

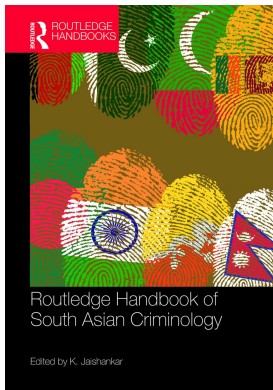
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# 3

## BHUTAN

### Penal Laws, Crimes and Criminal Justice Processes

*Debarati Halder*

#### Introduction

The Himalayan Kingdom of Bhutan had remained isolated for many years from the rest of the world. It was only after the 1970s that the fourth king of Bhutan, King Jigme Singye Wangchuck, took progressive steps to bring people-oriented developmental goals, and the world came to know about Bhutanese ideology of Gross National Happiness. Bhutan is well known as a favourite tourist destination, especially from India and South Asian countries, and also from Korea, Singapore, Malaysia, Europe, the USA, Australia etc. Even though Bhutan is a preferred destination for tourists, ironically, Bhutan has been also a chosen destination for drug peddlers (Chua, 2008) due to its geographic location, which helps to yield more crops to be used for narcotics. Similarly, Bhutan is also affected by migration of women and children for sex trafficking, especially to the eastern regions of India, and they are prone to dreadful sexually transmitted diseases like HIV/AIDS (Sarkar et al., 2008).

It is interesting to note that due to rapid urbanisation of the society in Bhutan, the Bhutanese youth are adhering to Western cultures. Sadly, urbanisation and Western influence has also brought many negative impacts including breaking of nuclear families, driving the youth to be more addicted to technology, which is reducing the scope of physical socialisation with families and peers as was the tradition of Bhutan (Chua, 2008). These may lead to growth of crime rates especially for cases like sexual harassment, drug abuse, domestic violence and privacy infringement through information and digital technology.

There are very few surveys (L. Dorji et al., 2015) depicting the rate of crimes such as the survey on gender violence in Bhutan, which was carried out by National Commission for Women and Children in Bhutan (2012). As per this survey, it could be seen that there was 6.1% prevalence of physical violence on married women; in 2.1% cases, sexual violence by intimate partners was noted; 6.3% cases were noted where women suffered physical violence by non-partners; and 3.5% cases were noted where women suffered psychological violence by non-partners. However, this report did not give any details regarding the types of psychological or physical violence.

There is a need to understand the patterns and trends of crimes in Bhutan as well as the functioning of the criminal justice system in Bhutan. In the present chapter, an effort is taken in that direction. Notably, there has rarely been any socio-criminological-legal research conducted on the issue of crimes and the criminal justice system in Bhutan. There is no proper source or literature on crime rates, trends and usage of penal laws for prevention of crimes in Bhutan. The limited research that is

available on the crime situation of Bhutan primarily investigates crime and mental health (L. Dorji et al., 2015), violence against women (T. Dorji, 2015), drug and alcohol addiction among the youth (Chua, 2008; L. Dorji, 2012), corruption and related issues (Namygel, 2009), Bhutanese refugees in Nepal (Laxminarayan & Pemberton, 2012) and legal aid in Bhutan (Sherab, 2014). Apart from the said resources there were no resources dealing with other trends of crimes that may be prevalent in Bhutan. One of the main reasons for such limited resources available on crime and the criminal justice system in Bhutan may be because of non-reporting behavior due to the family-oriented traditional culture; reporting crimes to the criminal justice administration may be seen as a shameful act (Chua, 2008).

Even though there is a lack of literature regarding trends of crimes or crime patterns in Bhutan, the criminal law-making process or policing, this chapter will rely on the Bhutan Penal Code and the constitution to understand the above-mentioned issues. This chapter will basically delve into the constitution of Bhutan, which was formally introduced on 18 July, 2008,<sup>1</sup> and the very progressive Penal Code of Bhutan, which came into effect on 11 August, 2004, to build an overview of crime and criminal justice system of Bhutan. Following the introduction, this chapter is divided into two parts: 1. Penal Laws and Crimes in Bhutan and 2. Criminal Justice Processes in Bhutan, and it will conclude with some suggestions.

## I. Penal Laws and Crimes in Bhutan

The Bhutanese constitution is divided into 35 Articles, which are further divided into separate sections dealing with matters including the three divisions of governance, viz., executive, legislature, judiciary; institution of monarchy; fundamental rights and duties; trade and commerce; environmental rights and duty; spiritual heritage; provisions regarding emergency; amendments etc. It may be interesting to note that the Bhutanese legal system is framed upon seven core Buddhist ideologies including proper decorum, legality, freedom from duress, decision through majority, grounds of a judicial decision resolution through rebuttal and plead guilty.

While the constitution is the source of all laws, formation of governmental departments, and rules and policies, it also provides an overview of rights and wrongs which are governed by the Penal Code of Bhutan. The Bhutan Penal Code is divided into seven parts which are further divided into 35 chapters. These chapters deal with the types of offences, restitution of justice in different ways for such offences, forms of sentencing etc.

A brief overview of the Penal Code of Bhutan illustrates that crimes are divided into the following types:

1. Crimes against the nation, which may include terrorism, illegal immigration, sedition etc.;
2. Economic crimes including cheating, money laundering, tax evasion, corruption-related crimes etc.;
3. Crimes targeting women and children including sexual crimes like rape, molestation, woman and child trafficking, prostitution; general crimes against children including forceful child labour, discrimination in regard to education etc.; domestic violence-related crimes targeting women including wife abuse, marital rape etc.;
4. Crimes targeting property including theft, burglary, trespassing etc.;
5. Cybercrime-related issues including hacking, cyber stalking etc.;
6. Crimes targeting the body of the person including bodily harm, homicide, motivational murders, defamation, etc.;
7. Religious crimes etc.;
8. Other social crimes like substance abuse including drug and alcohol abuse etc.

As has been discussed earlier, s.3 of the Bhutan Penal Code divides crimes into four classifications: felony (any crime which is awarded an imprisonment term for a minimum period of three years or more), misdemeanour (for crimes which are awarded a maximum term of three years imprisonment to minimum one year imprisonment), petty misdemeanour (for crimes which are awarded with imprisonment for term of less than one year maximum and a minimum of one month) and violation (when the crime is awarded with a fine of the daily minimum national wage rate up to a maximum of 90 days).<sup>2</sup> Felonies can further be divided into four categories, namely, felony of first, second, third and fourth degree.<sup>3</sup>

As could be seen from the existing literature, not all of these crimes are analysed extensively in surveys conducted either by the government or any other non-governmental organisations (NGOs). However, it needs to be noted that the Bhutan Penal Code has taken serious note of crimes against women and children whereby it has criminalised corporal punishment on children by teachers, caregivers or parents, only when such use of force causes substantial damage to the body of the person or causes death to the person to whom such force is used in the name of discipline or controlling.<sup>4</sup> The penal code recognizes no criminal liability of a juvenile if the child is below 10 years of age.<sup>5</sup> But at the same time, it provides opportunity for correctional institutions when the juvenile is above 10 years of age.<sup>6</sup> The penal code criminalises illegal abortions under s.146. Apart from criminalising trafficking of persons including children under s.154, the penal Code also criminalises kidnapping (s.162), abduction (s.165) and criminal elopement (s.169), thus creating clear categories of criminal liabilities in cases of forceful removals of a person from his/her secured place. Further, the penal code also criminalises abandonment of children by parents or caregivers, child abuse, abuse and abandonment of mentally challenged children, paedophilia and child trafficking under Chapter 15 of the Code.

The penal code further criminalizes rape of any individual under s.177 irrespective of his/her gender or sexual orientation, rapes of married persons (s.179), of children below 12 years of age (S.183), of pregnant women (s.185), gang rape (s.187), gang rape on married persons, children below 12 years and above 12 years and statutory rape (S.181). The uniqueness of Bhutan penal laws regarding rape lies in the fact that it recognises marital rape (s.199) irrespective of the gender. Social crimes including crimes against women and children also include criminalising indecent exposure (s.209), sexual harassment (s.205), child molestation (s.203) etc. Further, it may be noted that the penal code also criminalises prostitution under Chapter 26 of the Penal code; it also criminalises several offences against privacy including eaves dropping (Chapter 30), harassment etc. While some researchers and reports have thrown light on trafficking (Sarkar et al., 2008), violence against women (T. Dorji, 2015) and child abuse (United Nations, 2008), there is not much literature available about the current status of sexual offences including marital rape in Bhutan.

Notably, substance abuse and alcohol abuse among the youth of Bhutan have attracted the attention of many stakeholders such as the government, the NGOs and the civil society (L. Dorji, 2012; UNODC, 2012). While drug and alcohol abuse is an issue of concern with regard to Bhutanese youth including school children, there are several government agencies, such as the Bhutan Narcotics Control Agency, that are responsible for monitoring the situation (UNODC, 2012). The Bhutan Penal Code has successfully targeted the root cause of substance abuse in Bhutan by criminalising environment-related issues which may generate crimes including substance abuse like narcotic and drug abuse under Chapter 33 of the penal code. Also, it has criminalised several social behavioural problems of youth such as public intoxication, illegal sale of tobacco, illegal sale of alcohol, gambling, environmental crimes like motivational destruction of environment and the like under Chapter 27.

Corruption, money laundering and fraudulent activities are also highlighted by the Bhutan criminal justice system, especially the Penal Code under Chapter 34. It may be necessary to point out that the Bhutanese constitution embraces the philosophy of equality and equal distribution of wealth. Since Bhutan is a landlocked country, there is an inflow and outflow of illegal money to and

from neighbouring countries such as India, Nepal, and Bangladesh, and the possibility of the use of Bhutan for smuggling goods between other countries has not been ruled out by the lawmakers and police.

Bhutan has also made homicide, murder, manslaughter, assault etc. penal offences under Chapter 11 of the Penal Code. It is interesting to note that this particular chapter differentiates between different types of dreadful attacks on persons, thus making it easier for the criminal justice system as a whole to ensure speedy justice to the victim as well as the perpetrator. Bhutan needs to be secured from external terrorist attacks as well as internal civil unrest, which may be motivated by various reasons including bad governance. While the later possible phenomenon is monitored by government agencies by means of laws, especially Chapter 20 of the Penal code which deals with embezzlement and bribery, the earlier possibilities are kept in check by means of laws meant for national security, as has been stated in Chapter 23, which deals with treason, terrorism, related offences etc. It must be noted that due to the progressive outlook of the fourth king, Bhutan became a democratic monarchy, giving prime importance regarding law-making and rights and duties of the citizens including the royal family members to the constitution; and this to a certain extent reduced the risk of internal civil unrest, as had happened in Nepal immediately after the royal massacre of Nepal (Bearak, 2001) in which the then-King Birendra was killed.

The Bhutan Penal Code also indicates a strong note against damaging the reputation of a person irrespective of gender. Chapter 22 of the penal code criminalises defamation, libel, blackmail and false advertisements for maligning the name of the person. This is particularly in line with the constitutional right to human dignity to all. Also, Bhutan is one of the few countries which has developed penal laws to deal with cybercrimes. Even though the penal law does not include crimes like cyberstalking or revenge pornography or cyberbullying, Chapter 31 of the Penal code criminalises tampering with computer materials, pornography and illegal possession of computer materials.

Further, Bhutan considers illegal handling of stuffs of national and cultural heritage as criminal activities under Chapter 24 of the Penal Code. It needs to be mentioned here due to their ancient background that Bhutanese antiquities may be in high demand in foreign markets like India and China. The Bhutanese government is presently taking precautionary measures to develop foreign policies with neighbours like India, China, Nepal etc. to prevent illegal export of the antiquities and also hazardous narcotics objects.

## II. Criminal Justice Processes in Bhutan

### 1. Judiciary

The Bhutanese legal system is a unique system and on a close examination it reveals features of various legal systems but it neither falls within the category of common law system (adversarial system) nor the continental civil law system (inquisitorial system). In 1953, His Majesty the third Druk Gyalpo Jigme Dorji Wangchuck established the legislative branch called the Tshogdu. The Tshogdu comprised 150 members of which 106 members were elected representatives of the people of 20 Dzongkhags (districts); 10 from the Zhung Dratshang (clergy); and 24 nominated representatives of the government. The Tshogdu as the legislative arm of the Government adopted the Thrimzhung Chhenmo, the Supreme Law of Bhutan in 1959. The Thrimzhung Chhenmo had comprehensive provisions dealing with legal principles and procedure both for the civil and criminal cases. The enactment of Thrimzhung Chhenmo marked the beginning of the modern law making process in Bhutan.

(Sherab, 2014, p. 8)

The appointment of judges (Drangpons) in the districts started in the 1960s and the High Court as a court of appeal was established in 1968. Since then the judiciary has evolved over the years. The formal justice system is safeguarded, upheld and administered fairly and independently without fear or favour by the Judiciary.<sup>7</sup> The judicial authority is vested with the Royal Courts of Justice comprising of the Supreme Court, High Court, Dzongkhag Court and Dungkhag Court (Divisional Court).<sup>8</sup> The Supreme Court (with 5 Justices including the Chief Justice) is the highest appellate court in the country. Next in line is the High Court (with 9 Justices including the Chief Justice), which exercises appellate jurisdiction over Dzongkhag Courts. There are 20 Dzongkhag Courts (one in each district) which act as the appellate court for the Dungkhag Courts and is the court of first instance where there is no Dungkhag Courts. Dungkhag Courts were established essentially to enhance access to justice for the rural masses. Currently, there are 15 Dungkhag Courts of first instance. Both the Dzongkhag Courts and the Dungkhag Courts act as trial court, depending on the hierarchical set up. While all the courts exercise general jurisdiction, the High Court is the court of first instance on constitutional matters. Additionally, the constitution also provides for the establishment of 'such other Courts and Tribunals' as may be necessary.

(Sherab, 2014, p. 8)

The process of prosecution is entirely guided by Bhutan civil and criminal procedure Code, Bhutanese Penal Code and constitutional rights. Both the victim and the accused have right to get justice and appeal. It may be necessary to point out that while the Bhutanese constitution ensures that victims of crimes are entitled to get help from the criminal justice machinery including government lawyers in the prosecution stage, the Bhutanese constitution through various laws also ensures that underprivileged citizens should get free legal aid from the courts (Norbu, n.d.; Sherab, 2014). The Bhutanese judiciary created a huge example of welfare governance by creating a national system of legal aid without state funds (Norbu, n.d.; Sherab, 2014). This has helped many Bhutanese citizens to access justice irrespective of their financial, social or educational background.

## 2. Police

The Bhutanese government has given due importance to construct a proper policing system by forming the Royal Bhutan Police, which is the main policing agency in Bhutan. The Civil and Criminal Procedure Code (Wangdi, Tashi, & Dorji, 2014) of Bhutan and the Royal Bhutan Police Act provide statutory guidelines for policing, investigation etc. The Bhutan Penal Code provides numerous provisions for effective policing by way of laying down exceptions to the crimes through provisions such as Chapter 7, which deals with justification of affirmative defence. Also, the Civil and Criminal Procedure Code (2011) and the Royal Bhutan Police act laydown strict rules which, if violated, may result in suspension of the duties of the concerned police officer or disciplinary actions against the police officer concerned (Wangdi, 2014).

Bhutan is no exception in giving due preference to the rights of the accused (Wangdi, 2014; Article 7, Fundamental rights under Bhutanese constitution); but at the same time, the Bhutanese constitution also ensures the right against arbitrary arrest and detention, human rights violation in any form by police officers or any other civilians and the right to fair trial.<sup>9</sup> The accused is thus given right to consult his/her lawyer to defend him/herself. Similarly, as the Royal Bhutan Police Act and the civil and criminal procedure code laydown, the police must show compassionateness to the victim and should avoid victim blaming while interacting with the victim (Wangdi, 2014). The recent researches also showed that the Bhutanese government and the police organisation are also

encouraging for community policing and encouraging youth to participate in community policing (Zangpo & Kamnuansilpa, 2013). It is noteworthy that the Bhutanese government has taken measures to check corruption in every field of governance including policing. To check corruption Bhutan has established an Anticorruption Commission and introduced public welfare laws like the Anti-corruption Act of Bhutan, 2006, Bhutanese Penal code, which deals with corruption under Part Four, especially Chapter 20 (Namygel, 2009).

The police are responsible for reporting crimes, investigating offences, helping victims to reach the courts and connecting them with government prosecutors, especially when the crime is cognizable in nature (Wangdi, 2014).

### 3. Sentencing Processes

The Bhutan Penal Code further ensures speedy and effective means of justice by classifying crimes according to the harms created by them to the affected parties and the sentencing classification for each categories of crimes recognised by the Bhutan Penal Code. Bhutan does not have capital punishment; sentences for felony of first degree may include life imprisonment or a minimum imprisonment of 15 years. Felony of first degree shall include grievous offences like murder, terrorism, offences against Ku Sung, ThukTen, Zung, creation of weapons for mass destruction etc. Felonies of second degree include offences which are awarded a term of imprisonment for not less than 9 years and not more than 15 years.<sup>10</sup> Felonies of third degree include crimes which are awarded imprisonment for a term not less than five years and not more nine years. And felonies of fourth degree shall include offences for which sentences are awarded for imprisonment for a term not less than three years and not more than five years.<sup>11</sup> Further, the sentencing for crimes in the nature of misdemeanours has been fixed with imprisonment for a term which shall not be more than three years and not less than one year; for crimes in the nature of petty misdemeanours, the sentencing is fixed for imprisonment for a term of not less than one month and not more than one year.<sup>12</sup> The Penal Code also states that in case of next conviction for the same offence, a convicted person shall be liable for enhanced punishment, which includes upgrading of petty misdemeanour to misdemeanour, felonies of fourth, third and second degrees to next degrees and to first degree finally.<sup>13</sup>

Sentencing in Bhutan also includes value-based sentencing. S.18 of the Bhutan penal Code explains this by stating that the offence graded as value based under this code shall be a felony of the third degree if the value or the amounts involved in the crime exceeds the total amount of the daily minimum national wage rate at the time of the crime for a period of 30 years or more; it shall be a felony of fourth degree if the item of the crime is not described in the earlier subsection and the value and crimes involved in it exceeds the total amount of the daily minimum national wage rate at the time of committing the crime less than 30 years and for a period of 15 years and more; it shall be a misdemeanour if the item of the crime is not described in the earlier subsections and the amount involved in the crime exceeds the total amount of the daily wage rate at the time of the committing of the crime for a period less than 15 years and not less than 7 years or more; and it shall be a petty misdemeanour if the crime is not described in earlier sections and the amount involved is less than the total amount of the daily wage rate at the time of committing of crime for a period less than 7 years. As the Penal Code suggests, the court should also consider forfeiting the property, paying the damages etc. for restitution, recovery etc.; the court may also consider removing the offender from official designation in cases of value-based sentencing.<sup>14</sup>

Though there is no literature on the correctional systems of Bhutan, the Bhutanese judiciary and the Penal Code ensure correctional administration for the prison inmates to rectify their mistakes and take a positive attitude to life.

## Conclusion

A brief overview of the Bhutanese penal code, the legal system, the provisions for legal aid and the existing literature on trends of crimes in Bhutan as discussed above may show that Bhutan may have excellent crime-prevention policies, but it lacks proper execution in certain respects, especially in cases of encouraging reporting of the crimes and creation of a national database of crime records. It needs to be remembered that the Bhutanese criminal justice system is based on the ancient Buddhist ideologies, which give preference to equality, proper and fair justice to all and mediation. While there are some reported cases of domestic violence, the existing literature shows a gradual growth of crime rates among youth especially by way of substance addiction. It is noteworthy that Bhutan has taken many positive steps to restrict the growth of substance abuse by way of alcohol and drug abuse, but there are not many studies to show how far the rate of substance abuse has come down or grown. Bhutan, being an ancient monarchical kingdom which has adopted a newly democratic governmental system, needs more infrastructure to properly execute the laws and policy guidelines.

Bhutan presently does not have many law universities or university departments providing education on law or<sup>15</sup> social sciences including behavioural sciences, police sciences, criminology and victimology. Interested stake holders therefore have to travel to neighbouring countries like India (Sherab, 2014), China etc. to gain knowledge in these subjects. However, it needs to be understood that each nation has its own heritage and culture, depending upon which the customary laws in the civil and criminal procedure codes are enacted. During the British colonisation, Bhutan resisted the penetration of the British legal principles in its own legal framework. This has helped Bhutan to maintain its own uniqueness in lawmaking as well as in framing up a modern constitution, the Penal Code, the judicial system the civil laws etc., which are highly influenced by ancient Buddhist ideologies, modern understanding of judicial sentencing etc. It is understandable that this had been possible due to the very progressive king's efforts to merge ancient ideologies with modern criminal justice sciences. Unfortunately, as the existing literature suggests, only a few of the judicial officers, police officers and government officials including university professors could have been trained to execute this unique blend of ancient and modern laws and policy guidelines. Even though it has been shown that Bhutan has an increasing number of internet users, it is unfortunate that not all police officers, judicial officers and lawyers are well connected with the worldwide criminal justice fraternity. This is evident from the lack of research on the issue from Bhutan by Bhutanese stakeholders.

Further, it has been noted by this author that many government agencies like National commission for Women and Child, Royal Bhutan Police etc. have their own websites, but they do not have up-to-date information about new trends of crimes, crime rates, new laws etc. While the print, television and electronic media may speak about Bhutan's involvement with its neighbours like India, China etc. in building up joint military actions to resist terrorism, there are far fewer reports about modern Bhutan's movements against woman abuse, child abuse, human right abuse etc. There is also little research on Bhutanese mass movement to awaken youth to report social and domestic crimes as well. Given the fact that Bhutanese youth are driving fast towards communication technology, there are also no reports on the government or any other stakeholder formulating any strategy to tackle possible abuse of human rights in the digital and internet communication systems.

Further, it can be seen that the Bhutanese Penal Code has not recognised several other types of crimes related to digital technology, prison violence, school violence etc. The Bhutanese government can consider encouraging setting up NGOs or inviting foreign experts for imparting training to police officers to deal with such offences. Bhutan must also create more university-level study centres to impart knowledge on criminology, criminal justice sciences, law, behavioural sciences etc. and must encourage judicial officers, police officers and academicians and students to take part in national and international seminars on criminal justice sciences, restorative justice, digital communication technology and cybersecurity issues, good governance etc.



Bhutan must also ratify UN treaties and conventions dealing with cross-border human right violations, cybercrimes, child rights violations, domestic abuse etc. It is expected that by taking up measures such as these, Bhutan may not only encourage its own officials and civil citizens to take a combined effort to prevent crimes, it may also showcase to the world its own unique constitutional rights and duties for safeguarding citizens as well as the environment, penal laws which stand apart from the rest of the world due on its progressive outlook to several issues including marital rape, sexual offences etc. and the uniqueness of judicial process which is influenced by ancient and modern ideologies.

## Notes

- 1 See the preamble of the Constitution of Bhutan.
- 2 See s.3 of the Bhutan Penal Code.
- 3 See s.4 of the Bhutan Penal Code.
- 4 See s.109 of the Bhutan Penal Code, which speaks about use of force for care, discipline or safety of another.
- 5 See s.114 of the Bhutan Penal Code.
- 6 See s.116 of the Bhutan Penal Code.
- 7 Constitution of the Kingdom of Bhutan, art. 21, § 1.
- 8 Ibid.
- 9 See Article 7 of the Bhutanese constitution.
- 10 See s.9 of the Bhutan Penal Code.
- 11 See ss.10 and 11 of the Bhutan Penal Code.
- 12 See ss.12 and 13 of the Bhutan Penal Code.
- 13 See s.15 of the Bhutan Penal Code.
- 14 See ss. 19–22 of the Penal Code; also see Chapter 5 of the Penal Code.
- 15 Currently, Bhutan does not have a law school to provide law degree and all aspiring lawyers pursue their law degree in India and other countries. However, a one-year course (Post Graduate Diploma in National Law) on the national legal system and national laws is a must for every lawyer who wishes to practice law in Bhutan. As of now, there are approximately 112 lawyers (As per the list maintained with the Office of the Attorney General of Bhutan) in the country which is inclusive of judges, prosecutors, government attorneys and a few private practitioners. It may be noted that at the moment there is no standard rules and regulations regarding to the issuing of license to practice law. However, a person with a law degree and who has successfully completed the diploma in national law can practice law.  
(Sherab, 2014, p. 9).

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