

RIA REPORT

Title of the Legal Measure: THE JABMI (AMENDMENT) BILL OF THE KINGDOM OF BHUTAN 2014

Type of Regulatory Measure: Amendment Bill

Lead Agency: Office of the Attorney General

Expected Year of Adoption: 2014

Background

1. WHAT ISSUE/PROBLEM IS THE PROPOSAL EXPECTED TO TACKLE?

Background and issues

Taking into account of the importance of the services of Jabmis or the lawyers, the Parliament adopted the Jabmi Act in 2003. Ever since the passing of the said Act, no concrete initiative was taken to establish Jabmi Tshogdey (Bar Council) and formation of Jabmi Thuentsog (Bar Association), which is important to maintain professionalism of Jabmi while delivering legal services to the public. Even the visitors both private and officials have been inquiring on the existence of both the institutions. In this regard the Office of the Attorney General reviewed the said Act in consultation with the lawyers in the ministries, corporations and private firms. Accordingly the participants proposed the amendment of few provisions of the Act, so as to meet the current needs of the change in socio-political environment in the country. As more lawyers are coming into the market, the need for having Bar Council and Bar Association as envisioned in the Act is inevitable. Moreover, the Supreme Court in the first constitutional case also recommended for the amendment of the said Act relating to the practice of law by the retired Drangpons.

It was in this spirit that the lawyers present in the stakeholders meeting unanimously suggested that it is timely to work on the establishment of Jabmi Tshogdey (Bar Council) and Jabmi Thuentsog (Bar Association) in accordance with Jabmi Act 2003. Establishment of these two offices would assist the courts in expediting cases to ensure just, fair and prompt dispensation of justice. It was also felt that it is important to set professional standards for the legal profession including ethical standards; discipline members of the profession who breach the professional standards; be instrumental in determining entry requirement into the legal profession and conduct basic and continuing legal education programmes.

Moreover, some of the lawyers have already established legal firms and are facing multiple problems for functioning without an agency to regulate such firms. There are also many instances where misunderstanding arose between the clients and the legal counsel and in the absence of the Jabmi Tshogdey (Bar Council) and Jabmi Thuentsog (Bar Association) such issues were either left without attention or are not dealt professionally; affecting either the clients or the legal professionals.

The Office also received information from the courts that some of the legal representatives had taken the advantage by breaching the code of conduct, which affected the clients and caused disadvantage of the courts while making decision on the cases.

In some instances the courts had even passed the orders to deal the practicing lawyers accordingly for breaching the code of conduct, which has affected the clients. This is because

the unprofessional conduct of some of the legal representatives delays the progress of case and defeat the principle of Rule of Law and Due Process of law.

2. WHAT IS THE MAIN OBJECTIVE AND ITS INTENDED EFFECTS?

All the existing problems among the Jabmis, between Jabmis and Clients and inconvenience encountered by the courts will be regulated. The establishment of independent Jabmi Tshogdey (Bar Council) and Jabmi Thuentsog (Bar Association) will boost the morale of the Jabmis.

The clients in the market could rely on the services of the Jabmis and could always take recourse in case they are over charged or not served up to their expectation.

One of the objectives is to conduct Jabmi selection examination, which will produce professional and effective Jabmis in the market. The Jabmi Tshogdey would conduct continuing legal education for the Jabmis, which would encourage and promote the efficiency and responsibility of Jabmis. Due to this the public will have the choice to avail the best services at a reasonable cost. The cases in the courts would be expediated and justice would be ensured.

3. WHAT MAIN OBJECTIVE IS THE PROPOSAL EXPECTED TO REACH?

The following are the objectives considered:

1. Promote and Support Law reforms
2. Prepare and maintain a roll of Jabmi
3. Conduct Jabmi selection examination
4. Organize legal aid to an indigent person (Pro Bono) in the prescribed manner
5. Safeguard the rights, privileges and interests of Jabmi on its roll
6. Regulate and promote the uniform practice of law and of discipline among the Jabmis
7. Uphold the integrity of Jabmis
8. Determine the maximum number of cases, which a Jabmi can deal at a time.

4. WHAT ARE THE MAIN OPTIONS AVAILABLE TO REACH THE OBJECTIVES?

Objective 1: Promote and support law reforms

When Jabmis (lawyers) are regulated professionally they would bring positive changes in the legal system. As they get more experience they would give suggestions on various legal issues, which would promote the rule of law. Their professionalism in dealing the cases will make easy for judges to decide on the case. The Jabmi Tshogdey would encourage Jabmis to write articles and commentaries on various important legal issues, which would facilitate in publishing law journals.

Objective 2: Prepare and maintain a roll of Jabmi

Preparing and maintaining a roll of Jabmi will help the public in choosing the right person for their case. They will know the professionalism and integrity of the Jabmis and

their field of experience. This will also make all enrolled Jabmis to work harder for gaining the Good Will. This would encourage a healthy professional competition among the Jabmis in the market.

Objective 3: Conduct Jabmi selection examination

This is crucial in selecting good lawyers from the market to practice as Jabmi for the court of law. Jabmi selection exam will be conducted by Jabmi Tshogdey for maintaining the standards and professionalism of the legal profession.

Objective 4: Organize legal aid to an indigent person (Pro Bono) in the prescribed manner

In the legal profession it is important for every lawyer to provide pro bono or free legal services to the people who cannot effort to hire a lawyer. This would be encouraged by the Jabmi Tshodey to all the lawyers by offering a plus point to their CV. This legal service would promote justice and harmony in the society.

Objective 5: Safeguard the rights, privileges and interests of Jabmi on its roll

In all the legal markets, the conflicts between the Jabmis and clients are inevitable. Some of the clients take advantage over the Jabmis by not paying or delaying in the payment the fees. Sometimes the Jabmis are defamed and cheated in different ways, which affects their professions. In such a case, the Jabmi Tshogdey and Jabmi Thuentsog should take the initiatives in resolving the issues by protecting the rights, privileges and interests of the Jabmi. This is essential for protecting and boosting the morale of the legal professionals.

Objective 6: Regulate and promote uniform practice of law and of discipline among the Jabmis

As number of Jabmis increase in the market it is important to frame uniform practice of law and discipline among the Jabmis. Without such norms they would take advantage of the situation and deal the clients at their whims and fancies. In this regard, it is important to determine, maintain and enhance appropriate standards of professional practice, ethical conduct and etiquette on the part of Jabmis.

Objective 7: Uphold the integrity of Jabmis

It is important for the Jabmis to conduct themselves in a manner befitting the noble fraternity of the Jabmis. They should conduct in such a way as to enhance the regard and respect as between the members of the profession and strive to maintain the honour and dignity of the profession and be an officer of the court to ensure the proper administration of justice. They must always seek to uphold the rights and fundamental duties and at all times act freely and diligently and maintain an attitude of courtesy and politeness, irrespective of his personal views as to the cause of the client.

Objective 8: Determine the maximum number of cases, which a Jabmi can deal at a time.

The Jabmi Tshogdy shall determine the maximum number of cases for a Jabmi to deal at a time. This is important for providing professional services to the clients. If a Jabmi takes more cases he or she will not be able to focus. Moreover, such an act will also prolong the cases whereby affecting the clients. The profession of the Jabmi is not only to make money but also to serve the society with due care and caution.

5. WHAT ARE THE IMPACTS-POSITIVE AND NEGATIVE

1. The Jabmi Tshogdey will bring lots of positive impacts to the legal system and society. All the problems faced by the Jabmis, clients and the courts will be controlled, which in turn will bring uniform practice of law and discipline among the Jabmis.
2. The clients can depend on the Jabmis and can avail professional legal services at a reasonable cost.
3. It will be easy for the judges to hear the cases and decide on the judgment.
4. People who cannot afford to hire a lawyer will be able to get free legal services from the Jabmis.
5. The defence council will be stronger and will represent the accused with diligence, which will also promote the professionalism of the government prosecutors.
6. Due to the strong representatives on both sides of the cases, most of the new issues and legal principles will be challenged and tested before the courts setting precedents for the future course of action.
7. It will also encourage FDI projects; this is because the international clients could avail the professional legal services of the local consultants.
8. Some of the legal works of the government offices could be outsourced at reasonable and cheaper charges, which would avoid high costs of hiring international consultants.
9. The enhancement of legal professionalism will encourage the lawyers to write articles and commentaries on various legal issues, which will provide legal awareness and legal education to the larger community.
10. The Jabmi Tshogdey could organize various seminars, conference, workshops within the country and at international level.
11. It is also possible to organize exchange programmes.

If Jabmi Tshogdey and Jabmi Thuentshog is not form as per the Act at this critical juncture, courts will face lots of problems in dealing with the case, due to which cases will prolong and judgments will be delayed. The conflicts between the Jabmis and the clients will continue and increase, whereby creating social disharmony. The professionalism of the Jabmis will not be enhanced and due to which the legal services to

the society not be reliable. The Jabmis will take advantage of the situations and justice will not be delivered, defeating the principle of Rule of Law and Due Process of Law. There will be no one to control the lawyers working in the private companies and private legal firms. This will defeat the very objective and principle of passing the Jabmi Act, 2003.

6. PREFERRED OPTION

The preferred option has the following components:

1. Establish Jabmi Tshogdey (Bar Council) as an independent authority with a comprehensive mandates, functions and powers to effectively regulate and support the practicing Jabmis in the market as per the provisions of the Jabmi Act, 2003.
2. Process to form Jabmi Thuentshog (Bar Association) for the practicing lawyers.
3. Address most of the issues/problems currently faced by the courts, clients and Jabmis themselves.
4. Upgrade the professionalism of the current Jabmis for upholding the rule of law.
5. Appointing the President for the Jabmi Tshogdey (Bar Council).

Based on the above 5 options, it is crucial to establish Jabmi Tshogdey (Bar Council) by amending few provisions of Jabmi Act 2003, which is proposed to be treated as a priority to the decision-makers.

7. OTHER IMPACTS

Social impact

The formation of the Jabmi Tshogdey and Jabmi Thuentshog will bring social harmony. One can make best use of the services of Jabmis for upholding ones rights and getting justice at the end of every case. Based on the advice of the Jabmis an individual can decide whether to file a case before the court or not. Sometimes some of the cases could be resolved through negotiation by using the professional legal services of the Jabmis, which is reasonable, practical and a win-win situation. Such practice will save time, money and efforts and will not break families and society, which would ultimately uphold the principle of Gross National Happiness and promote a social well being. The Jabmi Tshogdey will promote pro bono or free legal services to the people who cannot effort to hire a Jabmi. For rest of the society it will organize legal aid services by using the expertise of the Jabmis.

When civil cases are resolved through negotiation, it will ease the workload of the courts and judges will be able to focus more on the criminal cases, which is important for every

accused, who are presumed to be innocent until proven guilty. When the criminals get justice it will reduce the number of crimes, which will promote social security. It will also be helpful for the Royal Bhutan Police and other law enforcement agencies like OAG, ACC, RAA, Revenue Customs and others. Therefore Jabmis play indispensable role in the Bhutanese society in providing justice which is fundamental to the country's development.

Economic impact

The formation of Jabmi Tshogdey will fosters economic growth at the national and international arena. This is because big companies and businessmen can hire the services of the Jabmis for representing them in the court of law, which sometimes take years to resolve. When such services are easy available in the market the business entities and the individuals can focus on the business and contribute to the nation in a meaningful ways.

When the business enhances it will create job opportunities in the market, which will further expand the size of the economy. The companies and private businessmen will be protected from arbitrary actions and unfair means.

The Alternative Dispute Resolution requires professional lawyers for arbitration. Therefore, if the legal services are easily available in the market the international companies will be encouraged to initiate FDI projects in Bhutan, which will promote the economy and the market for the small scale industries. Moreover, every visitor whether private, tourists or officials can avail the services of the lawyers in the market.

The availability of the legal services in the market will ease the legal works of the government. This is because some of the legal works could be outsourced which will be cost effective and saving time. There will be a healthy competition amongst the lawyers and this will bring quality to the work.

Once the lawyers in the market are regulated and strengthened we do not have to hire the international consultants, whose services are exorbitantly high. Unlike our lawyers in the market the international consultants fail to understand our needs and create ambiguity in the laws drafted by them, which does not serve the purpose after having spent huge amount of money.

Moreover, once they are out of the country they are not accountable to us. If the works are assigned to our lawyers they will be fully committed. This is because firstly the law is also going to impact them as being one of the citizens of the country. Secondly, they will be held accountable for the work. Moreover, we can also avail their back up services at any time.

Environmental impact

The judiciary is proposing to set up a Green Bench in the courts for environmental issues. In such a case, good lawyers in the market will deal with the environmental cases effectively to preserve the environment. Lawyers can write articles on the importance of

environment. There are lawyers who had specialized in the environmental laws and sometimes can help the communities in preserving environment.

8. STAKEHOLDER CONSULTATION

Justice being the primary source of peace in the Kingdom of Bhutan and reaffirming the noble goal in pursuit of justice and recognising the importance of the assistance of a Jabmi to protect and establish rights in all stages of proceedings, the Jabmi Act was adopted by the Parliament in the year 2003.

It is a comprehensive Act and covers all important provisions which meet international standards. There are only few provisions which require amendment. One of the important issues was to make the Jabmi Tshogdey (Bar Council) independent which is an accepted international norm. The same issue was also raised by international experts from Danish Bar and Law Society and International Bar Association. For Jabmi Tshogdey (Bar Council) to be independent it is vital to have the President who is independent and influential.

Therefore, it was mainly for this purpose the Office of the Attorney General had consultations with lawyers in the Civil Service, Corporations, NGOs and Private Legal firms. The Office also had consultations with the Para Legals who are also currently operating legal firms in the market.

During the consultation all participants felt the crucial need of the independent head of the Jabmi Tshogdey (Bar Council) and had proposed to add a provision in the Act for the appointment of the President.

The other issue was regarding the practice by the retired drangpons. During the first constitutional case the Supreme Court had directed to amend the Jabmi Act to resolve the issue of whether the retired drangpons should be allowed to practice before the court of law.

Therefore, the said Act was proposed to amend only in the light of above two issues.

9. MONITORING AND EVALUATION

The Jabmi Tshogdey will function independently and will monitor all the lawyers in the market. All members of the Jabmi Thuentshog will be accountable to Jabmi Tshogdey, which will be headed by the President.

The Attorney General will be the ex officio member. There will be one retired judge of the High Court and Supreme Court. The Chairperson of the Jabmi Thuentshog (Bar Association) will be one of the members. The Presiding Member of the Disciplinary Committee and three members elected from amongst the Jabmis will also be the member of the Jabmi Tshogdey.

1. The Jabmi Tshogdey will conduct Jabmi selection examinations and prepare and maintain a roll of Jabmis.
2. Will organize legal aid to an indigent person (pro bono) in the prescribed manner.
3. One of the functions is to safeguard the rights, privileges and interest of Jabmis on its roll.
4. Will regulate and promote the uniform practice of law and of discipline among Jabmis.
5. Will determine the maximum number of cases, which a Jabmi can deal at a time.
6. Will maintain and enhance appropriate standards of professional practice, ethical conduct and etiquette on the part of Jabmis.
7. One of the important roles of Tshogdey is to regulate and check the time taken by a Jabmi for each case.
8. Will determine cases of misconduct against Jabmis on its roll.
9. Will determine qualifications for Jabmis to become a member of the Jabmi Tshogdey and Jabmi Thuentshog and disqualifications form such membership.
10. Will prescribe the standards of professional conduct and etiquette to be observed by Jabmi.
11. Will fix Jabmi Tshogdey fees.
12. Will prescribe Jabmi selection examination rules and regulations.
13. Recommend to the National Judicial Commission/ Royal Judicial Council for the appointment of Drangpons from amongst the eminent jurists, except for the appointment of other judicial personnel.
14. Will determine universities whose degree of law shall be a qualification for enrolment as Jabmi.
15. Will promote and support law reforms
16. Will conduct continue legal education
17. Will uphold the integrity of Jabmis