

དཔལ་ལྷན་འབྲུག་པའི་དང་ཁྲིམས་ལྷན་སྡེ།

# THE JUDICIARY OF THE KINGDOM OF BHUTAN



ཁྲིམས་སྡེའི་ལག་འགན་དང་འབྲི་འགན་སྒྲིག་གཞི་སྤྱི་ལོ་ ༢༠༡༧ ཅན་མ།

## The Judicial Responsibility and Accountability Regulation, 2017

# **The Judicial Responsibility and Accountability Regulation, 2017**

## **Preamble**

*Whereas*, the Constitution of Bhutan mandates the Judiciary to safeguard, uphold, and administer Justice fairly and independently without fear, favour, or undue delay in accordance with the Rule of Law to inspire trust and confidence to enhance access to Justice;

*Whereas*, the Preamble of the Judicial Service Act, 2007 (hereafter “the Act or Judicial Service Act”) pledges that in keeping with His Majesty the Druk Gyalpo’s vision for enlightened laws to protect the society, it is necessary to strengthen and promote the independence and accountability of the Judiciary;

*And whereas*, a comprehensive Regulation on Judicial Accountability is indispensable for the fair and efficient administration of justice.

Therefore, the Judiciary hereby adopts this Judicial Responsibility and Accountability Regulation as follows:

## **Chapter I Preliminary**

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

- (1) This Regulation shall:
  - (a) Be called the Judicial Responsibility and Accountability Regulation, 2017;
  - (b) Come into to force on the 8<sup>th</sup> Day of 4<sup>th</sup> Month of the Fire Female Bird Year, which corresponds to the 2<sup>nd</sup> Day of June, Year 2017; and
  - (c) Extend to the Drangpons of the Supreme Court, High Court, Dzongkhag and Dungkhag Court, and all the Judicial Service Personnel.

**Objectives:**

- (2) The objectives of this Regulation are to:
  - (a) prevent and curb corruption in the Judiciary;
  - (b) promote judicial independence, transparency, accountability;
  - (c) regulate the conduct of the Drangpons and the Judicial Service Personnel in the course of the administration of justice;
  - (d) promote high morale and confidence among Drangpons and Judicial Personnel by providing speedy and just process of investigation and action for complaints filed against them and to ensure justice, fairness and the protection of the innocent;
  - (e) ensure that the Drangpons and Judicial Service Personnel do not abuse and misuse their office and power;
  - (f) carry out their duties in accordance with the established law and procedure; and
  - (g) ensure and protect the rights, honour and dignity of the Drangpons and Judicial Service Personnel who shall not be censured or subjected to an action without following the due administrative procedure established under this Regulations and laws of the country.

## **Chapter II Complaint Procedure**

**Complaint Procedure**

- (3) A complaint against a Drangpon or Judicial Service Personnel shall be filed to the Registrar General of the Supreme Court.
- (4) Any complaint against a Drangpon or Judicial Service Personnel shall be in writing and in person. Any complaint filed anonymously shall not be entertained.
- (5) All complaints filed shall be kept confidential till prima facie case is established.

- (6) Any vexatious or frivolous complaint against a Drangponor Judicial Service Personnel shall be deemed as contempt of court and the concerned Drangpon may file defamation suit against the complainant.

### **Grounds for Complaint**

- (7) The commission of corruption or lack of judicial integrity while delivering judgment for consideration, collateral or extraneous reasons, or accepting bribes by way of cash, kind or any demands made thereof shall be the grounds of complaint.
- (8) Any other grounds that is specified under Chapter 12, Section 140 of the Judicial Service Act, 2007.
- (9) Violation of the judicial code of conduct as specified under the provisions of Chapter 10 of the Judicial Service Act, 2007.

## **Chapter III Procedure for Inquiry and Investigation**

### **Inquiry Procedure:**

- (10) Preliminary inquiry against a complaint shall be conducted discreetly by the Registrar General of the Supreme Court to establish the facts and circumstances of the case.
- (11) If the complaint is baseless, the Registrar General of the Supreme Court shall dismiss the complaint and drop the case forthwith. A copy of the dismissal order shall be given to the complainant.
- (12) The complainant may further appeal to the Chief Justice of Bhutan within 10 days of such a dismissal order. After review by the Chief Justice, if the complaint is still found to be baseless or frivolous, the complainant may be liable for contempt of Court.

- (13) Based on the complaint, if a *prima facie* case is established which in the opinion of the Registrar General warrants further investigation, the Registrar General of the Supreme Court shall after a written submission to the Chief Justice of Bhutan, carry out necessary investigation as provided under this Regulation and Judicial Service Act, 2007.

## **Chapter IV**

### **Judicial Investigation Committee**

#### **Judicial Investigation Committee**

- (14) The investigation procedure by the Judicial Investigation Committee (herein after referred to as “Committee”) for disciplinary cases or complaints shall be conducted in compliance with due process and in conformity with the laws of the country.
- (15) In accordance with Section 135 of the Judicial Service Act, no investigation shall be conducted, except by a committee consisting of not less than five members.
- (16) Notwithstanding the Judicial Service Council’s power to delegate all or any of the powers and functions relating to investigation to an appropriate and competent judicial authority or committee in accordance with Section 134 of the Judicial Service Act, if the investigation is against the Drangpon of the Dzongkhag and Dungkhag Court or Judicial Service Personnel, the committee shall consist of:
- (a) The Registrar General of the Supreme Court as the chairperson of the committee;
  - (b) The Registrar General of the High Court as member secretary;
  - (c) Two Dzongkhag Drangpons nominated by the Chief Justice of Bhutan;
  - (d) One Dungkhag Drangpon nominated by the Chief Justice of Bhutan;
  - and
  - (e) Two members of Judicial Service Personnel including one Registrar nominated by the Chief Justice of Bhutan.

- (17) If the investigation is against the Drangpon of the High Court and the Supreme Court, the committee shall consist of:
- (a) The Senior most Drangpon of the Supreme Court as the chairperson of the committee;
  - (b) The chairperson of the Royal Judicial Service Council;
  - (c) The Chief Justice of the High Court;
  - (d) The Registrar General of Supreme Court as member secretary; and
  - (e) A member of the Royal Judicial Service Council nominated by the Chief Justice of Bhutan.

Provided that in case the investigation is against the senior most Drangpon of the Supreme Court or the Chief Justice of the High Court, the Drangpon next in line of seniority either in case of Supreme Court or High Court Justice shall be the member.

- (18) The Committee shall complete its investigation within 30 days from the date of its constitution.
- (19) The Committee shall as per Section 136 of the Judicial Service Act, sign and submit its report to the Royal Judicial Service Council. Similarly, the committee formed for the investigation against the Drangpon of the High Court and the Supreme Court shall sign and submit its report to the National Judicial Commission. Any qualifying statement or dissenting view expressed by the committee members shall be reflected in the report.

### **Conflict of Interest**

- (20) In accordance with Section 137 of the Judicial Service Act, a person related to or associated with a respondent Drangpon or Judicial Service Personnel shall not participate in the investigation or the decision-making process.

## **Chapter V**

### **Disciplinary Authority**

#### **Disciplinary Authority**

- (21) The Disciplinary Authority shall be the Judicial Service Council or the National Judicial Commission as the case may be.
- (22) In accordance with Section 130 of the Judicial Service Act, the authority to execute and enforce disciplinary action shall be the Royal Judicial Service Council for the Drangpons and all Judicial Service Personnel other than the Drangpons of the Supreme Court and the High Court for which the competent Disciplinary Authority shall be the National Judicial Commission in accordance with Article 21, Section 15 of the Constitution.
- (23) In accordance with Section 131 of the Judicial Service Act, the authority to censure or suspend the Drangpons of the Dzongkhag and Dungkhag Courts shall be the Chief Justice of Bhutan on the recommendation of the Royal Judicial Service Council for proven misbehavior.
- (24) In accordance with Article 21, Section 15 of the Constitution, the authority to censure or suspend the Drangpons of the Supreme Court and the High Court shall be by a Royal Command of His Majesty the DrukGyalpo on the recommendation of the National Judicial Commission for proven misbehavior, which, in the opinion of the Commission, does not deserve impeachment.
- (25) In accordance with Section 139 of the Judicial Service Act, the disciplinary authority shall fully state reasons justifying their decisions in each case.

## **Powers of the Disciplinary Authority**

- (26) In accordance with Section 132 of the Act, a person shall provide information, data or answer to any query required by the disciplinary authority in the discharge of its responsibilities.
- (27) The disciplinary authority shall have the power of a Court during inquiry in accordance with Section 133 of the Act.
- (28) In accordance with Section 138 of the Act, investigation and adjudication of disciplinary cases or complaints shall be in conformity with laws of the country.
- (29) The adjudication by disciplinary authority shall comply with the principles of natural justice such as the right to be heard, right to defend, fairness and impartial conduct of the proceedings, elimination of biases, right to a reasoned decision and appeal against such decision.
- (30) The respondent Drangpon or Judicial Service Personnel may respond to the complaint and the grounds of charges in writing in person or through a representative.

## **Chapter VI Disciplinary Action**

- (31) In accordance with Section 141 of the Judicial Service Act, the disciplinary authority shall render a decision within 21 days from the receipt of the investigation report of the committee.
- (32) In accordance with Section 142, a copy of the decision rendered by disciplinary authorities shall be submitted to the Chief Justice of Bhutan. The Chief Justice of Bhutan shall have the finality authority to either modify or affirm the decision of the disciplinary authorities or to order a further investigation before making the final decision.



- (33) In accordance with Section 143, the disciplinary authority, while imposing penalties, shall take into consideration the nature and seriousness of the conduct, as well as any mitigating or aggravating circumstances regarding the intent of the respondent Drangpon or the Judicial Service Personnel.
- (34) In accordance with Section 144, the appropriateness of disciplinary action, and the degree of penalty to be imposed, shall be determined through a reasonable and reasoned application of the Judicial Service Act and the effect of the improper activity on others or on the institution of the Judiciary.
- (35) In accordance with Section 54 of the Evidence Act, no Drangpon shall testify as witness to the disciplinary authority in relation to any case adjudicated by him.
- (36) During the pendency of inquiry and investigation, or upon completion of the process if the Drangpon or the Judicial Personnel is suspended, the Official shall:
- (a) Receive only 50 percent of his/ her basic salary; and
  - (b) Not be entitled to duty vehicle, housing facilities/ allowance, mobile and voucher allowance, duty free benefits and such other privileges.
- (37) The Drangpon or the Judicial Service Personnel found to have breached the Judicial Code of Conduct may be imposed disciplinary action in accordance with Section 145 of the Judicial Service Act or any other appropriate action the Disciplinary Authority may deem appropriate.
- (38) The Judicial Service Council besides the application of this Regulation shall apply the relevant provisions of the Judicial Service Act and the Civil Service Act and its Rules and Regulation thereof while taking any administrative or disciplinary action against Judicial Service Personnel.
- (39) The subsistence allowance under section 36 of this Regulation shall be paid until the completion of disciplinary action or judicial proceedings.

- (40) Upon completion of the disciplinary action or judicial proceedings, if the Drangpon or Judicial Personnel is adjudged innocent or acquitted, he or she shall be accordingly reinstated to the post and shall receive the remaining 50% of his basic salary and other benefits as listed under section 36 of this Regulation for the entire period of suspension. In such a case, the period of suspension shall be considered as part of active service for the purpose of gratuity, annual increment and promotion.
- (41) In case a respondent Drangpon or the Judicial Personnel expires during the course of suspension, the Disciplinary Authority will complete its adjudication and give a decision forthwith, so that the benefits may be availed of by his or her family or legal nominee(s).
- (42) Till the finality of the order by the Chief Justice of Bhutan, no new appointment shall be made to fill the vacancy of the incumbent Drangpon except that the Registrar General of the Supreme Court in consultation with the Chief Justice of Bhutan may provide alternative arrangements including temporary assignment to the post till the finality of the decision.

### **Right to Appeal**

- (43) In accordance with Section 146 of the Act, the Drangpon and the Judicial Service Personnel aggrieved by any decision of the disciplinary authority shall have the right to appeal to the Chief Justice of Bhutan, who shall be the final appellate authority.

## **Chapter VII**

### **Removal, Impeachment and Amendment**

#### **Removal**

- (44) The removal of a Drangpon and Judicial Service Personnel other than the Chief Justice and the Drangpon of the Supreme Court, the Chief Justice and the Drangpon of the High Court may be effected only in accordance with Section 152 of the Act.

- (45) 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 in accordance with Judicial Service Act and the provision of the Constitution.
- (46) The procedure for the Impeachment proceeding shall be as provided under Chapter 13, Sections 147 to 151 of the Judicial Service Act.
- (47) In accordance with Section 153 of the Act, misconduct shall include any conduct, which reasonably brings reproach to the judicial profession such as the dereliction of duty, unlawful or improper behaviour or on the grounds of “proven misbehavior” as provided under this Regulation or any serious breach of the judicial code of conduct under the Judicial Service Act.
- (48) In accordance with Section 154 of the Act, a Drangpon or a Judicial Service Personnel shall not be imprisoned on an administrative decision. Any criminal case must to be charge sheeted to the Court and proven beyond a reasonable doubt.
- (49) This Regulation shall be implemented in conjunction with the Royal Judicial Service Act, 2007.

### **Amendment**

- (50) The amendment of this Regulation by way of addition, variation or repeal may be effected only when the Commission or the Council submits a motion to the Chief Justice of Bhutan, subject to the requirement that amendments shall not undermine the effectiveness of the Judicial Service Act and this Regulation.