
The Sentencing Guideline of Judiciary of Bhutan, 2022



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Judiciary of the Kingdom of Bhutan
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Annexure 1 – Rationale/concept paper for the SGB, 2022

I. Preliminary

1. Authority

This Guideline is promulgated pursuant to sections 30 and 30.1 (b) and (c)¹ of the *Civil and Criminal Procedure Code of Bhutan, (Amendment) 2021*²; and sections 27(f) and (h) of the *Judicial Service Act of Bhutan, 2007*.

2. Title

This document shall be cited as the *Sentencing Guideline of Judiciary of Bhutan, 2022*.

3. Extent of Application

- i. This Guideline shall apply to criminal cases prosecuted or otherwise within the jurisdiction of the Royal Court of Justice;³
- ii. The Royal Court of Justice shall follow the Guideline in sentencing the offenders; unless it is satisfied that it would be contrary to the interests of justice to do so; in such cases, the court shall furnish reasonable justifications;
- iii. The Guideline shall come into force upon its promulgation by the *Royal Judicial Service Council* with an executive order of the Chief Justice of Bhutan.⁴

4. Amendment

The amendment of this Guideline by way of addition, variation or repeal may be affected by the order of the *Royal Judicial Service Council* or the Chief Justice of Bhutan.

5. Construction

Unless the context otherwise requires, the words, phrases and concepts used in this Guideline shall have the same meaning and connotation as in the *Penal Code of Bhutan (the Penal Code)*, *Civil and Criminal Procedure Code of Bhutan (the Procedure Code)* and the respective statutes wherein the penal provisions are enshrined.

¹ Section 30.1(c) inserted by way of amendment in 2021 as “be with regard to the sentencing guidelines to be used by the courts, including on when to apply sentences concurrently or consecutively.

² Amended in 2011 and 2021.

³ As per section 215.18, ‘Royal Court of Justice’ means [any/all levels of] courts of law in Bhutan.

⁴ Section 44 of the *Judicial Service Act, 2007* requires assent of the Chief Justice of Bhutan for all policies, rules and regulations formulated and endorsed by the Council.

6. Authoritative Text

The Dzongkha text shall be authoritative in case of a discrepancy in meaning between the Dzongkha and the English text of this Guideline.

II. Legislative Framework for Sentencing⁵

1. Article 9, Section 5 of the *Constitution* requires the state to endeavor to provide justice through a fair, transparent and expeditious process; which implies that an offender shall be sentenced fairly and appropriately; commensurate with the offence committed by him or her.
2. As per Article 7, Section 16 of the *Constitution*, a person charged with a penal offence has the right to be presumed innocent until proven guilty in accordance with the law.
3. As per Article 7, Section 17 of the *Constitution*, a person shall not be subject to torture, or cruel, inhuman or degrading treatment or punishment.
4. As per Article 7, Section 18 of the *Constitution*, a person shall not be subjected to capital punishment.
3. As per Article 7 Section 15 of the *Constitution*; and section 3 of the *Procedure Code* all persons are equal before the law and are entitled to equal and effective protection of the law without discrimination on grounds of race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or other.
4. Article 21 of the *Constitution* requires the Judiciary to administer justice fairly, without fear, favor or undue delay to inspire public trust and confidence; which entails transparent, consistent and uniform sentencing of offenders for similar offences.
5. The Judiciary is an independent, competent and impartial institution mandated to uphold the *rule of law*, guarantee a fair trial, protect the rights and ensure access to justice as per Section 101 of the *Judicial Service Act, 2007*; this requires the Royal

⁵ *Constitution of Kingdom of Bhutan, 2008; The Judicial Service Act, 2007; Civil and Criminal Procedure Code of Bhutan, 2001[amended in 2011 and 2021; Penal Code of Bhutan, 2004 [amended in 2011 and 2021]⁵; Royal Bhutan Police Act, 2009; Prison Act of Bhutan, 2009; Anti-Corruption Act of Bhutan, 2006(Amended in 2011; Narcotic Drugs, Psychotropic Substances and Substance Abuse Act, 2015[amended in 2018]; Child Care and Protection Act, 2011, amongst others.*

Court of Justice to make independent sentencing decisions⁶ based solely on the objective factors concerning the case.⁷

III. Sentencing Hearing

1. Sections 96.2, 156 and 207 of the *Procedure Code* require the prosecution to prove the charge labelled against a person *beyond a reasonable doubt* before the defendant is convicted and sentenced.
2. Section 96.6 of the *Procedure Code* requires the Royal Court of Justice to convict and *sentence* a person only upon “finding guilt or liability” against him or her.
3. There may be a sentencing hearing during the closing argument in which the defendant may, short of contesting or objecting the high term of sentence and proposing an alternative sentence such as a community sentence or rehabilitation in lieu of incarceration, present *mitigating circumstances* as to why the punishment and penalties should be minimum or lenient if the defendant is convicted.
4. Conversely, the prosecution may, short of objecting the lenient penalty, present *aggravating circumstances* to demonstrate why the sentence should be maximum or harsh to enable the Royal Court of Justice to decide imposition of high-term, mid-term or low-term sentences or consider appropriate alternative sentencing options.
5. A sentencing hearing shall be mandatory in cases where a defendant has entered a plea of guilt, *nolo contendere*, plea-bargaining, revocation of probation, revocation of community sentences, enhancement due to prior conviction, etc.
6. The defendant shall be present in the court during the sentencing hearing and the final judgment of the case.
7. The Royal Court of Justice shall consider the following factors and other aggravating and mitigating circumstances of the case in making a sentencing decision:
 - i. the nature and circumstances of the offense;
 - ii. the history and characteristics of the defendant;
 - iii. the need to protect the public from the defendant;
 - iv. this Sentencing Guidelines;
 - v. the need to avoid sentence disparities among defendants with similar records who have been found guilty of a similar offence; and
 - vi. the need to provide restitution to victims of the offence.

⁶ Section 2 of the *Procedure Code* reinforces the independence of the Judiciary and section 5 requires courts to decide cases solely on the basis of the facts and the applicable laws thereto; interference from any/all quarters is prohibited.

⁷ Chapter 10 (Code of Conduct) of the *Judicial Service Act, 2007* lays down indispensable judicial ethics, integrity and duties for ensuring equitable justice, including sentencing of offenders.

IV. Sentencing Measures

1. The Royal Court of Justice may award one or more of the following sentences to the defendants convicted of various offences as per section 208 of the *Procedure Code* (Amendment) Act, 2011⁸:
 - a. Imprisonment or custodial sentence;
 - b. Alternative sentences such as:
 - i. probation;
 - ii. community sentencing; and
 - iii. suspended sentence
 - c. Fines;
 - d. Compensation;
 - e. Damages; and
 - f. Restitution
2. The Royal Court of Justice may take one or more of the following *additional sentencing measures* in accordance with section 209 of the *Procedure Code*:
 - a. Forfeiture of property;
 - b. Judicial sale of property;
 - c. Financial penalty;
 - d. Cancellation of license/s; or
 - e. Impose any other penalty as deems fit.
3. Further, the Royal Court of Justice may confiscate, recover, and restore the following when a defendant is convicted of an offence in accordance with sections 20, 21, 46, 47 and 48 of the *Penal Code*:
 - a. Property which the victims have been deprived;
 - b. Proceeds of the crimes;
 - c. Weapons or articles used for the commission of the crimes;
 - d. Repay any loss or injury sustained by the victims;
 - e. Any benefit derived from the crime;
 - f. Forfeiture of property;
 - g. Suspend or cancel a license, or a transaction;
 - h. Impound the documents;
 - i. Remove a person from an official position;
 - j. Order payment of appropriate damages for injury, loss or damage sustained; and
 - k. Value of what the victim is deprived of.

⁸ The Legislature repealed provision on capital punishment, which was abolished by *His Majesty the Fourth Gyalpo* in 2004.

4. Additionally, the Royal Court of Justice may grant appropriate damages or reparation for any loss, injury, or deterioration caused to the victim in accordance with sections 36 to 48 of the *Penal Code*.
5. In the case of illegal sale of health-hazardous substances and illegal sale of alcohol, the Royal Court of Justice may order suspension or revocation of the business license as per sections 387, 388 and 389; and sections 390, 391 and 392 of the *Penal Code* respectively.
6. The Royal Court of Justice may order the defendant to make restitution and pay compensation to the victim, including the imprisonment of the person for the number of years calculated based on the minimum wage as per sections 198 and 198.1 of the *Procedure Code (Amendment) Act 2011*.
7. The Royal Court of Justice shall grant *compensatory damages* in case of death, disability, injury or loss to persons as per sections 38 to 43 of the *Penal Code*⁹ as follows:

Sl. No.	Harm/injury	Extent of compensatory damages	Compensatory damages (Nu.)
1.	Death	Maximum of Daily minimum wage of up to 10 years and the cost of 49 days for 7 people (priests) [expenses for the funeral rites]	$125 \times 30 \times 12 \times 10 = 4,50,000.00$ $125 \times 49 \times 7 = 42,875.00$ $= 4,92,875.00$
2.	Permanent disability	Daily minimum wage of up to 10 years	$125 \times 30 \times 12 \times 10 = 4,50,000.00$
3.	Partial disability	Daily minimum wage of up to 7 years	$125 \times 30 \times 12 \times 7 = 3,15,000.00$
4.	Bodily injury	Daily minimum wage of up to 5 years	$125 \times 30 \times 12 \times 5 = 2,25,000.00$
5.	Temporary loss of wages	Actual wages lost	Based on the duration of the loss of wages

8. The Royal Court of Justice shall order that a prisoner be kept in prison in accordance with the conviction order issued by the court as per section 168 of the *Prison Act of Bhutan, 2009*. The date of conviction and release mentioned in the conviction order shall be strictly followed by the prison authorities.

V. Addition and Alteration of Charges

1. The Royal Court of Justice may alter or add to any charge before the judgment is pronounced, and sentence accordingly, to meet the ends of justice, based on the material evidence as per Section 187.3. of the *Penal Code*: Provided:
 - i. Every such alteration or addition shall be read and explained to the accused and given the opportunity to defend the charge/s;
 - ii. If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, the Court may proceed with

⁹ Section 39 amended in 2011

the trial as if the altered or added charge had been the original charge.

- iii. If the alteration or addition is such that proceeding immediately with the trial is likely, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

VI. Concurrent or Consecutive Sentences

1. The Royal Court of Justice may impose *concurrent* or *consecutive* sentences (custodial or imprisonment terms) in accordance with section 210 of the *Procedure Code*, where a defendant is convicted for several counts of charges in the same or different cases.
2. Sentences shall be *concurrent* where the Royal Court of Justice allows a convict to serve sentences, which are awarded for the different charges; or different counts of charges in the same case and the sentence awarded in the different case/s simultaneously, with the convict being released after the longest term ends.
3. Sentences shall be *consecutive* where the Royal Court of Justice requires sentences awarded for all the charges or counts of charges in the same case and the sentence awarded in the different case/s to run one after another, requiring the convict to serve one term immediately following another; till all terms are completed.
4. The Royal Court of Justice shall consider the criminal history of the accused and other factors while deciding concurrent or consecutive sentences:
 - i. the multiple crimes were related to one another;
 - ii. the crimes were committed at different times or in separate places;
 - iii. the accused engaged in violent conduct;
 - iv. the accused is a poses serious danger to the community; and
 - v. the accused has committed a crime while on probation or is a pardonee.
5. The Royal Court of Justice shall deduct the period spent in judicial custody or detention from the overall prison term or sentence awarded to a person convicted and sentenced for an offence by the court as per section 211 of the *Procedure Code*.
6. The Royal Court of Justice shall allow victims and other people harmed by the offenders to file civil suits against the offenders for damages and reparations as per Section 212 of the *Procedure Code*.
7. The Royal Court of Justice shall consider the aggravating and mitigating circumstances while awarding concurrent or the consecutive sentences as per relevant provisions of this Guideline and the *Penal Code*.

8. Unless the Royal Court of Justice specifies that the sentences awarded for the multiple charges or counts of offences in a case shall run consecutively, it will run concurrently. However, the sentences awarded in different cases shall run concurrently, unless it is specified that the sentences shall run consecutively.

VII. Guilty, Not Guilty and *Nolo Contendere* or No Contest Pleas

1. The Royal Court of Justice shall award a sentence when a defendant tenders a different type of pleas in response to the crimes which he or she is charged with committing, as set out in sections 195 and 196 of the *Procedure Code*.
2. *Guilty plea* is an admission of crimes charged, which shall be submitted and affirmed under oath in the appropriate judicial form. Since it avoids a lengthy criminal trial, a *guilty plea* shall be a factor in the determination of the final sentence.
4. *Not guilty plea* is denial or contest for the charges labelled against the defendant, in which a full trial shall be conducted. A defendant risks a potentially higher sentence if he or she is found guilty, after having pleaded not guilty.
5. *Nolo contendere* means ‘no contest’, or when the defendant does not contest the charges nor admit the charges but agrees to accept the punishment, at least the mandatory minimum sentence. However, unlike the guilty plea, the ‘no contest’ plea shall not be used against the defendant in another cause of action.
6. The Royal Court of Justice shall insist on an explanation when the defendant pleads guilty to all the offences charged, to prevent self-incrimination or false imprisonment, as per Section 195.2 of the *Procedure Code*.
7. The Royal Court of Justice shall convict and sentence the offender only when it is satisfied that the defendant has admitted guilt *voluntarily* and the admission appears to be true as per Section 195.3 *Procedure Code*. The court shall ensure that the defendant:
 - i. understands that he or she is forfeiting some of his or her constitutional rights;¹⁰
 - ii. is pleading guilty knowingly and willingly;
 - iii. knows what crimes he or she is accused of and admits to having committed; and
 - iv. knows the consequences of the guilty plea, including a possible prison term.
8. The Royal Court of Justice shall set out conditions and modalities for examination of the charges to which the defendant has not pleaded guilty and awarding of sentence

¹⁰ Right to be presumed innocent until proven guilty in accordance with the law as per Article 7, section 16 of the *Constitution*.

only for the charges to which the defendant has pleaded guilty or *nolo contendere* as per Sections 195.4, 195.5, 196 and 196.1 of the *Procedure Code*.

9. The Royal Court of Justice shall, in case the child enters a plea of guilt or *nolo contendere*, award a sentence in the best interest of the child, in presence of parents, guardian and legal counsels as per section 195.1 of the *Procedure Code*.

VIII. Plea Bargaining

1. The Royal Court of Justice shall award sentences as per sections 197, 197.1, 197.2 and 197.3 of the *Procedure Code* in plea bargain cases.
2. Plea bargain takes place when a defendant pleads guilty to an offence lesser than the offence charged in the criminal trial in exchange for the information and evidence against other defendants.

IX. Compounding of Offences

1. The Royal Court of Justice shall allow compounding of the offences as per sections 70 to 73 of the *Penal Code*.
2. Compounding an offence means not prosecuting minor or non-felony crimes in favor of other options. It is a compromise between the offender and the victim and his or her family for forbearing to prosecute the offender. The compromise involves the accused making good to the victim, while the victim ensures that he or she would not undertake legal action against the accused.¹¹

3. Process of Compounding

- i. The victim and the accused shall seek permission from the Royal Court of Justice for compounding offences. The petition shall state the compromise reached which is duly endorsed by the concerned law enforcement or the prosecuting agencies.
 - ii. On receipt of the petition for compounding, the Royal Court of Justice shall examine the petition and hear both the sides, including the law enforcement or the prosecuting agencies representing the State and determine if compounding of the offence can be allowed in the interest of justice and public interest.
4. Royal Court of Justice shall allow an offence to be compounded only upon payment of compensation for the substantial loss, damage or injury caused to the victims and shall take the following factors into consideration as per sections 72 and 73 of the *Penal Code*:

¹¹ In Buddhism, the heinous acts of patricide, matricide, murdering an arhat, injuring/draining blood of a Buddha/Bodhisattva and inciting dissent or creating schism in the *Sangha* (community of Buddhist practitioners) are beyond atonement or unpardonable and hence non-compoundable (*mtsham med nga*).

- i. Severity of the charges;
- ii. Defendant's past criminal record;
- iii. Potential threat posed to the society; and
- iv. Defendant's age and physical or mental health condition.

5. Except for the recidivists or habitual offenders, the Royal Court of Justice may allow compounding of the following offences as per sections 70 and 71 of the *Penal Code*, as well as offences described in other Acts:

Sl. No.	Class of offence	Compoundable or non-compoundable	Condition
1.	Felony of the first degree	Non-compoundable	Not applicable
2.	Felony of the second degree	Non-compoundable	Not applicable
3.	Felony of the third degree	Non-compoundable	Not applicable
4.	Felony of the fourth degree	Non-compoundable	Not applicable
5.	Misdemeanor	Compoundable	Provided the offender is not a recidivist or habitual offender
6.	Petty Misdemeanor	Compoundable	Provided the offender is not a recidivist or habitual offender
7.	Violation	Compoundable	Provided the offender is not a recidivist or habitual offender

X. Imprisonment or Custodial Sentence

1. Imprisonment means taking away a person's freedom and putting him or her in a state penitentiary. There shall be mandatory or minimum sentences and maximum sentences as per the *Penal Code*.
2. A *mandatory* sentence is one that shall be imposed regardless of any other circumstances. A mandatory sentence provides a mandatory or minimum sentence when an offender is found guilty of a crime.
3. The *minimum* sentence is the *least* sentence that is mandatory to be imposed on the offender. For instance, the minimum sentence for aggravated assault prescribed in the *Penal Code* is one year in prison, which is mandatory.
4. The law lays down *maximum* sentences for all crimes. For instance, the maximum sentence for aggravated assault (misdemeanor) under section 159(b) of the *Penal Code* is 3 years imprisonment.

5. The custodial or imprisonment sentence is classified into a determinate and indeterminate sentences:
 - i. A *determinate sentence* is a prison sentence that has a defined length that cannot be changed by a parole board or other agency. It is a tough-on-crime system because of its mandatory minimum sentences. It leads to greater fairness because when the legislature sets a determinate sentence and courts have little discretion, people who commit similar crimes receive similar sentences.
 - ii. An *indeterminate sentence* consists of a range of terms, a minimum term with no certainty in release date. It will be determined by a parole board that periodically reviews the case. Indeterminate sentences help in decongesting prison and rehabilitating the offender and the prospect of earlier release gives prisoners an incentive to behave well while serving the sentence.

XI. Types of Imprisonment

1. The Royal Court of Justice shall award *imprisonment for life* for the following offences as per sections 7 and 182(b) of the *Penal Code*:
 - i. In case of a felony of the first degree comprising of murder, treason, terrorism or gang rape of a child of 12 years and below;
 - ii. For the offence against the *Ku, Sung, Thuk-ten* and *Zung*;
 - iii. For the offence of illegal manufacturing of weapon of mass destruction;
 - iv. For statutory rape, if the defendant:
 - a) Is in a position of trust or authority towards a child;
 - b) Is a person with whom the child is a relationship of dependency; and
 - c) Is in a relationship with a child that is exploitative of the child.
1. *Imprisonment for life* means deprivation of the freedom of the whole or the remaining life of the convict in accordance with due process of law.¹² An offender sentenced to life in prison shall remain in prison until he or she dies or until pardoned or otherwise commuted to a fixed period, or receives Royal pardon, amnesty or clemency.¹³
2. The Chief of Police shall upon the command of *His Majesty the Druk Gyalpo*, submit the list of prisoners for consideration of amnesty or remission of sentence on the following grounds as per section 172 of the *Prison Act, 2009*:
 - a. good conduct and behaviour ;
 - b. prisoners over 70 years of age who have served 15 years of the sentence; and

¹² Article 7 section 1 of the *Constitution*.

¹³ Article 2 section 16(c) of the *Constitution*.

c. prisoners who are suffering from a terminal illness.

3. There shall be simple imprisonment, rigorous imprisonment and solitary confinement:

a. Simple imprisonment

An offender sentenced to simple imprisonment shall be kept in prison without any hard labor. He or she shall be required to do only light duties. Simple imprisonment shall be awarded for non-felonious offences.

b. Rigorous imprisonment

An offender sentenced to rigorous imprisonment has to do hard labor such as agriculture, carpentry, drawing water, etc.¹⁴ Rigorous imprisonment is obligatory for felony, repeat and dangerous offenders.

c. Solitary confinement

Solitary confinement means keeping the person convicted of an offence isolated and away from any kind of interaction with the outside world.¹⁵ It is the isolation of a prisoner from the society of fellow prisoners by cellular detention. It shall be imposed following a fair procedure and only in exceptional cases.¹⁶

d. Minimum Security Prison

The minimum-security prisons house white-collar offenders who have committed offences of embezzlement or fraud. Although these are serious crimes, they are non-violent in nature and therefore the perpetrators are not considered to be a risk for violence. It provides a dormitory-type living environment, fewer guards, and more personal freedoms.

e. Medium Security Prisons

Medium-security prisons are the standard facilities used to house most criminals. They feature cage-style housing, armed guards, and a much more regimented daily routine than minimum security.

f. High-Security Prisons

¹⁴ Section 151 and 152 of the *Prison Act, 2009* requires prisoners to perform prison labor.

¹⁵ As per section 107(d) and 108(f) of the *Prison Act, 2009*, a prisoner is liable for seven-day solitary confinement for minor prison offences and one-month solitary confinement for major prison offences.

¹⁶ Prisons are classified based on the level of security needed.

The high-security prisons are reserved for the most violent and dangerous offenders. These prisons include far more guards than both minimum and medium security and very little freedom. Each person confined in such a prison is considered to be a high-risk individual.

- g. There are also psychiatric and military prisons.
- h. There are *Central Prison* for the 1st degree, 2nd-degree felony and political prisoners and *Dzongkhag Prison* for the 3rd-degree felony, misdemeanour and petty misdemeanour convicts as per section 21 of the *Prison Act of Bhutan, 2009*.

XII. Classes of Crimes

1. There shall be the following classes of crimes based on the seriousness of the crimes and the corresponding duration of the prescribed prison term as per section 3 of the *Penal Code*:
 - i. **Felony** offences are those for which a prison term of more than 3 years is prescribed;
 - ii. **Misdemeanor** offences are those for which a prison term of less than 3 years is prescribed;
 - iii. **Petty Misdemeanor** offences are those for which a prison term of less than 1 year is prescribed; and
 - iv. **Violation** offences are those for which a fine equivalent to a daily minimum wage of 90 days is prescribed.
2. There shall be the following classes of felony offences based on the degree of seriousness of the offences section 4 of the *Penal Code*:
 - i. Felony of the first degree
 - ii. Felony of the second degree
 - iii. Felony of the third degree
 - iv. Felony of the fourth degree
3. The Royal Court of Justice may grade the offences described in other laws of the country but are not graded as per section 5 of the *Penal Code*.
4. The following shall be the sentencing ranges for the various categories of offences as per sections 7 to 14 of the *Penal Code*:

Sl. No.	Class of Offence	Sentencing Range (custodial/imprisonment)	
		Minimum (year)	Maximum(year)
8.	Felony of the first degree	15	Life in prison
9.	Felony of the second degree	9	Less than 15
10.	Felony of the third degree	5	Less than 9
11.	Felony of the fourth degree	3	Less than 5
12.	Misdemeanor	1	Less than 3
13.	Petty Misdemeanor	1 month	Less than 1
14.	Violation (non-custodial sentence)	A fine equivalent to a daily minimum wage of 1 day	A fine equivalent to a daily minimum wage of less than 90 days

XIII. Enhanced Sentence

1. Enhanced punishment means a longer sentence. Criminal sentencing enhancements increase the possible sentence for a crime. Typically, enhancements relate to the defendant's criminal history or specific details regarding the circumstances of the crime that increases its gravity such as prior convictions, use of weapons, hate and gang crimes, and other aggravating circumstances:
 - i. assault with use or display of firearms, for instance, will attract a longer sentence;
 - ii. drug convictions may attract longer sentences for drug activity near a dzong, lhakhang, school, playground, etc.;
 - iii. crimes against older victims or vulnerable adults; and
 - iv. sex crimes against children and younger persons carry harsher penalties.
 - v. In the repeat offender enhancement cases, upon conviction for the current charge and proof of prior convictions, the Royal Court of Justice shall increase the penalty. Depending on the prior convictions, the defendant shall serve the maximum prison sentence for the charge without parole, or possibly life in prison.
2. The Royal Court of Justice shall award enhanced sentence to the repeat offenders as per section 15 of the *Penal Code* and section 187.1(d) of the *Procedure Code* and *Thrimthue*

payment shall not be allowed if he or she is a habitual offender (the third time offence) as per section 6 (b) of the *Procedure Code* (Amendment Act, 2021):

Sl. No.	Previous level of punishment	Enhanced level of punishment
1.	Violation	Petty Misdemeanor
2.	Petty Misdemeanor	Misdemeanor
3.	Misdemeanor	Felony of the fourth degree
4.	Felony of the fourth degree	Felony of the third degree
5.	Felony of the third degree	Felony of the second degree
6.	Felony of the second degree	Felony of the first degree
7.	Felony of the first degree	Life imprisonment

XIV. Additional Sentence for Re-offender

1. The Royal Court of Justice in *addition* to the original sentence shall award an additional sentence to a defendant who commits a further offence while undergoing or serving the term of imprisonment or sentence; provided he or she shall be liable to be tried for that offence and if convicted, the defendant shall be sentenced accordingly as per section 16 of the *Penal Code* and section 165 of the *Prison Act of Bhutan, 2009*.
2. This shall apply in the case of convicts under probation, suspended sentence and probation, including open-air prisons and recipients of royal pardons and clemency.

XV. Value-based Sentencing

Based on the amount of the monetary value involved in the offence, e.g., embezzlement, bribery, larceny, and other offences, the defendant shall be sentenced as follows, in addition to restitution and payment of damages to the victims as per section 5 of the *Penal Code* (Amendment Act 2021) and sections 18¹⁷ and 19 of the *Penal Code* and relevant provisions of the *Anti-corruption Act of Bhutan, 2006* (amendment Act 2011):

¹⁷ Amendment Act 2011.

Sl. No.	Value (Nu.)	Class of offence to be sentenced	Sentencing Range (years)	
			Minimum	Maximum
1.	Daily minimum wage ¹⁸ for 35 years or more (1,575,000.00)	Felony of the second degree	9	15
2.	Daily minimum wage for 30 years or more (1,350,000.00)	Felony of the third degree	5	9
3.	Daily minimum wage for 15 to 30 years (6,75,000.00 to 1,350,000.00)	Felony of the fourth degree	3	5
4.	Daily minimum wage for 7 to 15 years (3,15,000.00 to 6,75,000.00)	Misdemeanour	1	3
5.	Daily minimum wage for 7 years or less (3,15,000.00)	Petty Misdemeanour	1 month	3 months

XVI. Alternative Sentencing or Community Sentencing

1. Alternative sentencing comprises different forms of punishment that a court may impose on a defendant after he or she has been convicted of an offence, other than an imprisonment term.
2. It is also called community sentencing or non-custodial sentencing. This allows courts to impose a punishment that is tailored to the crime and has the best chance of having a positive impact on society, as well as the defendant.¹⁹
3. The Royal Court of Justice may allow *civil commitment* or non-custodial punishment *in lieu of imprisonment* or sentence, provided the defendant pays compensatory damages to the victims and does not jeopardize public safety, in accordance with sections 25 to 27 of the *Penal Code*.
4. The Royal Court of Justice may allow payment of *fine or money in lieu of the imprisonment*, provided the defendant is not a repeat offender or recidivist; and is not convicted for the commission of felony offences, in accordance with section 28 of the *Penal Code* and section 6 (a) and (b) of the *Penal Code* (Amendment Act, 2021).
5. The Royal Court of Justice may order *community service in lieu of imprisonment* for the defendant convicted and sentenced for the misdemeanour and petty misdemeanour offences, provided the offender does not pose threat to the community and the victim; and there is no likelihood of escape, in accordance with sections 29 and 30 of the *Penal Code*.
6. However, defendants shall meet certain criteria to be eligible for the alternative sentencing. It will depend mainly on the type of crime that was committed and whether

¹⁸ The current daily minimum wage of Bhutan is Nu.125 (equivalent to 1.6 US\$)

¹⁹ Preamble to the *Prison Act of Bhutan, 2009* states that the law was enacted for the welfare, reformation and rehabilitation of the prisoners.

or not the defendant has any prior convictions. Following are the alternative (alternative to imprisonment) sentences commonly used:

- i. Fines;
- ii. Suspended Sentence;
- iii. Probation;
- iv. Restitution;
- v. Community service; and
- vi. Diversion programs

i. Fines

- a. The most common form of alternative sentence is monetary fines. It is often used as an *additional punishment* rather than an alternative, tagging them onto the main sentence.
- b. Generally, fines are imposed to punish the offender in helping the state compensate for the offence, and deter any future criminal acts.
- c. The Royal Court of Justice shall deposit the fines levied on the offenders towards the revenue of the Royal Government of Bhutan.

ii. Suspended Sentence

- a. A suspended sentence is an alternative form of punishment where a court orders a sentence but does not enforce it immediately.
- b. It is usually applied in cases involving non-felony and first-time offenses, especially children.
- c. A suspended sentence prevents the offender from going to prison immediately but is given the chance to stay out of trouble and comply with the conditions imposed by the court.
- d. The Royal Court of Justice shall determine the imposition of alternative sentences based on the type and severity of the crime, the age of the defendant, criminal history, the effect of the crime on the victims and the defendant's remorse.
- e. Suspended sentences can be unconditional or conditional. An unconditional suspended sentence simply suspends the sentence with no conditions to be observed.
- f. If the suspended sentence is conditional, the Royal Court of Justice may impose certain conditions to be fulfilled by the offender such as restriction of movement, periodic reports to the court and police station, completing

specific training programs, doing unpaid community or volunteer works, undertaking a treatment program for alcohol, drugs, rehabilitation, etc.

- g. The Royal Court of Justice shall recommit a person on suspended sentence or a probationer to serve the previous custodial sentence if he or she violates the conditions of release and award a maximum sentence if the offender is convicted of another offence during the time of *suspended sentence*, in accordance with section 34 of the *Penal Code*.

iii. Probation

- a. The Royal Court of Justice may release a first-time, low-risk, non-recidivist and non-dangerous offender who is sentenced for non-felony offences on probation in accordance with section 31 of the Penal Code.
- b. Probation is the conditional release of an offender in lieu of imprisonment sentence imposed. As a part of non-custodial or alternative to imprisonment, the sentence is suspended and the defendant is released back into the community, under the supervision of a probation officer of the Royal Bhutan Police.
- c. The Royal Court of Justice shall impose appropriate conditions on the offender; and may revoke or modify the probation if the offender violates the conditions of probation.
- d. The Royal Court of Justice may impose the following, and other requisite conditions when offenders are released on probation:
 - i. be law-abiding citizens;
 - ii. refrain from possession of firearms;
 - iii. engaged in meaningful pursuits or employed;
 - iv. participate in an educational program;
 - v. restrict movement or remain at specific places;
 - vi. obey the orders of the court and the probation officer;
 - vii. refrain from contact with the victims, such as a former partner in a domestic violence case;
 - viii. refrain from contact with victims of similar crimes such as minors, if the instant offense involves child sexual abuse, or with known criminals, particularly co-defendants.
- e. Additionally, the Royal Court of Justice may require offenders to refrain from the use or possession of alcohol and drugs and may be ordered to submit alcohol and drug tests or participate in alcohol and drug treatment.
- f. The Royal Court of Justice may require offenders on probation be fitted with electronic tags or monitors, to trace their location and trace movements.

iv. Restitution

- a. Restitution is returning or repaying what the victims of crimes have been parted with or deprived of. It is compensating victims for any financial setback caused by the crime, such as for medical expenses or property damage.
- b. Restitution may be used as an additional punishment in some cases, rather than as an alternative.
- c. The payment is designed to make the victims whole and restore them financially to the point they were prior to the commission of the crime.

v. Community Services

- a. Community service is any activity that benefits the community to make up for the wrong done by the offender.
- b. The community benefits from the work that the offender performs and avoids the cost of incarceration while the offender benefits from a lesser sentence and learns from his or her work experience.
- c. The Royal Court of Justice may order an offender to perform community service, usually in exchange for a reduction of fines and; or incarceration.
- d. The Royal Court of Justice may order community service in addition to other alternative sentences.
- e. The Royal Court of Justice may order specific forms of community sentence that relate to the crime charged. For example, an accused found guilty of a drug offense may be sentenced to lecture young adults about the dangers of dealing with drugs. The court may order specific forms of community services such as cleaning of highways, streams and parks, etc.

vi. Diversion Programs

- a. Diversion programs take the defendant out of the ordinary process of prosecution. Diversion programs or deferred adjudication, especially related to cases involving children and first-time offenders in drug offenses are alternatives to prison terms that may result in the dismissal of charges.
- b. The purpose of diversion programs is to allow defendants to show that they have learned from their mistakes and will not repeat them. However, the charges will be brought again if the defendant fails to meet the criteria.

- c. Qualifying defendants include those eligible for parole, those likely to be sentenced to a correctional facility, and those experiencing difficulty under traditional probation and parole.
- d. The goal of diversion programs is to allow a defendant time to demonstrate that he or she is capable of behaving responsibly. Normally, the conditions imposed include some form of counseling and probation and require the defendant to stay out of trouble.
- e. This program promotes public safety through increased accountability with options such as electronic monitoring, drug and alcohol testing, and unannounced home or work visits. The goal is to enact long-term behavioral change via cognitive-behavioural intervention, mental health treatment, substance abuse treatment, life skills development, and educational or vocational training.

XVII. Eligibility for Alternative Sentencing

To be eligible for alternative sentencing, an offender shall meet certain criteria and convince the court why he or she is eligible for it. Factors which the court shall consider for granting an alternative sentence include:

1. The defendant is a first-time offender;
2. The offense was non-violent;
3. The defendant is not a danger to the community;
4. The defendant has steady employment;
5. The crime was a result of drug or alcohol abuse; or
6. The defendant shows promise of completing treatment programs.

XVIII. General Principles of Sentencing

1. Sentencing is the ultimate and most important step in the criminal justice system which takes into account the individual circumstances of each case in awarding a sentence that is just and appropriate.
2. Recognizing the inevitability and necessity of judicial discretion to do justice in individual cases, the sentencing exercise is a systematic process in which a unique sentence befitting the offence and the offender is customized by the court.
3. It is essential to determine the sentence that is appropriate for a particular case and replicable in all other similar cases decided by the courts across the country.
4. Sentencing rules provide a bench mark for fairness, transparency, uniformity, predictability and proportionality in the sentencing process, which will ultimately contribute to society's trust and confidence in the justice system.

5. This Guideline is founded on the following principles of sentencing:

i. Proportionality

Punishment should be proportionate to the seriousness of the offence and reflect the degree of responsibility of the offender for it; while taking into account the unique characteristics of each case. The overall punishment must be proportionate to the gravity of the offending behavior.

ii. Fairness

The sentence should be fair to the victim, offender and society. It means ensuring all people involved are treated equally without discrimination. Fairness requires a sentence that respects the rights of victims, offenders and their families. It requires that the victim's voice is heard, and the personal circumstances of the offender are taken into account, and provides for an appropriate balance between these factors in the determination of a sentence.

iii. Alternative Punishment

It is not necessarily the severity of imprisonment that contributes to deterring offenders, rather it is the certainty of detection and prosecution. Harsher punishment does not necessarily help to address offending behavior. It reflects society's move towards a more rehabilitative and therapeutic approach rather than a punitive one.

iv. Transparency

Sentencing decisions should be taken openly and with reference to standards and principles laid down in this Guideline. The principle of transparency promotes clarity, consistency and predictability, and assists the public to understand sentencing decisions.

v. Uniformity

Offenders who commit similar crimes should receive similar sentences, or similar sentences should be imposed for similar offences committed by offenders in similar circumstances by all the courts.

vi. Consistency

Sentencing decisions should be well-reasoned and based on clearly-articulated sentencing standards and Guidelines that are consistently used by the courts in sentencing.

vii. Public Safety

Criminal sentencing should serve public safety by ensuring that violent offenders

are committed to prison; and that the sentence not only punishes the offender but one that aids in the offender's rehabilitation and reintegration with society.

viii. Totality

Where an offender is to serve more than one sentence, the overall sentence must be just and appropriate in light of the overall offending behavior.

6. In order to ensure fair, proportionate, transparent and uniform sentences for the offenders, the Royal Court of Justice shall:
 - i. consider all relevant factors of a case including the seriousness of the offence, the impact on the victim, other individuals affected by the crime; and the circumstances of the offender;
 - ii. ensure the sentences shall be no more severe than is necessary to achieve the appropriate purposes of sentencing in each case;
 - iii. state reasons for sentencing decisions clearly;
 - iv. base sentencing decisions on this Guideline;
 - v. ensure the sentencing of the offenders reflect the equal treatment of all offenders without discrimination;
 - vi. ensure that offenders receive similar sentences in similar cases; and
 - vii. ensure consistency and predictability of the sentences.

XIX. Objectives of Sentencing

The objectives of this Guideline, amongst others, are to:

1. ensure certainty, uniformity, consistency, and proportionality of punishment;
2. ensure equitable sanctions with respect to relevant sentencing criteria;
3. ensure similarly situated offenders receive similar sentences;
4. ensure a consistent approach to sentencing;
5. provide guidance on factors the court should take into account that may affect the sentence;

6. award sentence based on the harm caused to the victim and culpability of the offender;
7. gradually shift from the custodial sentencing (imprisonment) to alternative and community sentencing for the rehabilitation of the offenders; and
8. ensure consistency and predictability of the sentences and enhance public trust and confidence in the judiciary.

XX. Purposes of Sentencing

Following are the main purposes of sentencing the offenders:

1. Retribution

- i. The purpose of sentencing is to punish the offender to an extent and in a way that is just in all circumstances. A sentence is normally intended as some form of penalty or loss to the offender. Punishment expresses society's disapproval of the offender's criminal behavior; reinforces respect for the law and members of the society, and represents retribution for the society.
- ii. Victims and their families are injured, either physically or emotionally by a crime. The criminal justice system uses sentencing as a means to denunciate criminal behavior. The State achieves this end by taking away freedom, or ordering stiff monetary penalties; thereby condemning or censuring the offending conduct.

2. Deterrence

- i. Another objective of sentencing is both *general deterrence of the public* and *specific deterrence of the offender* from committing the same or similar offences. Sentencing aims to deter further offending by punishment and make the consequences of criminal behavior clear to individuals and society.
- ii. Providing punishment for a crime demonstrates to the public generally that there are consequences for committing a crime. This puts the public on notice of what the boundaries of appropriate behavior are in society.
- iii. Punishments send messages to the criminals that there are consequences for breaking the law; with the hope, that they will not commit crimes in the future as a result of his or her punishment.

3. **Incapacitation**

- i. The criminal justice system is meant to protect the public, to keep society civilized. Commission of crimes demonstrates to society that they cannot be trusted to behave appropriately or cannot control their actions sufficiently. Therefore, criminals need to be taken out of society, or incapacitated, for a period of time or permanently. The ultimate form of removing a criminal from society is the death penalty.²⁰ A sentence of life imprisonment, however, is becoming the norm.
- ii. Sentencing protects the public from the offender and from the risk of more crimes being committed by them. Criminals are incapacitated to commit crimes when they are put in prison, which restricts their activities.
- iii. Sentencing protects the public by removing the offender from society, where necessary, or holding the offender to account through supervision in the community, and taking actions to divert or otherwise prevent the offender from reoffending. This purpose takes into account the wider needs of society.

4. **Rehabilitation**

- i. Rehabilitation is restoring an offender to normal life. Its focus is on changing an offender's behavior to prevent future offending and reduce crime. Rehabilitated offenders acknowledge and move away from their offending behavior. Often this is achieved through therapeutic and practical support.
- ii. Mass incarceration of offenders has proven to be not an effective measure. Moreover, many offenders can change their criminal behavior if they are given the chance and the right circumstances.
- ii. Rehabilitation allows offenders to turn their lives around and rejoin society as productive citizens. This allows the offender to give something back to society for the hurt and harm caused, for instance, by the payment of compensation or through restorative justice, which gives victims the chance to tell offenders about the impact of their crime and receive an apology.

5. **Restitution**

- i. In addition to punishing the criminal, another purpose of sentencing is making the victim whole, to the extent possible. Restitution may be in the form of restoring or repairing any damage inflicted on the victim, i.e.,

²⁰ Death penalty or the capital punishment was officially abolished in Bhutan in 2004 by *His Majesty the Fourth Druk Gyalpo*.

bringing the victim back, as much as possible, to his or her pre-crime status, and hence helps to restore the equilibrium in the society.

- ii. Restitution is appropriate in cases of theft or burglary where offenders can be ordered to pay back the victim, or replace the things damaged. While in some cases, only the punishment may bring some restorative justice to a victim, or his or her family's emotional state. The object of restitution is to make the offenders realize that a crime does not benefit him or her.

6. Reparation

- i. Reparation helps to meet the needs of both the offender and victim by acknowledging the harm caused and allowing an opportunity to redress the offence.
- ii. Reparation provides a greater voice and opportunity to the victims for a sense of closure, while at the same time, providing offenders with the opportunity to make amends for the harm caused and to give something back.

XXI. Sentencing Children and Differently abled Persons

1. The Royal Court of Justice shall award no sentence to a child²¹ below 12 years for any offense committed in accordance with section 114 of the *Penal Code* (Amendment) Act, 2011; but the court may order the parent or guardian to pay damages in accordance with section 117 of the *Penal Code* (Amendment) Act, 2011 and section 111, 159 and 160 of the *Child Care and Protection Act, 2011* (CCPA).
2. The Royal Court of Justice shall award only half of the sentence prescribed for the offence to a child offender above 12 years in accordance with section 115 of the Penal Code (2011 amendment).
3. The Royal Court of Justice shall be guided by the following principles in the adjudication and disposition of the cases related to children as per section 174 of the CCPA:
 - i. the well-being of the child;
 - ii. proportionate sentencing in the best interest of the child;
 - iii. minimum restriction on the personal liberty of the child; or
 - iv. appropriate alternative sentencing.
4. The Royal Court of Justice shall investigate the background and circumstances in which the child is living including family background, performance and conduct in school, educational institutions, society and the conditions under which the offence

²¹ Section 16 of the *Child Care and Protection Act, 2011* defines a "child" as a person below 18 years.

has been committed before any conviction and sentencing decisions are made as per section 175 of the CCPA.

5. The Royal Court of Justice shall have regard to the following factors while sentencing a child for an offence as per section 158 of the CCPA:
 - i. general principles applicable to the sentencing of all persons;
 - ii. child justice principles;
 - iii. nature and seriousness of the offence;
 - iv. child's previous deviant records;
 - v. information about the child, including a pre-sentence report;
 - vi. programs and services established for the child in conflict with the law;
 - vii. victim's interest; and
 - viii. possible opportunities to engage in reformation, rehabilitation, educational programs, employment, etc.
6. The Royal Court of Justice shall in accordance with section 116 of the *Penal Code* (Amendment) Act, 2011 and sections 162 to 173 of the CCPA award non-custodial or alternative sentencing such as probation, suspended sentence, community service, fines, restitution or commit to rehabilitative or corrections institutions.
7. The Royal Court of Justice shall not convict and sentence a person if the defendant lacked the capacity to discern the criminality of the conduct during the commission of the offence owing to *mental disability* in accordance with sections 118 and 119 of the *Penal Code*.
8. The Royal Court of Justice shall order the parents and guardians of the child to pay damages to the victims under section 117 of the Penal Code (2011 amendment) and sections 159 and 60 of the CCPA.

XXII. Principles for Sentencing Children

1. The Royal Court of Justice considers the principles and objectives of sentencing children in Sections 3 to 15 of the CCPA.
2. When sentencing children or young people Royal Court of Justice shall have regard to the principal aim of the child justice system, to prevent offending by children; and the welfare or the best interest of the child.
3. While the seriousness of the offence shall be the main basis, the approach to sentencing shall be individualistic and focused on the child, as opposed to offence focused. For a child, the sentence shall focus on rehabilitation where possible.
4. The Royal Court of Justice shall consider the effect the sentence is likely to have on the child or young person, both positive and negative, as well as any underlying factors contributing to the offending behavior.

5. The custodial sentence (imprisonment) shall be a measure of last resort for children. It may only be imposed when the offence is so serious that no other sanction is appropriate
6. Royal Court of Justice shall avoid criminalizing children but encourage them to take responsibility for their own actions and promote re-integration into society rather than to punish.
7. Restorative justice disposals shall be of particular value for children as they can encourage them to take responsibility for their actions and understand the impact their offence may have had on others.
8. Royal Court of Justice shall consider a child's susceptibility to peer pressure and other external influences and changes taking place during adolescence leading to experimentation, resulting in criminal behavior.
9. Royal Court of Justice shall consider the factors that mitigate the culpability of a child since the children are not fully developed and they have not attained full maturity, which impacts their decision making and risk-taking behavior.
10. The Royal Court of Justice shall consider the extent to which the child has been acting impulsively and whether his or her conduct has been affected by inexperience, emotional volatility or negative influences.
11. The Royal Court of Justice shall give equal importance to the emotional and developmental age as well as the chronological age of the children.
12. The Royal Court of Justice shall consider that a child is likely to benefit from being given an opportunity to address their behavior and may be receptive to changing their conduct without undue penalization or stigma; especially as a court sanction might have a significant effect on the prospects and opportunities of the child and hinder reintegration into society.
13. The Royal Court of Justice shall consider that an offending by a child or young person is often a phase that passes fairly rapidly and so the sentence should not result in the alienation of the child or young person from society if that can be avoided.
14. The Royal Court of Justice shall consider that punishment is likely to be felt more heavily by a child or young person in comparison to an adult as any sentence will seem longer due to their young age.
16. In having regard to the welfare or the best interest of the child, the Royal Court of Justice shall consider:
 - i. any mental health problems or learning difficulties/disabilities;

- ii. any experiences of brain injury or traumatic life experience (including exposure to drug and alcohol abuse) and the developmental impact this may have had;
 - iii. any speech and language difficulties and the effect this may have on the ability of the child or young person (or any accompanying adult) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction;
 - iv. the vulnerability of children and young people to self-harm, particularly within a custodial environment; and
 - v. the effect on children and young people of experiences of loss and neglect and/or abuse.
17. Rehabilitation shall be the principal consideration for sentencing children, and the Royal Court of Justice shall consider the following factors when sentencing a child:
- i. the need to strengthen and preserve the relationship between the child and his and her family;
 - ii. the desirability of allowing the child to live at home;
 - iii. the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance;
 - iv. the need to minimize the stigma to the child resulting from a court decision;
 - v. the suitability of the sentence to the child;
 - vi. if appropriate, ensuring the child is aware of his and her need to take responsibility for any action that is against the law; and
 - vii. if appropriate, the need to protect the community, or any person, from the violent or other wrongful acts of the child.

XXIII. The Sentencing Process

1. This Guideline is a mechanism that enables the implementation of determinate sentencing.
2. This Guideline is the rules which enable courts to arrive at an appropriate sentence based upon the offence and offender characteristics.
3. The Royal Court of Justice shall take several factors into consideration based on the individual case, such as the seriousness of the offence, harm caused to the victim, the offender's level of blame, criminal record, personal circumstances and whether he or she has pleaded guilty. These factors are essential for determining the type of sentence as well as the duration and the additional requirements that might be imposed.
4. When considering a sentence, the Royal Court of Justice shall have reference to the law, including the mandatory minimum and the maximum statutory sentence prescribed by law; and the factors to be considered to work out the appropriate sentence as per the following processes.

5. **Offense Characteristics**

The ranking of the seriousness of offenses shall be based on how the crime is defined by the legislature, not on how a particular offender committed a particular crime. For example, theft of an unoccupied building would be ranked as less serious than assault with a weapon.

6. **Offender Characteristics**

- i. Offender characteristics are things that are unique to a particular offender. Examples include the number and type of prior offenses (i.e., felonies, misdemeanors, petty misdemeanors) or whether the offender was under a custody status at the time of the offense (e.g., probation or jail).
- ii. The offense and offender characteristics are then placed on a sentencing grid or are assigned points on a worksheet, and the recommended sentence is derived from it. The recommended sentences are generally believed to be appropriate for all “typical” cases sharing the same or similar offense and offender characteristics.
- iii. If the crime or the offender is truly “atypical,” meaning there is something about the way this crime was committed or about the particular offender that is different enough from a typical case of this type, then a *departure sentence* may be more appropriate than the recommended sentence.

A *departure* is simply a sentence that is something other than the sentence recommended under this Guideline. It may be harsher than called for in the guidelines (e.g., imposing prison when the guidelines call for probation or imposing a longer prison sentence than recommended); or it may be less harsh than called for in the guidelines (e.g., imposing probation when the guidelines recommend prison, or imposing a shorter prison sentence than recommended).

XXIV. Step One: Determining the Offence

A. Category of Offence

1. The Royal Court of Justice shall determine the category of offence based on the *culpability* of the offender and the *harm* caused, or which might have been caused, by the offence. As either or both culpability and harm increase, so may the seriousness of the offence:
 - i. Category 1 - Higher culpability and greater harm (HCGH)

- ii. Category 2 - Higher culpability and lesser harm (HCLH)
 - iii. Category 3 - Lower culpability and greater harm (LCGH)
 - iv. Category 4 - Lower culpability and lower harm (LCLH)
2. The assessment of offence shall be a key factor in deciding the appropriate type of sentence, such as a fine, a therapeutic sentence, or a custodial sentence.
 3. The assessment of offence shall also help in deciding the level of sentence to be imposed, i.e., the amount of fine, the requirements to be included in the therapeutic sentence, or the length of a custodial sentence.

B. Culpability

1. Culpability is how much the offender is to blame for the offence. It is the extent to which an offender is responsible for an offence and for the harm he or she caused.
2. Generally, the more culpable a person is, the more serious the offence; and the more severe the sentence.
3. To determine an offender's culpability, the Royal Court of Justice shall consider the offender's intention, awareness and motivation for committing the offence.
4. The Royal Court of Justice shall also consider factors such as whether the offence was:
 - i. Committed by an offender in complete control of his or her own actions;
 - ii. Committed with the offender's knowledge of its consequences; or likely consequences; or only in careless or negligent disregard of the consequences; or if the harm is caused by the recklessness of the offender;
 - iii. A result of planning or premeditation on the part of the offender;
 - iv. Caused due to sudden and grave provocation of the victim;
 - v. Committed while in possession of a weapon;
 - vi. Was committed by an offender whose age and maturity are low, or the mental health at the time of committing the offence was impaired.
5. The above conditions shall not necessarily apply in strict and absolute liability offences; where the commission of act itself shall be adequate to establish the culpability. However, an intention to commit harm, recklessness, or knowledge involved in committing the offence may still be relevant in deciding the sentence.

C. Harm

1. An offence that is generally regarded as more serious entails a greater amount of harm.
2. The Royal Court of Justice shall take into account the nature and seriousness of the offence, including any physical, mental or emotional harm to a victim who may have been exposed to, or a witness to the offence.
3. The Court shall in assessing the level of harm, have regard to any victim statement which has been put before it, to the extent that it considers the information in the statement to be relevant to the offence.
4. The harm may include physical or mental injury as well as the risk of harm. It includes harm caused to an individual or property, or the society and the environment.
5. In offences where there was a risk of harm, but no actual harm resulted, the Royal Court of Justice shall consider the nature of the offender's conduct, the likelihood of harm occurring, and the gravity of the harm that would have resulted.
6. The following are some factors that may be relevant in assessing harm, but not limited to:
 - i. Deliberate degradation or humiliation of a victim;
 - ii. Multiple victims;
 - iii. A sustained offence or repeated offences against the same victim;
 - iv. An especially serious physical or psychological effect on a victim, even if unintended;
 - v. In property offences, high value including the sentimental value of property to the victim, or substantial consequential loss, e.g., where theft of a property causes serious disruption to a victim's life or business.

D. Complexity

1. Assessing the offense and its seriousness may be complex, particularly where there is an imbalance between culpability and harm.
2. In some cases, the harm that results may be greater than the harm intended by the offender. In that event, culpability will be influenced by the extent to which the offender ought to have foreseen harm.

3. In other cases, the offender’s culpability may be high, although there is a low level of harm.

XXV. Step Two: Select the Sentencing Range

1. Having determined the category of offence as outlined in Step One, the Royal Court of Justice shall then select the starting point to reach a sentence within the range based on the culpability and harm. The starting point shall apply to all offenders irrespective of plea or previous convictions.
2. Provisional sentencing range shall be identified and assessed based on the level of harm and culpability from the grid as follows:
 - a. The level of *harm* caused by the offence is divided into bands of:
 - (i) Slight;
 - (ii) Moderate; and
 - (iii) Severe.
 - b. The offenders’ *culpability* is divided into bands of:
 - (i) Lesser;
 - (ii) Medium, and
 - (iii) Greater.

Harm Culpability	Slight (SL)	Moderate (MH)	Severe (SH)
Lesser (LC)	LS (LCSH) 1	LM (LCMH) 2	LS (LCSH) 3
Moderate (MC)	ML (MCSL) 4	MM (MCMH) 5	MS (MCSH) 6
Greater (GC)	GS (GCSL) 7	GM (GCMH) 8	GS (GCSH) 9

- c. The Royal Court of Justice shall apply this grid formula to decide a sentence with due regard to the statutory provisions applicable to the sentencing of the offender, including any maximum and minimum sentence.

Example: Aggravated Battery

In a case of aggravated battery, which is an offence of misdemeanour, the Penal

Code of Bhutan prescribes a minimum sentence of one year and a maximum of less than three years.

- (d) The Royal Court of Justice shall determine the offender's culpability and the harm caused, or intended, by reference to the factors below.
3. Culpability is the legal responsibility for a criminal act, an individual's blameworthiness and the quality of being culpable. It refers to the mental state (*mens rea*) that must be proven for a defendant to be held criminally liable.

Culpability

The level of culpability is determined by weighing all the factors of the case. Where there are characteristics present, that fall under different levels of culpability, the Royal Court of Justice shall balance these characteristics giving appropriate weightage to the relevant factors to reach a fair assessment of the offender's culpability.

A Greater Culpability

1. A significant degree of planning or premeditation
2. Vulnerability of the victim due to age, personal characteristics or circumstances
3. Use of a highly dangerous weapons
4. Strangulation, suffocation, asphyxiation, etc.
5. Played a lead role in conspiracy and execution of the criminal activities
6. Prolonged or persistent harm; etc.

B Medium Culpability

1. Use of a weapon or weapon equivalent which does not fall within category A
2. Played a lesser role in the conspiracy and execution of the criminal activities
3. Cases falling between category A or C because:

- a) Factors in both slight and severe categories of harm are present which balance each other out; and/or
- b) The offender's culpability falls between the factors described in lesser and greater culpability.

C Lesser Culpability

1. No weapon used
2. Excessive self defense
3. Impulsive or spontaneous and short-lived assault
4. Mental disorder or learning disability, where it is linked to the commission of the

offence.

4. Determination of Harm

Category One – Slight Harm It is a harm with some level of physical injury or psychological harm with limited impact upon the victim.
Category Two – Moderate Harm It is a harm falling between categories 1 and 3.
Category Three – Severe Harm It is a serious physical injury or serious psychological harm and/or substantial impact upon the victim.

5. Having determined the category of harm and culpability, the Royal Court of Justice shall select the sentencing range as indicated in the grid below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm			
Culpability	Slight (SH)	Moderate (MH)	Severe (SH)
Lesser (LC)	(LCSH) 1 year	(LCMH) 1 year 6 months	(LCSH) 2 years 3
Medium (MC)	(MCSH) 1 year 6 months	(MCMH) 2 years	(MCSH) 2 years 6 months
Greater (GC)	(GCSH) 2 years	(GCMH) 2 years 6 months	(GCSH) 2 years 11 months 29 days

6. Therefore, the Royal Court of Justice may impose one of the following provisional sentences based on and culpability of the offender and harm caused to the victim:
- Lesser Culpability Slight Harm (LCSH) - 1 year
 - Lesser Culpability Medium Harm (LCMH) – 1 year 6 months
 - Lesser Culpability Severe Harm (LCMH)– 2 years

- d. Medium Culpability Slight Harm (LCSH) – 1 year 6 months
- e. Medium Culpability Medium Harm (MCMH) – 2 years
- f. Medium Culpability Severe Harm (MCSH) – 2 years
- g. Greater Culpability Slight Harm (GCSH) – 2 years
- h. Greater Culpability Medium Harm (GCMH) – 2 years 6 months
- i. Greater Culpability Severe Harm (GCSH) – 2 years 11 months 29 days

XXVI. Step Three: Consider Aggravating and Mitigating Factors

1. Once the sentencing range has been identified, the Royal Court of Justice shall decide on the minimum or maximum to reflect the aggravating or mitigating factors, if any, that impact the culpability of the offenders and/or harm caused by the offence to reach a provisional sentence.
2. Mitigating factors are details about the offender and the offence that tend to reduce the seriousness of the offence or offender's culpability thereby reducing the severity of the sentence.
3. Aggravating factors are details about the offence, the victim, and/or the offender that tends to increase the seriousness of the offence or person's culpability thereby increasing the severity of the sentence received.
4. The Royal Court of Justice may consider the following, and other appropriate aggravating and mitigating circumstances for sentencing the offenders as per sections 17, 23 and 24 of the *Penal Code*:

i. Mitigating Factors

- a. The offender has no record of a prior criminal conviction;
- b. The crime is committed while the offender was under the affliction of extreme mental or emotional distress;
- c. The crime is committed accidentally;
- d. The victim is a participant in the offender's criminal conduct or consented to the criminal act;²²
- e. The crime is committed under circumstances that the offender believed of having a reasonable justification or extenuation for the conduct;
- f. The offender is an accomplice in a crime committed by another person and the defendant's participation in the crime is minor;
- g. The offender acted under duress or the domination of another person; or
- h. At the time of the crime, the capacity of the offender to appreciate the wrongfulness of the conduct or to conform the conduct to the requirements of law was impaired on account of mental disability or intoxication.

²² Contributory negligence or self-victimization as per Section 38 of the *Penal Code*.

ii. Aggravating Factors

- a. The crime is committed by an offender, who has previously been convicted of a crime that was punishable by imprisonment or a crime of the same or similar nature;
- b. At the time of the commission of the crime, the offender also committed another crime;
- c. The offender knowingly created a grave risk of death or serious bodily injury to another person;
- d. The offender negligently caused bodily injury to another person with a deadly weapon; or
- e. The crime is especially heinous, atrocious, or cruel thus manifesting exceptional depravity on behalf of the offender.

iii. Accomplice Liability

- a. The Royal Court of Justice may, pursuant to section 64 of the *Penal Code*, impose the following sentence if it is convinced that the offender is an accomplice in the commission of an offence:
 - i. A sentence of one degree lower than the degree awarded to the person who had committed the crime; or
 - ii. Half the penalty awarded to the person who had committed the crime, if the offence is a petty misdemeanor.
- b. The Royal Court of Justice shall not impose a sentence on the offender if he or she is not an accomplice but a victim of the crime; or has terminated the accomplice relationship as per section 65 of the *Penal Code*.

iii. Approver Evidence

Pursuant to sections 66 and 67 of the *Penal Code*, the Royal Court of Justice in order to obtain evidence, testimony, true and full disclosure of facts and circumstances relating to the offence against another suspect for the same or a different crime which is of serious nature may:

- a. tender *pardon* to the defendant incriminated in the same or a different offence;
- b. allow the defendant to be *sentenced for a lesser crime*; or
- c. award the defendant a *lesser punishment* for the offence charged.

XXVII. Step Four: Determining the Final Sentence

1. Having completed One to Three, the Royal Court of Justice shall determine the appropriate sentence. This is the sentence that is appropriate for the offence after consideration of all of the matters contained in steps One to Three of this Guideline but *before* any adjustment as a result of steps Five to Eight of this Guideline.
2. When determining the provisional sentence, the Royal Court of Justice shall have regard to the principles and purposes the sentence is intended to achieve.
3. The Royal Court of Justice shall also have regard to statutory provisions relating to the specific offence for which the offender is being sentenced.

XXVIII. Other Steps (Steps Five to Eight)

Steps Five to Eight cover other considerations, which may not apply in every case, but where they do, they should be taken into account in arriving at the final sentence.

XXIX. Step Five: Reduction for Guilty Pleas

This step applies where the offender has pleaded guilty to the offence or offences for which he or she was charged.

1. Where an offender has pleaded guilty, the Royal Court of Justice may consider reducing the sentence to be imposed, what is generally known as a ‘discount’ to the provisional sentence.
2. Where a guilty plea is indicated at the first stage of proceedings a reduction of one-third shall be made. The first stage will normally be the Preliminary Hearing at which a plea or indication of plea is sought and recorded by the Royal Court of Justice.
3. Where a guilty plea is indicated after the first stage of proceedings a reduction of a maximum of one quarter should be made.
4. The reduction may be affected if the guilty plea is entered during the course of the evidence or cross-examination hearing.
5. The Royal Court of Justice shall not increase a sentence because the person pleaded not guilty since a person charged with a criminal offence is entitled to plead not guilty and defend him/herself and to have the case proved against him or her.
6. Notwithstanding the extent of any reduction for guilty plea as indicated above, careful consideration shall be given in case of offences of a first-degree felony.

XXX. Step Six: Consider Totality Principle

1. The Royal Court of Justice shall apply the *totality principle* when sentencing an offender for multiple offences or when sentencing an offender who is already serving an existing sentence.
2. When there is more than one offence on the same complaint or indictment, the Royal Court of Justice shall either sentence a defendant convicted of multiple offences concurrently or consecutively²³.
3. The principle of totality comprises the following elements:
 - i. The Royal Court of Justice shall while sentencing an offender award a sentence by considering the totality of the criminal behavior which is just and appropriate irrespective of whether the sentence is structured as concurrent or consecutive.
 - ii. It is usually impossible to arrive at a just and proportionate sentence for multiple offences simply by adding together notional single sentences. It is necessary to address the offending behavior, together with the factors personal to the offender as a whole.
4. **Concurrent sentencing** is when the court orders a defendant convicted of multiple offences to serve multiple sentences simultaneously.
5. The Royal Court of Justice may award concurrent sentences in the following circumstances:
 - i. Offences arising out of the same incident or facts, for instance, robbery with a weapon where the weapon is ancillary to the robbery and is not distinct and independent of it.
 - ii. There is a series of offences of the same or similar kind, especially when committed against the same person, for instance, repetitive embezzlement of public funds by a civil servant on different occasions.
6. **Consecutive sentencing** is when the court orders a defendant convicted of multiple offences to serve his/her sentences one after other.
7. The Royal Court of Justice may award consecutive sentences in the circumstances where offences arise out of unrelated facts or incidents. It means that where two offences committed during the course of a single episode are of a completely different nature and each incident

²³ Section 210 of the *Civil and Criminal Procedure Code, 2001*.

involved significant or extreme gravity, it is likely that some accumulation will be necessary to address the criminality of the two.

- 8 Multiple victims and discrete offending usually require partly consecutive sentences, for instance, dangerous driving, sexual assault, assault and wounding, breaking, enter and robbery.

Scenario 1

Where the defendant is convicted of illicit trafficking of narcotic and psychotropic substances and battery, the battery is not the essence or the intrinsic part of the drugs offence and requires separate recognition.

Scenario 2

Possession of two different kinds of drugs may not be regarded as one episode of criminality in a case of “deemed” supply.

Scenario 3

In the case of sexual molestation of multiple victims, the fact that there is more than one victim will generally require an increase in the otherwise appropriate sentence than where only one victim was involved. A prudent measure of cumulation is necessary where the criminal conduct is capable of being described as discrete offences.

Scenario 4

In case of dangerous driving with multiple victims, separate sentences should usually be fixed which are made partly concurrent and partly consecutive. Failure to accumulate those sentences, at least partially, will be a failure to acknowledge the harm done to the individual victims.

Scenario 5

Where there are two victims involving wounding (assault) committed in the course of a single extended criminal episode, partial accumulation may be made.

Scenario 6

Where there are multiple counts of robbery committed within a day, imposing fixed terms for all will be inappropriate in the context of serious offences such as robbery.

7. Offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences, for instance where offences of domestic violence or sexual offences are committed against the same or different individual.

8. While determining the sentencing length in consecutive sentencing, the Royal Court of Justice shall test the overall sentence(s) against the requirement that they be just and proportionate:
 - i. impose a sentence that is proportionate to the gravity of the offence or offences, the harms done to crime victims, and the blameworthiness of offenders;
 - ii. when reasonably feasible, impose a sentence that seeks to achieve offender rehabilitation, general deterrence, incapacitation of dangerous offenders, restoration of crime victims and communities, and reintegration of offenders into the law-abiding community provided these goals are pursued within the boundaries of proportionality above; and,
 - iii. render a sentence that is no more severe than necessary to achieve the applicable purposes of sections (i) and (ii) above.
9. The Royal Court of Justice shall follow, where applicable, the following totality principles in sentencing:
 - ii. In applying the *principle of totality*, the courts need to ask whether the sentence for one offence can comprehend and reflect the criminality of the other offence.
 - iii. If the sentence for one offence can be comprehended and reflect the criminality of the other, then the sentences ought to be concurrent, otherwise, there is a risk that the combined sentences will exceed that which is warranted to reflect the totality of the two offences.
 - iv. If not, the sentence should be at least partially cumulative otherwise there is a risk that the total sentence will fail to reflect the total criminality of the two offences. This is so regardless of whether the two offences represent two discrete acts of criminality or can be regarded as part of a single episode of criminality.
 - v. Generally, the court may impose concurrent sentences where the offences arise out of one criminal enterprise, but the practice should not be followed where wholly concurrent sentences would fail to take account of differences in conduct.
13. The court shall be cautious when applying the totality principle. Public confidence in the administration of justice requires the courts to avoid any suggestion that what is in effect being offered is some kind of a discount for multiple offending.

XXXI. Step Seven: Consider Custodial Period

The Royal Court of Justice shall in deciding the length and commencement date of the custodial sentence, have regard to the time spent in custody or detention.²⁴

XXXII. Step Eight: Compensation and Ancillary Orders

1. In all cases, the Royal Court of Justice shall consider whether to make compensation and/or other ancillary orders.
2. Ancillary orders are orders which are imposed by the Royal Court of Justice in addition to a sentence or, in some instances, as an alternative to the sentence which the court could have imposed.

XXXIII. Step Nine: Sentencing and Reasons

The Royal Court of Justice shall give reasons or justification for the appropriate final sentence awarded to the offender including the ends it seeks to achieve in the public interest.²⁵

²⁴ Section 211 of the Procedure Code.

²⁵ Section 96.3 of the Procedure Code.

Annexure 1

Rationale

Sentencing or punishment of offenders is a message to the offenders that the act or omission committed by him or her is prohibited by the society and the violations shall be visited by unpleasant consequences. Sentencing is critical to legitimizing the rule of law and maintaining society's confidence in its justice system. It has to be effective and commensurate with the offence. Therefore, while sentencing an offender, the court must have regard to the punishment of offenders, reduction of crime by deterrence, the reform and rehabilitation of offenders, the protection of the public, and the making of reparation by offenders to persons affected by their offences.

Sentencing guidelines are a set of judicial standards or rules to establish rational and consistent sentencing practices. The existing piecemeal approach is imbued with a lack of transparency which undermines public confidence in sentencing and the justice system. A sentencing guideline is expected to improve awareness, understanding and clarity in how sentencing decisions are reached by the courts, provide a definitive benchmark of the elements that all sentences should incorporate and reflect, and ensure compliance with international standards and obligations.

When a crime is committed and the police arrest and charge someone, the *Office of the Attorney General*²⁶ and the *Royal Bhutan Police*²⁷ decide whether or not to charge and prosecute him or her in a court of law for the commission of the offence. If the person is prosecuted, he or she becomes a *defendant* in the court. If he or she either pleads guilty or is found guilty beyond a reasonable doubt by the court, he or she becomes an *offender* and will be *convicted* of the offence and *sentenced* by the court to carry out appropriate punishments.

The sentence is based on the harm done to the victim and the responsibility the offender owes to society due to the crime. The sentence imposed on an offender should reflect the crime he or she has committed and be proportionate to the seriousness of the offence. The court decides how much weight to be given to each factor in the case they are dealing with. A *sentence* is a punishment a court decides to be given to an offender, who has been convicted of the crime as prescribed by law. It comes at the end of a prosecution.

The legislature sets a minimum and maximum sentences for various offences consolidated in the Penal Code.²⁸ This invests inevitable and necessary discretion with the courts to do justice in individual cases, considering their unique characteristics and circumstances. Sentencing guidelines help courts identify the type and length of sentence to be imposed and set out the factors courts should consider before making final sentencing decisions. When courts follow the same rules and standards of sentencing, they take uniform and consistent approaches to

²⁶ Section 11 of the *Attorney General Act, 2007*.

²⁷ Section 7 of the *Royal Bhutan Police Act, 2009* authorizes the *Royal Bhutan Police* to prosecute "any person for any criminal offence other than petty misdemeanor and above."

²⁸ *The Penal Code of Bhutan, 2004* (amendment Acts 2011 and 2021)

sentencing, aligned with the nature and circumstances of the cases, offenders and the substantive law. As a result, the sentences are fairly predictable, fair, proportionate and uniform which enhances the public trust and confidence in the judiciary.

One of the aims of sentencing is to punish the offenders for the crime they have committed. There are other important aims such as preventing or deterring future crimes so that people don't become victims of the same offenders and ensure a safe community.

Offences are committed in many different ways with different results and impacts on the victims and society. An offence of assault can, for instance, range from an argument where one person pushes another causing no injury, up to a carefully-planned attack that causes life-changing injuries. Therefore, it is necessary to have a range of sentences available that appropriately reflect the seriousness of each individual offence. Sentencing guidelines set out the processes courts should follow and the factors they should consider to work out the appropriate sentences.

Many countries have adopted *Sentencing Guidelines* for specific offences and moved away from *indeterminate* to *determinate* sentencing, with a minimum degree of judicial discretion. Adoption of this Sentencing Guideline by the Judiciary of Bhutan marks an important milestone in the reformation of the criminal justice system in the country although the Judiciary never exercised unfettered or arbitrary discretion in sentencing the offenders. The courts basically award the sentences between the *mandatory minimum* and the maximum limit set by the legislature for the individual offences in the *Penal Code of Bhutan, 2001(Penal Code)*.²⁹

This general *Sentencing Guideline* is aimed at assisting the courts in determining appropriate sentences for the offenders till such time promulgation of offence-specific guideline is warranted by the proliferation of dangerous crimes and sophistication of the society. In addition, courts will continue to follow the precedents of the previous cases by referring to judgments passed by the appeal courts.

Promulgation of this Guideline is expected to trigger sentencing practices and corrections by making the sentencing policies fair, consistent, proportionate and with the opportunity for rehabilitation of the offenders. This will not only decongest the existing prisons, save taxpayers money spent on the development and management of the penitentiary facilities but decriminalize the offenders and hold them accountable for their conduct and ultimately reform and rehabilitate them into the society.

Up till now, although laws provided alternative sentencing measures, sentencing generally meant incarceration of the offenders for the full term of the sentence with no hope of probation, parole or rehabilitation. This practice did not give the opportunity for the offenders, especially the young and the first-time offenders to reflect, regret, express remorse and pay

²⁹ The penal laws were consolidated in 2004 with the enactment of the *Penal Code of Bhutan, 2004*. It draws mainly on the penal provisions contained in the *Thrimzhung Chenmo, 1969*), a repository of general laws enacted by the *National Assembly of Bhutan* during the reign of *His Majesty the Third Druk Gyalpo*.

back to the society harmed by their conduct, i.e., offenders served the sentence but were not held accountable for what they have done. This vindictive gesture of the state has hardened them into criminals leading to an increase in recidivism, and a decrease in public safety.

Therefore, this Guideline seeks to award various alternative and additional sentencing measures such as community sentencing, suspended sentences, probation, conditional release, fines and damages as provided in the *Penal Code* and the *Civil and Criminal Procedure Code, 2001(Procedure Code)* and other relevant laws. The Guideline is also promulgated in response to the increasing public misperception of arbitrary exercise of judicial discretion in interpreting the laws and awarding sentences. The Guideline is also a strategic tool to reduce crime and victimization and prevent stigmatization of the offenders. It is also aimed at ensuring that sentencing decisions are fair, uniform and transparent which will ultimately enhance public trust in the judiciary, thereby promoting conditions that will enable the pursuit of *Gross National Happiness* in the country.³⁰

³⁰ Article 9 section 3 of the *Constitution*.