

EFFECTIVE LEGAL AND PRACTICAL MEASURES IN COMBATING CORRUPTION

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I. INTRODUCTION

Corruption is a disease that is common in every country. However it varies from country to country depending upon the system of government, level of economic development, policy of the government and culture of the society. Although corruption is not seen in on an unmanageable scale it is prevalent Bhutan in all forms and at various levels, be it in government or the corporate and private sectors. Transparency International has placed Bhutan at number 46 amongst 180 countries in the Corruption Perception Index (CPI).¹

With the transition of the government to constitutional parliamentary democracy, His Majesty the Fourth King felt it very important to prevent and eliminate corruption from the very beginning of his reign and decreed the establishment of an Anti-corruption Commission (ACC) on 31 December, 2006. Accordingly on 4 January, 2007 the ACC office was set up specifically as an agency to clean up corruption in Bhutan. Since its inception, the ACC has been actively involved in tracing corruption and bringing perpetrators to task, besides carrying out preventive and educational programmes. It has mainly devoted itself to developing baseline information on corruption; investigating cases; simplifying public delivery systems and asset declaration; education and advocacy on corruption; and studying the forms, causes and consequences of corruption.²

II. POLICIES AND INITIATIVES OF THE ROYAL GOVERNMENT

His Majesty the Fourth King's development philosophy of Gross National Happiness (GNH) has been enshrined in the constitution as the goal and pursuit of the government.³ In order to pursue this noble goal, anti-corruption measures are adopted through the policies of good governance by encouraging efficiency, accountability and transparency. The fight against corruption has been featured as a national agenda in the 2005 Good Governance Plus (GG+) Report and through this report all agencies are required to take anti-corruption initiatives.

On 12 June the Prime Minister, in his address to the gathering on the Launching of the Asia Pacific Human Development Report 2008, "Tackling Corruption, Transforming Lives", assured the commitment of his government to the policy of good governance. In doing so he also stressed the participation of the people in making the government more accountable, responsible and transparent. In a later address to the nation he also assured his support for the fight against corruption and said that the government is adopting a policy of zero tolerance to corruption.

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¹ Bhutan Times, Volume II, No 112 (24 September 2008).

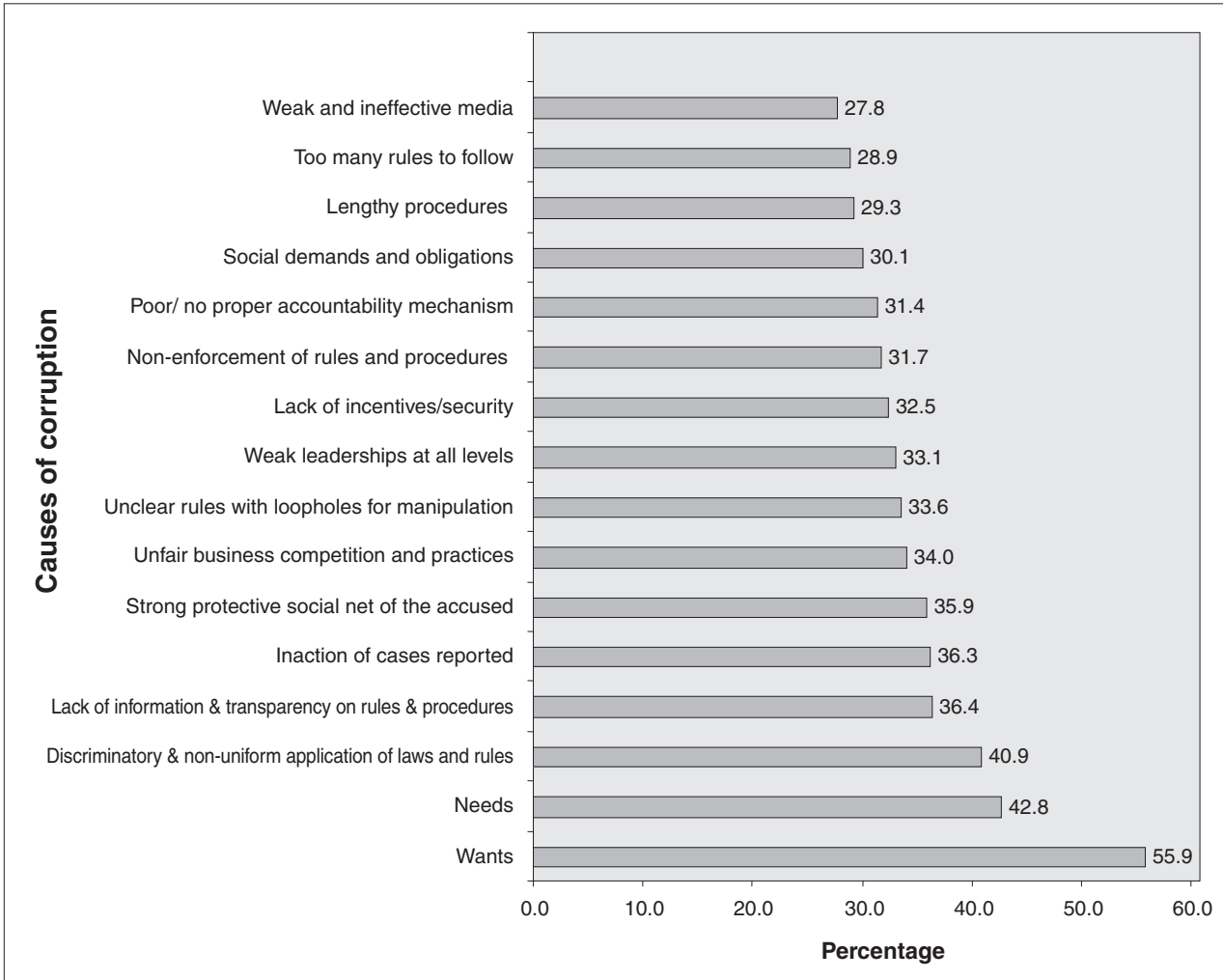
² ACC Website.

³ Article 9, section 2 of the Constitution of the Kingdom of Bhutan.

III. CAUSES OF CORRUPTION

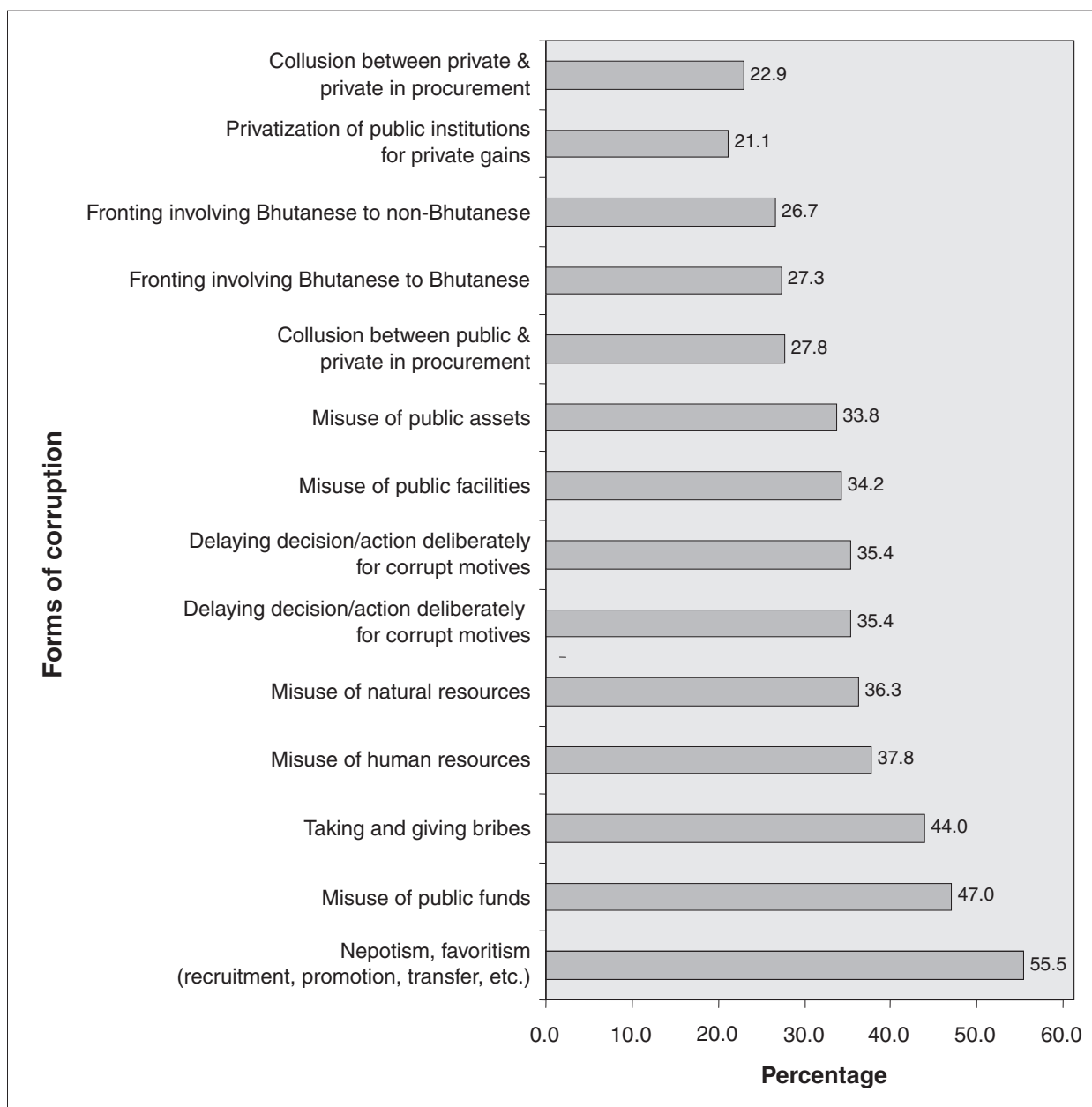
The ACC conducted a Corruption Perception Survey (CPS) in 2006 and found that the respondents viewed human wants (55.9%), needs (42.8%), and discriminatory and non-uniform application of laws and rules (40.9%), as the major causes of corruption, as shown in Figure 1.

Figure 1



IV. FORMS OF CORRUPTION

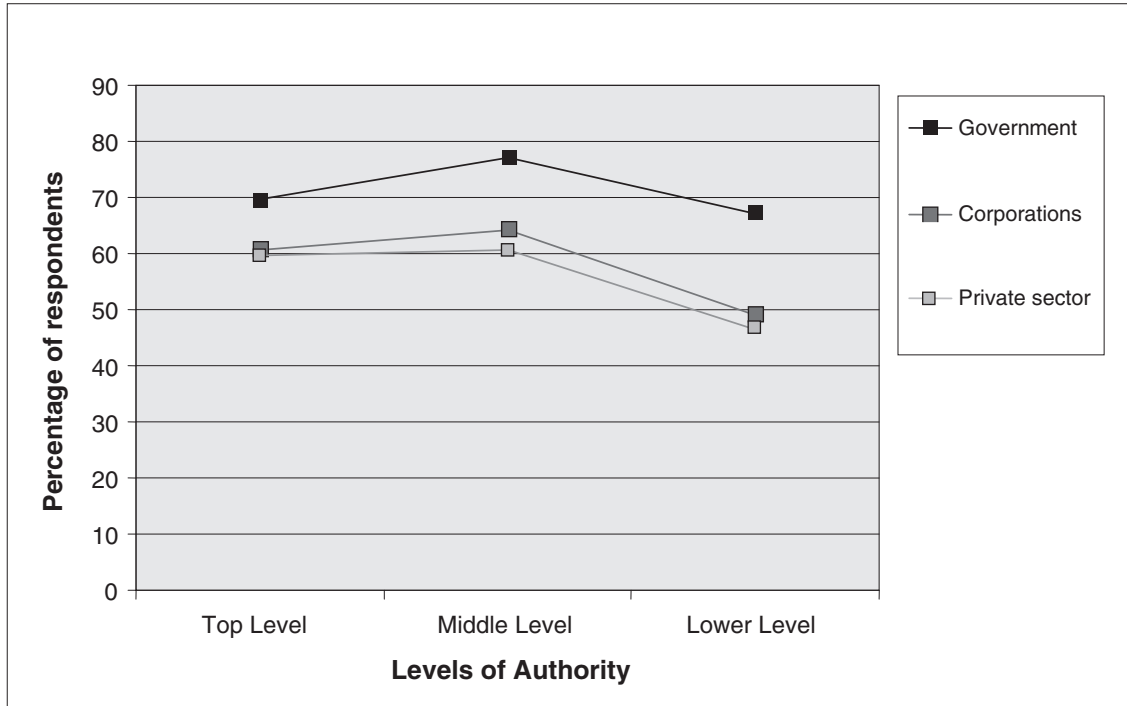
As per the CPS 2006, nepotism and favouritism are the most prevalent forms of corruption followed by misuse of public funds and bribery.



V. EXTENT OF CORRUPTION

The CPS 2006 survey also found that corruption is pervasive across all levels and sectors but is more prevalent at middle level.

Figure 3: Prevalence of corruption by level of authority



VI. COUNTER-CORRUPTION MEASURES

A. Enforcement Agencies

1. Anti-corruption Commission (ACC)

The ACC has been established as an independent body, headed by a chairperson and two commissioners to prevent and combat corruption in the country.⁴ The ACC also ensures that the reports of the Royal Audit Authority are meted out with appropriate actions by the concerned agency. Any individual can file a report with the ACC and, based on merits, the ACC takes up the case.

2. Royal Audit Authority (RAA)

The Royal Audit Authority was established in 1977 to audit the accounting systems in the country. Initially, the RAA also shouldered the responsibility of prosecuting those charged with corruption with the assistance of the Royal Bhutan Police. Today the action against the findings of the RAA is to be initiated by the line ministry and the ACC takes the case if no action has been taken against the offender.

3. Department of Revenue and Customs (DRC)

The DRC is a department under the ministry of finance primarily entrusted with the activity of collecting revenue for the government. Thus, the department also reviews whether the collection of revenue by the government agencies are properly accounted or not. Irregularities by the agencies or individuals officials are also reported to the concerned agency management.

4. Attorney General Office (AGO)

The OAG was initially established as Office of Legal Affairs in April 2000. With the passing of the Attorney General’s Act 2006, the office then became the Office of the Attorney General as per section

⁴ The Constitution of the Kingdom of Bhutan, Article 26, section 1.

3, Office of the Attorney General Act, 2006. The OAG is entrusted with the job of prosecuting and representing the government, drafting and reviewing bills, providing legal advice and other services of a legal nature as assigned by the government. Thus the OAG is entrusted with the important function of prosecuting offences in all types of corruption.

5. Royal Bhutan Police (RBP)

The RBP was established on 1 September 1965 as an independent body to maintain law and order. Its responsibility is to prevent the commission of crime and to detect crime already committed. Since it has to perform the function of prosecuting criminals in court, corruption cases are jointly prosecuted in collaboration with the concerned ministry or the OAG. The RBP also assists the ACC as and when required by the ACC.

6. Judiciary

The judiciary of Bhutan commenced functioning as separate organ from 1968 with the institution of the High Court headed by the Chief Justice of Bhutan. Presently the judiciary consists of the High Court, District Courts and Dungkhag Courts presided over by the Chief Justice, Dzongkhag Drangpons and Dungkhag Drangpons, respectively.

The Bhutanese legal system is based on Buddhist natural laws. Although the procedural system is principally adversarial, it also has certain elements of the inquisitorial system. This principle of the adversarial system is enshrined in the *Bardo thoedrel*⁵ which is also propagated to the people in the form of dance during annual festivals throughout the country.

B. Strategies Adopted by ACC

The ACC has created three divisions in order to prevent corruption. It has the Prevention Division, Public Education and Advocacy Division and Investigation Division.

The prevention division has three sections, consisting of the System Review Section, the Research Section and the Asset Declaration Section. The System Review section concentrates on organizational systemic studies aiming at both the short term as well as long term objectives. Preventive studies are based on the following sources:

- Systemic flaws discovered as a result of investigation;
- Proactive studies undertaken in corruption prone sectors;
- Findings by the Royal Audit Authority;
- Regular meetings with the senior management of government departments and public bodies and;
- Requests made by government departments or private agencies.

The Research Section undertakes research initiatives in relevant fields from local as well as global perspectives with long-term objectives such as policy changes. Research can provide useful information in formulating preventive strategies, adopting best practices, strengthening public education and supporting proactive investigation.

The Asset Declaration system provides an avenue to check the accumulation of wealth that is disproportionate to the legal source of income. This can promote trust and confidence of the general citizens in public officials occupying influential positions.

Further, the Public Education & Advocacy Division has been created to ensure the general public's awareness of corruption and its impact and influence, and to foster an attitude, behaviour and culture of intolerance towards corruption and to uphold social values and the ethics of honesty and integrity.

The Investigation Division of the Commission is mandated to investigate corrupt activities of the government, corporate and private sectors through both reactive and proactive approaches.

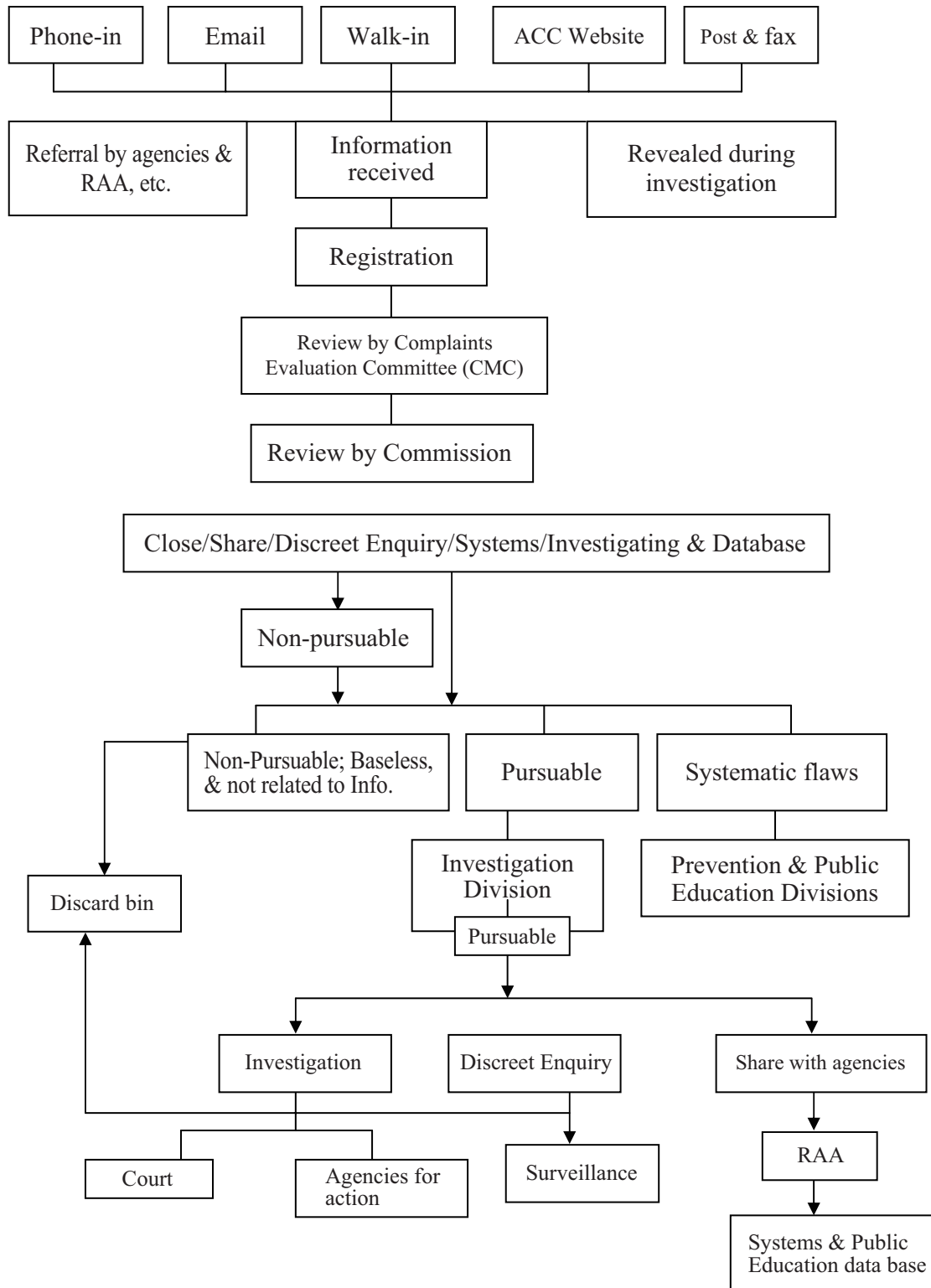
C. Filing of Complaint and Prosecution

As per section 59 of the Anti-Corruption Act of Bhutan 2006, any person can lodge a complaint with the

⁵ Book of the dead-Garud Puran.

ACC against a public servant, public entity or other person who committed or is attempting to commit an offence of corruption. Complaints, irrespective of the content, are registered by an officer and go through a rigorous process of review by the Complaints Management Committee (CMC). After the investigation, cases that warrant conviction are forwarded to the OAG for prosecution in the court of law.

The complaint management system of the ACC is as shown below:



VII. OFFENCES RELATED TO CORRUPTION

The Penal Code of Bhutan 2004 (Penal Code) has been enacted to repeal certain provisions of the *Thrimshung Chhenmo* (Supreme Law) of 1959 that are not accepted in the present day and also to cover up various offences not incorporated in the *Thrimshung Chhenmo*. Some of the provisions incorporated in the Penal Code to deal with corruption are:

- Laundering of the proceeds of crime and smuggling (Sections 277, 279 & 280);
- Embezzlement (Section 287);
- Bribery of a public official and commercial bribery (Section 289 & 292);
- Official misconduct (Section 294);
- Forgery of and tampering with public records and documents (Sections 296, 298 & 300);
- Deceptive practice (Section 309);
- Obstruction of lawful authority and public service (Section 422 & 424).

Common among the above offences charge sheeted to the court are embezzlement, forgery, official misconduct, tampering with public records and deceptive practices including fronting. The Penal Code also provides for restitution, confiscation and recovery of criminal proceeds under sections 46, 47 and 48. This could be done as provided under the criminal procedure code for freezing of accounts, seizure, etc.

VIII. CHALLENGES TO COUNTER-CORRUPTION ACTIVITIES

Bhutan has just stepped into a constitutional democratic system and its economy is still in a developing stage. Since the means has to justify the ends, it is the task of the government, corporate and private entities to provide the working class with adequate means. Further, because of globalization and growing consumerism, the dealing agencies have to manage corruption involving members of international communities.

Although civil servants are trained with modern management and administrative methods, the general tendency of complacency still persists. Besides, there is need for inculcating a business oriented culture (productivity) in government service which will remain for some time.

Bhutan is a small country with a small population where everyone is known to one another and being so, the tendency of 'Small Society Syndrome' makes the objective of bringing the corrupt to task more arduous. And one thing that hinders the assessment of bribery is the culture or the tradition of offering *Chhanjay*⁶ and receiving *Soelra*.⁷ It is difficult to draw a line between gift-giving and bribery and often the offence of bribery is overshadowed by the culture of gift-giving.

There is also a dearth of professionally trained personnel and amenities so as to effectively carry out research and investigation. The lack of adequate allowances and incentives is another factor that hinders the personnel of the agencies from effectively probing corruption.

IX. CONCLUSION

The government of Bhutan has adopted a zero tolerance policy to corruption so as to build up a strong foundation for a vibrant democracy. Since the inception of the ACC, corruption cases have multiplied to three times the former level. It has cracked down on not only on the government service employees but also on corporate employees as well as on private business industry. Although the judiciary of Bhutan is also committed to supporting the prosecution of corruption cases, not all cases of corruption could be brought to justice due to lack of evidence beyond reasonable doubt and having to play the role of an umpire as mandated by the constitution. However, smallness is also seen as an advantage considering the efforts of educating the masses and keeping watch on the functioning of the handful of government agencies, and corporate and private sector actors.

Bhutan signed the United Nations Commission against Corruption (UNCAC) in 2005 but has not yet ratified it.

⁶ *Chhanjay* is a tradition or the act of bringing gift to officials.

⁷ *Soelra* is culture or the act of giving gift by an official to a person subordinate to him or her.