due regard to financial status and personnel strength in the Judiciary.
29. The Council shall review the personnel policies from time to time to ensure that such policies are in keeping with the changing situation and propose amendments and modifications thereto as and when necessary.
30. The Council shall make rules for the judicial bodies, institutions and Courts concerning:
- (a) Formulation, review, execution and ensure a rational system of administration in the matters of selection, recruitment, appointment, transfer, promotion, tenure, incentives and other incidents of employment;
  - (b) Building of personnel administration system based on qualification, merit and experience;

- (c) Promotion of morale, good conduct, discipline, efficiency, integrity and devotion to the duty;
  - (d) Human resource development;
  - (e) Recruitment of personnel whether regular, contractual or on deputation to posts against which recruitment may be permanent, semi-permanent or temporary;
  - (f) Fixation of pay and allowances and other related matters pertaining to emoluments in parity with the other Civil Service Personnel of Bhutan;
  - (g) Travel and tours in parity with the other Civil Service Personnel;
  - (h) Welfare and benefits including medical benefits, provident fund, pension, gratuity and all other in-service and post-service benefits in parity with the other Civil Service Personnel;
  - (i) Working conditions including timing, health and safety regulations and all other conditions necessary to promote efficiency and effectiveness;
  - (j) Lay-off, premature retirement, removal, discharge and dismissal;
  - (k) Sanction of extraordinary leaves;
  - (l) Review and scrutiny of personnel actions; and
  - (m) Any other matter which may be prescribed.
31. The Council or any of its committee to which its executive powers have been delegated, shall carry out its executive functions in a fair and equitable manner.
32. The Council shall review laws from time to time and submit to Parliament to ensure that they are in keeping with the changing situation and propose amendments and modifications thereto as and when necessary.
33. The Council shall discharge its functions without fear or favour in accordance with the provisions of this Act.

**Procedures**

34. The provisions of this Act shall govern all the actions of the Council.
35. The quorum for any proceeding of the Council shall be not less than two-thirds of the total strength of the Council.
36. The Council shall decide substantive matters concerning policies by not less than two-thirds of the total strength of the members.

37. The Council by a simple majority of the members present and voting shall decide procedural matters not relating to policies.
38. To facilitate the Council in the discharge of its responsibilities, it may form sub-committees from among its own members as and when it deems necessary.
39. The Council may, by directions in writing and subject to such conditions, appoint any Committee or person to carry out any examination, evaluation or inquiry on the basis of which it may arrive at a decision pertaining to its responsibilities.
40. The Council shall meet twice a year, i.e. in June and December. Additional sessions may be convened if the Chief Justice of Bhutan deems necessary.
41. Members shall be entitled to sitting fees in accordance with the applicable rules and regulations.
42. The Member-Secretary shall be responsible for the general working and the efficient conduct of business of the Council.
43. Decisions may be taken on the recommendations of the Council by the Chief Justice of Bhutan at the national level and through the respective Drangpons at the Dzongkhag and Dungkhag levels.

**Assent of the Chief Justice of Bhutan**

44. All policies, Service Rules and Regulations formulated and endorsed by the Council shall be submitted to the Chief Justice of Bhutan for assent before implementation.

**Decentralization**

45. To provide for effective, efficient and independent discharge of judicial duties in the administration of Justice, the powers, functions and responsibilities of the Council shall be decentralized to appropriate judicial authorities at Dzongkhag and Dungkhag levels.

**Annual Report**

46. The Council shall submit an annual report to the Chief Justice of Bhutan.

## **CHAPTER 4 Position Classification System**

### **Position Classification System**

47. The principles of Position Classification System, as applicable to other Civil Service Personnel, shall govern all other matters not specifically provided in this Act.
48. The Council shall strive to establish:
  - (a) A proper job mapping and position classification of the Judicial Service by profession and nature of duties; and
  - (b) Parity in the entry level positions within and among other professions of Bhutan.

### **Entry Level Qualification**

49. To be eligible for the Judicial Personnel Selection Examinations, a person shall have a minimum of Bachelors of law degree from an institution of repute recognized by the Government and complete a year of Post Graduate Diploma in National Law.
50. Upon selection, the person shall be appointed as Deputy Registrar and placed in position level P4.
51. The Judicial Personnel shall be in position level P4 to PI and EX3 to EX1.

### **Judicial Support Level**

52. The Judicial Support Personnel shall render support services to the Judiciary.
53. The Judicial Support Personnel shall be in position level P5 and S5 to S1.
54. The personnel in the Judicial Support level reaching the highest position level may be considered for change, based on the excellent performance and subject to level change examination after fulfilling the criteria laid down in the rules applicable to other Civil Service Personnel.

### **Entry Level Qualification of Judicial Support Personnel**

55. The personnel in the Judicial Support level shall have the minimum qualification of a Bachelors degree from an institution of repute recognized by the Government and complete a year of National Legal Course.
56. Upon selection through the Judicial Support Personnel Selection Examination, the candidate under section 55 shall be placed in position level P5.

**Judicial General Service Level**

57. The Judicial General Service Level shall mean those personnel who render general services in the Judiciary.
58. Appointment to Judicial General Service Level shall be made by the Council or by authorities to whom such powers are delegated by the Council.
59. The Judicial General Service Level shall be in position level O4 to O1.

**Entry Level Qualification of Judicial General Service Level**

60. The personnel in the Judicial General Service Level shall have a minimum required qualification as prescribed by the Council from time to time.

**Other Levels**

61. The Judiciary shall be supported by Scientific & Technical Support and Technicians & Operators, which shall be in accordance with the laws and rules applicable to other Civil Service Personnel.

**CHAPTER 5  
Position Structure**

**Position Levels**

62. The position level of:
  - (a) The Drangpons of the Supreme Court and the Chief Justice of the High Court shall be as prescribed by law;
  - (b) The Drangpons of the High Court shall be as prescribed by law;
  - (c) The Registrar General of the Supreme Court and Chief Drangpons of the Dzongkhag Courts shall be in position level EX1;
  - (d) The Registrar of the Supreme Court, the Registrar General of the High Court and Drangpons of the Dzongkhag Courts shall be in position level EX2;
  - (e) The Registrar of the High Court and the Drangpons of Dungkhag Courts shall be in position level EX3;
  - (f) The Drangpon Rabjams shall be in position level P1;
  - (g) The Registrars of the Dzongkhag Courts shall be in position level P2;
  - (h) The Registrars of the Dungkhag Courts shall be in position level P3; and
  - (i) The Deputy Registrars of the Courts shall be in position level P4.

## **CHAPTER 6**

### **Appointment of Drangpons to the Supreme Court and the High Court**

#### **Eligibility Criteria**

63. A person eligible for appointment as the Chief Justice of Bhutan, Drangpons of the Supreme Court, Chief Justice and Drangpons of the High Court shall be:
- (a) A natural born citizen of Bhutan; and
  - (b) Not married to a person who is not a citizen of Bhutan.

#### **Appointment of Chief Justice of Bhutan and Drangpons of Supreme Court**

64. The Chief Justice of Bhutan shall be appointed from among the Drangpons of the Supreme Court or from among eminent jurists by the Druk Gyalpo by warrant under His hand and seal in consultation with the Commission.

Provided a candidate for appointment as the Chief Justice of Bhutan shall have a remainder of at least eighteen months of service subsequent to appointment.

65. The Drangpons of the Supreme Court shall be appointed from among the Drangpons of the High Court or from among eminent jurists by the Druk Gyalpo, by warrant under His hand and seal, on the recommendation of the Commission.

#### **Appointment of Chief Justice and Drangpons of the High Court**

66. The Chief Justice of the High Court shall be appointed from among the Drangpons of the High Court, Dzongkhag Courts or from among eminent jurists by the Druk Gyalpo, by warrant under His hand and seal, on the recommendation of the Commission.
67. The Drangpons of the High Court shall be appointed from among the Drangpons of the Dzongkhag Courts or from among eminent jurists by the Druk Gyalpo, by warrant under His hand and seal, on the recommendation of the Commission.

#### **Selection Guidelines**

68. The Commission shall:
- (a) Select and nominate judicial candidate for the post of Drangpons with the requisite qualifications to ensure a qualified, independent and accountable judiciary;
  - (b) Nominate judicial candidates with moral courage and integrity, reputation for fairness and uprightness, decisive, dignified and without bias of religious and regional prejudice;
  - (c) Ensure that the nominees have no political affiliations;
  - (d) Evaluate candidates on the basis of objective criteria and select candidates with those subjective qualities needed for a good judge; and

- (e) Select candidates with a good track record of adhering to established procedure and upholding the rule of law by reviewing past judgments rendered by the candidate.

**Oath of Affirmation**

69. The Chief Justice of Bhutan, Drangpons of the Supreme Court, Chief Justice and Drangpons of the High Court shall take an Oath or Affirmation of Office, as provided in the Schedule of the Constitution, before assuming office.

**Term of Office**

70. The term of office of:
- (a) The Chief Justice of Bhutan shall be five years or until attaining the age of sixty-five years, whichever is earlier; and
  - (b) The Drangpons of the Supreme Court shall be ten years or until attaining the age of sixty-five years, whichever is earlier.
71. The term of office of the Chief Justice and the Drangpons of the High Court shall be ten years or until attaining the age of sixty years, whichever is earlier.

**CHAPTER 7**  
**Selection and Appointment**

**Selection Guidelines**

72. The Council shall:
- (a) Facilitate appointment of suitable Bhutanese to various approved positions in the Judiciary in order to carry out the Judicial responsibilities in the service of the Tsawa-Sum in the most efficient and effective manner;
  - (b) Provide a systematic induction of qualified personnel into the Judicial Service to eliminate ad-hoc recruitment;
  - (c) Facilitate recruitment of only the qualified and suitable person based on merit;
  - (d) Carry out recruitment of Bhutanese for time bound projects and programmes; and
  - (e) Facilitate selection of personnel through an open competitive selection process which shall include selection techniques, such as academic performance, written examination and interviews in conformity with the provisions of recruitment rules and regulations.

**Appointment of Drangpons of the Dzongkhag and Dungkhag Courts**

73. The Drangpons of the Dzongkhag Courts shall be appointed by the Druk Gyalpo by warrant under His hand and seal on the recommendation of the Chief Justice of Bhutan as per the nomination by the Council from among persons having Bachelors of law degree and Post Graduate Diploma in National Law with relevant subjects from Zhung Chen and Dzongkha conducted by the Institute, provided that the person has served as a Drangpon of a Dungkhag Court or Drangpon Rabjam.
74. The Chief Justice of Bhutan, on the recommendation of the Council shall appoint the Drangpons of the Dungkhag Courts or Drangpon Rabjams from among persons having Bachelors of law degree and Post Graduate Diploma in National Law, provided that the person has served as a Registrar of a Court for four or more years in succession or seven or more years as an advocate in succession.

**Tenure**

75. A Drangpon shall enjoy security of tenure as long as he conducts himself appropriately in accordance with this Act.

**Appointment of Registrar General**

76. The Chief Justice of Bhutan shall appoint, on deputation for a period of three years the Registrar General of:
- (a) The Supreme Court from among the Chief Drangpons of Dzongkhag Courts and the Registrar General of the High Court; and
  - (b) The High Court from among the Drangpons of Dzongkhag Courts.
77. The Registrar General shall serve at the pleasure of the Chief Justice of Bhutan but shall not in any case, serve for more than one term consecutively.

**Appointment of Registrar**

78. The Chief Justice of Bhutan shall appoint, on deputation for a period of three years the Registrar of:
- (a) The Supreme Court from among the Drangpons of Dzongkhag Courts; and
  - (b) The High Court from among the Drangpons of Dungkhag Courts.

**Oath of Allegiance and Secrecy**

79. A candidate selected for appointment to the Judicial Service shall take an Oath of Allegiance and Secrecy before joining service in the form and manner prescribed by the Council.

**Application Procedures**

80. All applications for employment shall be made in the form prescribed in the Rules and Regulations.

81. Recruitment and selection to the Judicial Service shall be made on a periodic basis as per the activity calendar of the Council.

82. Appointments to Judicial Service shall:

- (a) Be in accordance with their qualification as prescribed in this Act and the pay shall be fixed at the scale prescribed for that post or position level accordingly; and
- (b) Require selection through the procedure prescribed by the Council.

**Revocation of Unauthorized Appointment**

83. An appointment made in contravention of this Act shall be invalid and the Chief Justice of Bhutan shall revoke such appointment.

**Recruitment on Contract**

84. Recruitment into the Judicial Service on contract both from within and outside the country on a competitive basis may be made to address shortage of human resource requirement in conformity with the provisions of the recruitment rules and regulations.

**CHAPTER 8  
Training**

**Objectives**

85. The Council shall make every effort to provide training opportunities to the Judicial Service Personnel both within and outside the country to:

- (a) Provide opportunity for career advancement;
- (b) Ensure that the personnel acquire the necessary skill and knowledge required to perform a higher responsibility in the respective profession;
- (c) Provide planned training programme in order to maximize professionalism and productivity;
- (d) Facilitate appropriate training and development of human resource so that service personnel become optimally useful;

- (e) Enhance the efficiency, capability and quality of personnel;
- (f) Minimize demand on human resource through acquisition of appropriate technology, skill and knowledge; and
- (g) Fulfill the requirement for trained human resource in the legal fields towards the establishment of a professional judicial service.

#### **Establishment of Bhutan National Legal Institute**

86. Bhutan National Legal Institute (hereinafter referred to as the “Institute”) shall be established for pre and in-service training of the Judicial Service Personnel.
87. The Institute shall conduct the Post Graduate Diploma in National Law and National Legal Course which shall include the relevant subjects from Zhung Chhen.
88. The Board of Management shall have power to choose or prescribe the syllabus in compliance with the responsibilities and functions of the Institute.

#### **Board of Management**

89. The Institute shall have a Board of Management (hereinafter referred to as the “Board”) comprising of five members consisting of:
- (a) The Chief Justice of Bhutan as the Chairperson;
  - (b) The Registrar General of the Supreme Court;
  - (c) The Registrar General of the High Court;
  - (d) One senior lecturer of the Institute; and
  - (e) The Director of the Institute as the member secretary.
90. Administration and management of the Institute shall be vested in the Director of the Institute as per the guidelines formulated by the Board.

#### **Responsibilities and Functions**

91. The responsibilities and functions of the Institute shall be to:
- (a) Conduct pre and in-service courses and trainings for Judicial Service Personnel;
  - (b) Create forum for the exchange of views and ideas on judicial or legal matters amongst the Courts;

- (c) Organize and hold meetings, conferences, lectures, workshops, symposiums and seminars to improve the professional expertise, knowledge and skills of the Judicial Service Personnel;
- (d) Formulate and conduct training and research in various aspects of the administration of justice;
- (e) Provide library facilities and other educational and technological materials for the Judiciary;
- (f) Provide for and organize periodical Information Communication and Technology (ICT) trainings;
- (g) Conduct legal dissemination and awareness programs; and
- (h) Explore exchange of ideas, experience, and programs with other similar institutions both within and outside Bhutan.

**Juridical Status of the Institute**

92. The Institute shall be treated as a legal entity and may:

- (a) Acquire, hold, take on lease or hire, mortgage, sell or otherwise dispose of any movable or immovable property;
- (b) Appoint such other officials as may be, in its opinion, necessary for carrying out the objectives of the Institute; and
- (c) Determine the remuneration and terms of service of the Board members and other officials of the Institute.

**Funds of the Institute**

93. The Government shall allocate adequate fund, which shall be administered and managed by the Board.

**Training Bond**

94. A training bond must be signed as per the Rules and Regulations before proceeding for training.

## **CHAPTER 9 Creation and Abolition**

### **Creation and Abolition of Benches and Posts**

95. Except for the post of Drangpons of the Supreme Court and the High Court, the Chief Justice of Bhutan shall be vested with the authority to approve the creation and abolition of benches and posts of all other Judicial Personnel on the recommendation of the Council.
96. The Council shall also prescribe the total strength of Judicial General Service Level Personnel for each Court.
97. No post shall be created or upgraded for the sole purpose of promoting a Judicial Service Personnel.
98. The additional post created or upgraded shall be included in the approved list of positions and shall be published by the Council.
99. When the promotion of a Judicial Service Personnel is approved, the staff strength shall be updated accordingly in order to reflect the promotion.

## **CHAPTER 10 Code of Conduct**

### **Principles for ensuring Judicial Integrity**

100. Intrinsic to all provisions of this Code are precepts that independence of the Judiciary is neither the right nor the privilege of Drangpons, but it is the right of all the consumers of Justice.
101. An independent, competent and impartial Judiciary is essential to uphold the rule of law, guarantee fair trial, protect the rights and ensure access to Justice.

### **Judicial Code of Conduct**

102. A Drangpon shall conduct himself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the Judiciary.
103. A Drangpon shall perform his judicial duties without fear, favour, bias or prejudice.
104. All Drangpons shall, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the Judicial System.

105. A Drangpon shall not be swayed by partisan interests, public clamour or fear of criticism.
106. A Drangpon shall at all times be conscious that he is under the public gaze and there should be no act or omission which is unbecoming of the high office.
107. A Drangpon shall hear courteously, enquire and decide impartially.
108. A Drangpon shall exercise the judicial function independently on the basis of the Drangpon's assessment of the facts and in accordance with a conscientious understanding of the law.
109. A Drangpon shall maintain order and decorum in proceedings before him. He shall require similar conduct of legal representatives, Court staff and others subject to his influence, direction and control.
110. A Drangpon shall knowingly, while a proceeding is before him, not make any comment in public or otherwise that might reasonably be expected to affect the outcome of such proceeding or impair the fairness of the process. This prohibition shall not apply in the case of making public statements for the due discharge of the Drangpon's official duties.
111. A Drangpon shall disqualify himself from participating in any proceedings in which he is unable to decide the matter impartially or in which he has conflict of interest.  
  
Provided that disqualification of a Drangpon shall not be required if no other Court can deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.
112. The taking of photographs in the courtroom while the Court is in session or the broadcasting or televising of Court proceedings is permitted only to the extent permitted by the Drangpon or authorized by an order of the Supreme Court.
113. A Drangpon shall not do or direct to be done, in abuse of his office or power, any act prejudicial to the rights of any other person knowing that such an act is unlawful or contrary to the law.
114. A Drangpon shall devote his professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in Court and the making of decisions, but also other tasks relevant to the judicial office or the Court's operations.
115. A Drangpon shall maintain high moral standards and refrain from involving in moral turpitude.

116. A Drangpon shall refrain from indulging in habits of associating with litigants and behaviour that infringe upon the performance of official duties or tarnish the image of a Drangpon or the Judiciary.
117. A Drangpon shall not accept any gifts, presents or benefits.
118. A Drangpon shall not engage in financial and business transactions in which he may have a conflict of interest.
119. A Drangpon shall declare his assets and liabilities to the Registry of the Court.
120. A Drangpon shall be apolitical and not associate with any political organization.
121. A Drangpon shall not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family.
122. A Drangpon shall not be a witness to any private documents and agreements nor be summoned to verify any private documents and agreements executed.
123. A Drangpon shall not be a member of any commission, committee, association, arbitration board, or any other organization that may affect the independence of the Judiciary.
124. A Drangpon shall exercise the power of appointment, promotion or performance evaluation on the basis of merit, avoiding nepotism and favouritism.
125. A Drangpon shall submit the list of those cases which are unduly delayed and pending before him.

## **CHAPTER 11**

### **Fiscal Responsibility, Accountability and Liability**

126. Judicial Service Personnel whose official duties and responsibilities require possession or custody of public funds, properties, or important accountable documents shall be liable for their safe custody.
127. The Chief Justice, Chief Judge or Drangpon of any Court shall be primarily responsible for all public funds and properties or any lapse of fiscal responsibilities and duties pertaining to their jurisdiction.
128. Judicial Service Personnel shall be held responsible and accountable for misuse of public funds, misuse of public properties, or any decision or action thereon in violation of this Act or other laws. They shall also be held responsible for all losses, damages or deterioration of such properties caused by negligence or misuse.

129. Judicial Service Personnel shall not be party to any contract or transaction of their respective Court wherein they have personal or pecuniary interest except when it is evident that such contract or transaction is:
- (a) For the best interest of the Judiciary;
  - (b) Due to causes, which are outside the control of the Judicial Service Personnel and could not be avoided by the exercise of due diligence; or
  - (c) Inevitable to prevent further loss and to ensure continuity of judicial operation.

## **CHAPTER 12**

### **Disciplinary Action**

130. The authority to execute and enforce disciplinary action under this Act shall be the Council for all Judicial Service Personnel other than the Drangpons of the Supreme Court and the High Court.
131. The independence of the Drangpons of the Dzongkhag Courts and Dungkhag Courts shall be guaranteed, provided that a Drangpon may be censured or suspended by Chief Justice of Bhutan on the recommendation of the Council for proven misbehaviour.
132. A person shall provide information, data or answer to any query required by the disciplinary authority in the discharge of its responsibilities.
133. The disciplinary authority shall have the power of a Court during inquiry in respect of the following matters:
- (a) Summoning witnesses and or the concerned parties and take depositions during investigation;
  - (b) Production of any public record or a copy thereof from any office or organization; and
  - (c) Furnishing information on matters as in the opinion of the Council may be useful for, or relevant to the proper conduct of an inquiry.
134. The Council may delegate all or any of the powers and functions relating to investigation to an appropriate and competent judicial authority or committee.
135. No investigation shall be conducted, except by a committee consisting of not less than five members.
136. The Judicial Committee shall sign and submit its report to the disciplinary authority. Any qualifying statement or dissenting view shall be reflected in the report.

137. A person related to or associated with a respondent Judicial Service Personnel shall not participate in the investigation or the decision-making process.
138. Investigation and adjudication of disciplinary cases shall be in conformity with laws of the country.
139. The disciplinary authority shall fully state their reasons justifying their decisions in each case.

**Cause for Disciplinary Action**

140. The cause for any disciplinary action against the Judicial Service Personnel shall include:
  - (a) Lack of judicial temperament;
  - (b) Repeated lack of Driglam Namzhag;
  - (c) Habitual absence from duties;
  - (d) Dereliction of officially assigned functions;
  - (e) Neglect of duty, non-compliance with or non-enforcement or non-implementation of lawful and proper orders, directives without justifiable reasons;
  - (f) Abuse of official authority, position, or violation of this Act;
  - (g) Habitual drunkenness;
  - (h) Use of controlled substance and drugs;
  - (i) Physical incapacity or mental aberrations;
  - (j) Conviction of a crime involving moral turpitude; or
  - (k) Sexual harassment, exploitation or taking advantage of the litigants.

Provided, that apart from the above grounds, the cause for any disciplinary action against a Drangpon shall also include any conduct in violation of the Judicial Code of Conduct.

**Decision of the Disciplinary Authorities**

141. Disciplinary Authorities shall render a decision within twenty-one days from the receipt of the investigation report.
142. A copy of the decision rendered by disciplinary authorities shall be submitted to the Chief Justice or the Drangpon of the concerned Court.

143. While imposing penalties, disciplinary authorities shall take into consideration the nature and seriousness of the offence, as well as any mitigating or aggravating circumstances regarding the intent of the respondent Judicial Service Personnel.
144. The appropriateness of disciplinary action, and the degree of discipline to be imposed, shall be determined through a reasonable and reasoned application of this Act and the effect of the improper activity on others or on the judicial system.
145. The Judicial Service Personnel found to have breached the Judicial Code of Conduct may be imposed disciplinary action varying from:
  - (a) Reprimand;
  - (b) Suspension;
  - (c) Withholding of pay increment, reduction of salary below the existing pay scale but with entitlement to increments on due date on the basis of the reduced salary;
  - (d) Withholding of promotion, reversion or demotion to a lower post and position level with salary re-fixed in the pay scale applicable to that lower post and position level; or
  - (e) Removal from service with or without retirement benefits.

**Right to Appeal**

146. Judicial Service Personnel aggrieved by any decision of the disciplinary authority shall have the right to appeal to the Commission or the Council respectively.

**CHAPTER 13**

**Impeachment of the Supreme Court and High Court Drangpons**

147. The Chief Justice of Bhutan, the Drangpons of the Supreme Court, the Chief Justice and Drangpons of the High Court shall be removed only by way of impeachment.
148. The Chief Justice of Bhutan, the Drangpons of the Supreme Court, the Chief Justice and Drangpons of the High Court shall be liable to be impeached only on the ground of incapacity, incompetency or serious misconduct with the concurrence of not less than two-thirds of the total number of members of Parliament.

149. The Chief Justice of Bhutan shall preside over all impeachment proceedings and, in the case of the impeachment of the Chief Justice of Bhutan, the senior most Drangpon of the Supreme Court shall preside.
150. The Attorney General shall submit a written report on the Articles of impeachment to the Speaker.
151. The procedure for impeachment, incorporating the principles of natural justice, shall be laid down by law made by Parliament.

#### **CHAPTER 14**

##### **Removal**

152. The removal may be effected only after:
  - (a) Conducting any inquiry into Judicial Service Personnel's incapability of properly performing the duties of office by reason of physical or mental incapacity; or
  - (b) Establishing that a Judicial Service Personnel is guilty of grave misconduct, incompetence or in violation of the Judicial Code of Conduct.
153. For the purpose of this Act, misconduct includes any conduct, which reasonably brings reproach to the judicial profession.
154. A Judicial Service Personnel shall not be imprisoned on an administrative decision. Any criminal case has to be charge sheeted to the Court.

#### **CHAPTER 15**

##### **Salary, Allowances and Facilities**

##### **Salary**

155. The Council shall ensure that adequate salaries are paid to the Judicial Service Personnel in parity with other Civil Service Personnel to:
  - (a) Ensure judicial independence;
  - (b) Reduce dependency;
  - (c) Prevent corruption;
  - (d) Attract the best candidates with optimal professional qualifications;
  - (e) Provide financial security; and
  - (f) Motivate the Judiciary to concentrate on the administration of Justice.

156. The Council shall ensure equal pay for equal value of work.
157. The salary of the Judicial Service Personnel shall not be reduced during one's term of office, except as provided under section 145 of this Act.
158. There shall be revision of position level, pay scale and other benefits for Judicial Service Personnel in parity with other Civil Service Personnel.
159. The salary, entitlements, privileges and allowances of the Judicial Service Personnel shall be as per their position levels.
160. In case of the Contract Service Personnel, their salary, entitlements, privileges and allowances shall be determined by the contract signed on appointment.

**Residence**

161. A sitting Drangpon shall be entitled to a free and furnished accommodation or in lieu of it he shall be paid twenty percent of his pay as house rent allowance.

**Transport**

162. Every sitting Drangpon shall be provided with a chauffeur driven transport.

**Transfer Grant**

163. The Judicial Service Personnel proceeding to the place of posting shall be entitled to:
  - (a) A transfer grant as applicable to the other Civil Service Personnel; and
  - (b) Personal luggage carriage, etc. in parity with other Civil Service Personnel.

**Medical Facilities**

164. The Government shall provide medical facilities for the Judicial Service Personnel in accordance with the applicable laws or rules.

**Leave**

165. The Judicial Service Personnel shall be entitled to leave in parity with other Civil Service Personnel.

**Travel**

166. Travel shall be undertaken by Judicial Service Personnel to carry out any official assignment and all the entitlements during the travel period shall be in parity with other Civil Service Personnel.

## **CHAPTER 16**

### **Superannuation, Resignation and Retirement Benefits**

#### **Superannuation and Retirement**

167. The Commission and the Council shall provide security to Judicial Service Personnel during his post retirement period in order that he remains content while in service enabling him to perform his duties without fear, favour, bias or prejudice.

#### **Age of Superannuation**

168. The date of birth recorded in the service record at the time of the initial appointment of the Judicial Service Personnel shall be the basis for deciding the age of retirement.

169. Except as otherwise specifically provided by this Act, superannuation shall be effective on the first day of the month following the month in which the actual date of retirement falls.

170. The age of superannuation for Dzongkhag and Dungkha Drangpons shall be sixty years and fifty-eight years for other Judicial Personnel.

171. Notwithstanding this Act, gratuity and other benefits shall be computed as on the actual date of retirement.

#### **Resignation**

172. Judicial Service Personnel may, subject to this Act, on their own volition, resign from service after giving notice of such resignation at least thirty days in advance.

173. Judicial Service Personnel who fail to give the prescribed period of notice of their resignation shall be liable to pay an amount equal to their pay for the number of days that falls short of the prescribed period of notice.

#### **Authority to Accept Resignation**

174. The power to accept a resignation submitted by Judicial Service Personnel shall be vested with the following authorities respectively:

- (a) The Druk Gyalpo if the resignation is submitted by the Chief Justice of Bhutan;
- (b) The Druk Gyalpo on the recommendation of the Chief Justice of Bhutan, if a resignation is submitted by the Drangpon of the Supreme Court, the Chief Justice and the Drangpons of the High Court; or
- (c) The Chief Justice of Bhutan, if a resignation is submitted by any other Judicial Service Personnel.

175. The Commission or the Council shall ensure that the resigning Judicial Service Personnel have complied with the conditions of service set forth in this Act.

**Retirement Benefits**

176. In order to ensure that Judicial Service Personnel contribute in the service of the Tsawa-Sum and to ensure financial security during their post-retirement period, they shall be provided adequate post-retirement benefits.
177. The Council shall define post-retirement benefits and prescribe procedures for sanctioning them.

**Pension and Provident fund Benefits**

178. Every Judicial Service Personnel shall be entitled to pension and provident fund benefits subject to such laws or rules applicable to other Civil Service Personnel.

**Eligibility Criteria for Gratuity**

179. Judicial Service Personnel retiring on superannuation, voluntarily or compulsorily shall be entitled to such amount of gratuity and subject to such conditions as may be prescribed by rules.
180. The Administrative and Finance Section of the respective Courts shall process any document relating to retirement benefits, provided there is no adverse report against the Judicial Service Personnel.

**Continuity in Service**

181. The Chief Justice of Bhutan may condone an interlude in the service of Judicial Service Personnel provided that such an interlude does not exceed two years and the interlude is due to causes which are outside the control of Judicial Service Personnel and could not be avoided by the exercise of due diligence.
182. If an interlude extends beyond the period of two years condonation, such an interlude shall not be counted for the purpose of calculating the gratuity.

**Verification of Service**

183. The services of Judicial Service Personnel claiming gratuity under this Act shall be verified from the service book of the concerned Judicial Service Personnel and certified by the designated authority in the prescribed form.

**Amount of Gratuity**

184. The amount of gratuity payable under this Act shall be computed in accordance with the formula applicable to the other Civil Service Personnel.

**Recovery of losses to public funds**

185. The amount found due from Judicial Service Personnel, if any, at the time of their retirement or demise and not recoverable otherwise shall be recovered from the gratuity payable to them or from the personnel's contribution to the provident fund in consultation with the National Pension and Provident Fund Bureau.

**Sanctioning Authority for Gratuity**

186. The gratuity shall be sanctioned to Judicial Service Personnel by a competent authority to whom such powers are delegated according to the Financial Manual of the Government after following due process of law in the prescribed form.

**Journey on Retirement**

187. Judicial Service Personnel who leaves service for any reason shall be entitled to journey on retirement benefit of an amount equivalent to one month's last basic pay of the Judicial Service Personnel concerned.

**Travel on retirement**

188. A Judicial Service Personnel on retirement shall be entitled to the travel benefit equivalent to his one-month basic pay and subject to such conditions as may be prescribed in the rules provided that the Judicial Service Personnel concerned has rendered a minimum service of three years.

**Carriage Charge of personal effects**

189. A Judicial Service Personnel who leaves service for a reason other than termination, shall be entitled to receive carriage charge of personal effects as may be prescribed in the rules applicable to the other Civil Service Personnel.

190. Family members of expired Judicial Service Personnel shall be entitled to traveling allowance as applicable to the Civil Service Personnel for proceeding to their home town from the place of last posting.

**Employees Group Insurance Benefits**

191. Personnel leaving judicial service shall be entitled to the benefit of Employees Group Insurance as applicable to the other Civil Service Personnel.

**Incidence and Payment of Retirement Benefits**

192. Gratuity and other retirement benefits shall be paid to retired Judicial Service Personnel.

193. Judicial Service Personnel shall claim gratuity and such other terminal benefits from the Court from which they last received salary.
194. In the event the annual increment is due for Judicial Service Personnel on the day following the date of retirement, the annual increment shall be released and it shall be considered for the purpose of calculating all retirement benefits.
195. The gratuity apportionable to an organization other than the Judiciary shall be borne by the concerned organization rounded to complete months, if Judicial Service Personnel have served both in the Judiciary as well as in the organization. The gratuity for the balance period shall be borne by the Judiciary where Judicial Service Personnel served last.
196. Such gratuity payable by the organization shall be remitted to the Judiciary and the details of which shall be recorded in the service book of the concerned Judicial Service Personnel.
197. Nominees of expired Judicial Service Personnel shall be entitled to gratuity and other retirement benefits in accordance with this Act.
198. If there are no nominees of expired Judicial Service Personnel, the gratuity and other retirement benefits shall be disposed off in accordance with the law.
199. Retired Judicial Service Personnel or their survivors or nominees shall not be entitled to gratuity and other retirement benefits if Judicial Service Personnel:
  - (a) Willfully remains outside the country with the knowledge of indictment or charges, as the case may be; or
  - (b) Fails to appear, testify or produce any document relating to their service as Judicial Service Personnel, before an appointed authority or a Court of law without any reasonable justification.

**Nomination**

200. Judicial Service Personnel shall submit to the agency concerned one or more persons as nominees who have the right to receive retirement benefits in the event of demise.
201. Judicial Service Personnel:
  - (a) Who desires to nominate more than one person under this Act shall specify the percentage payable to each nominee;
  - (b) May, at any time, cancel a nomination and submit a new one replacing it;
  - (c) May state in a nomination that if the nominee predeceases, the right conferred upon the nominee shall automatically be conferred to another person or persons as may be specified in the nomination; and

- (d) Not having a family at the time of nomination shall file a new nomination on acquiring a family. If the Judicial Service Personnel fails to file a new nomination, benefits shall be paid to the person nominated earlier or disposed off in accordance with other laws, as the case may be.
202. Every nomination made and every notice of cancellation by the Judiciary shall, to the extent it is valid, take effect on the date on which it is received by the agency concerned.
203. The personnel file and service record of Judicial Service Personnel who are terminated, compulsorily retired or have resigned shall be submitted to the Council.

## **CHAPTER 17**

### **Performance Review and Evaluation**

#### **Review and Evaluation**

204. The performance Review and Evaluation shall:
- (a) Be governed by the principles of transparency, efficiency and accountability. It shall provide mechanisms and tools to promote these principles in the Judicial Service;
  - (b) Enable fairness in career advancement and promote talent, merit, productivity and morale;
  - (c) Enhance both organizational and individual effectiveness by introducing objective measures of performance targets and results;
  - (d) Facilitate maximization of the output of every Judicial Service Personnel so that the individual delivers his services in the best possible manner; and
  - (e) Ensure equal opportunities to every Judicial Service Personnel to develop his capabilities and utilize the potential to the fullest extent to discharge the duties and responsibilities efficiently and effectively.

#### **Performance Rating**

205. The performance rating shall be one of the important factors determining the eligibility for promotion, regularization of service and other incentives. The performance rating for at least three years preceding the year of processing the promotion shall be taken into account.
206. Every Court shall submit, on an annual basis, attested copies of the performance evaluation in the prescribed format with respect to every Judicial Service Personnel in position level P5 and above to the Council in accordance with the prescribed procedures. The Court shall maintain annual performance records with respect to every Judicial Service Personnel.

## **CHAPTER 18**

### **Promotion and Transfer**

#### **Principles of Promotion**

207. Subject to the principles of Position Classification System, as applicable to other Civil Service Personnel, the Council shall determine the promotion criteria to:
- (a) Facilitate the maximization of effective output of every Judicial Service Personnel to serve the Tsawa-Sum in the best possible manner;
  - (b) Ensure availability of opportunities to every Judicial Service Personnel to develop their capabilities and to discharge duties and responsibilities efficiently and effectively;
  - (c) Safeguard against disparities in granting promotion and provide career advancement opportunities to every Judicial Service Personnel; and
  - (d) Ensure a promotion system, which would consider all eligible candidates for promotion.
208. The promotion programme shall be administered based upon the principle that the promotion shall:
- (a) Be considered among other things as one of the means to reward Judicial Service Personnel in a just and fair manner for meritorious services rendered;
  - (b) Not be considered as a matter of right or based on seniority;
  - (c) Be normally granted only to a post in the immediate higher position level and as provided by this Act;
  - (d) Provide opportunities for fast-track promotions to outstanding Judicial Service Personnel as prescribed by rules to promote meritocracy; and
  - (e) Be considered on the basis of performance evaluation report with integrity, efficiency and professionalism being the key requisites.

#### **Authority to Grant Promotions**

209. The authority to grant the promotion of a Judicial Service Personnel shall be:
- (a) The Chief Justice of Bhutan, on recommendation of the Council, if Judicial Service Personnel are in position level P4 and above;

- (b) The Chief Justice of Bhutan, on recommendation of Promotion Committee, if the Judicial Service Personnel are in position level P5; and
- (c) Chief Drangpon or Drangpon, on recommendation of the Promotion Committee, if the Judicial Service Personnel are in position level S5 to S1 and O4 to O1.

**Promotion**

- 210. The promotion of the Scientific & Technical Support and Technicians & Operators shall be in accordance with the laws and rules applicable to other Civil Service Personnel.
- 211. A Promotion Committee shall be constituted within each Dzongkhag or Dungkhaig Court.
- 212. The Council may process the promotion of a Judicial Service Personnel on its own motion if it feels it so necessary on account of long duration of service in a particular position level or if there is sufficient evidence that the Judicial Service Personnel was denied promotion due to discrimination.

**Promotion Criteria**

- 213. A Judicial Service Personnel who has rendered a minimum of four years of satisfactory and active years of service may be considered for promotion, except that in the case of promotion to position level P4 and above, the concerned Judicial Service Personnel must have a Bachelors of law degree and Post Graduate Diploma in National Law.
- 214. Period beyond eighteen months of any single training and any form of leave exceeding three months at a time shall not be counted as part of an active service for the purpose of promotion.

**Proposal for Promotions**

- 215. Every Court shall prepare a list of its Judicial Service Personnel eligible for promotion twice a year, and submit in May and November of each year.
- 216. The respective Court shall submit proposals for promotions to the:
  - (a) Commission through the Member-Secretary, if the Judicial Service Personnel are the Drangpons of the Supreme Court and the High Court;
  - (b) Council through the Member-Secretary, if the Judicial Service Personnel are in position level P4 and above, subject to (a); and
  - (c) Promotion Committee, if the Judicial Service Personnel are in position level P5 and below.

217. Promotions shall be approved only effective either January first or July first of each year.

**Promotion Procedures**

218. All proposals for promotion shall be submitted in the form prescribed by the Council together with an attested copy of the completed performance evaluation forms for the specified number of years. A recent Audit Clearance Certificate shall be attached with the proposal.

**Availability of Vacancy**

219. Promotion to all posts shall be granted only when the availability of such vacant posts are confirmed in accordance with the staff strength approved by the Council.

**Slab Promotion**

220. In the event a Judicial Service Personnel satisfies all criteria for promotion but it cannot be affected due to non-availability of a vacant position, the incumbent shall be considered for award of slab promotion as compensation.

**Revocation of Promotion**

221. A Promotion granted without fulfilling the prescribed criteria or completing the prescribed formalities shall be invalid.

222. The Council shall annul an invalid promotion granted by the High Court, the Dzongkhag Court or the Dungkhaig Court.

223. The Chief Justice of Bhutan shall annul an invalid promotion granted by the Council.

**Transfer**

224. The Council shall facilitate mobility among Judicial Service Personnel so that their services are best utilized and to diversify the experience, knowledge and develop appreciation for social, cultural and economic conditions prevailing in the country through change of post or place of posting.

225. The Council shall affect the transfer of Judicial Service Personnel every three years to prevent unwarranted development due to prolonged stay of an individual in a particular post or place of posting.

**Secondment out of Judicial Service**

226. Judicial Service Personnel may be seconded to any agency or organization, national or international outside the Judicial Service, to promote exposure to new ideas and experiences in accordance with such conditions and limitations as prescribed by rules.

## **CHAPTER 19**

### **Miscellaneous**

#### **Auditing**

227. All accounts of the organization, institutions, and Courts under the Judiciary shall be subjected to audit by the Royal Audit Authority.

#### **Annual Review Meeting or Annual Judicial Conference**

228. In addition to routine periodic meetings, an annual review meeting shall be convened at the Court level and the Annual Judicial Conference at the national level to review:

- (a) Actual achievements related to the plan objectives;
- (b) Plan activities for the ensuing year;
- (c) The internal resources and capacities;
- (d) Its own organizational structure and personnel; and
- (e) The enhancement and strengthening of the Judiciary.

#### **Chairperson of the Meeting**

229. The Chairperson of the meeting shall be:

- (a) The Chief Justice of Bhutan at the national or the Supreme Court level;
- (b) The Chief Justice of the High Court at the High Court level; and
- (c) The Chief Drangpons and Drangpons of the respective Courts at the Dzongkhag and Dungkhang level.

#### **Amendment**

230. The amendment of this Act by way of addition, variation or repeal may be effected only when the Commission or the Council submit a motion to Parliament, subject to the requirement that amendments shall not undermine the effectiveness of the Judicial Service.

#### **Rule Making Authority**

231. The Council shall, from time to time, make rules for effective administration of the Judicial Service or as it deems necessary to carry out and give effect to this Act.

#### **Authoritative Text**

232. In any instance of a difference in meaning between the Dzongkha and the English texts of this Act, the Dzongkha text shall prevail.