THE CONSTITUTION OF BHUTAN: Principles and Philosophies
by
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PREFACE

The Constitution of the Royal Kingdom of Bhutan encapsulate the people’s aspiration to preserve the sovereignty and indelible identity of Bhutan, the Monarchy’s adherence to the concept of grass-root level democracy and the decision of His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo to effectively transfer power to the people by giving to them the fundamental charter.

As the Chairman of the Drafting Committee, I was associated with “the making” of the Constitution under the guidance of His Majesty and had occasion to traverse the long route from the past to the present. The book chronicles the long history of Bhutan, from beyond 1907, when the first hereditary Monarch was installed and its onward march. It also narrates its traditions, culture, philosophy based in Buddhist ideology and precepts. The people to uphold Bhutan’s unique identity and the unrivalled role of the Monarchs in holding the peoples’ rights as sacrosanct and divine preserving, protecting, and sustaining the rights of the people for all times to come. The book explains the intent and the concept which are at the root of each provision of the Constitution.

The book underscores the reality that the Constitution is indeed the Supreme Law of the nation and throws light on the structure of polity. It has been carved out in the Constitution to maintain a harmonious equity between the State and the Citizens. The book wends its way from the past to the present and covers the active involvement of Their Majesties and the people (interactive sessions). The meaningful deliberations in the Drafting Committee and the desire of one and all to carve out a document, which will be a legacy for the people, to enrich their lives and usher in an era of Gross National Happiness as earnestly desired by Their Majesties.

Seldom has it happened in world history that the Monarch suo moto gives to his people an enduring gift to protect them, ensure sustainability to them and the nation and guide them to happiness and prosperity. His Majesty who sincerely and genuinely seeks the happiness of his people is the architect and creator of the Constitution. The former Prime Minister of India, the late Mrs. Indira Gandhi said “the richest legacy of His Majesty Jigme Dorji Wangchuck is his worthy son and successor, His Majesty Jigme Singye Wangchuck in whose hands now rests the destiny of Bhutan”.1 How prophetic were her thoughts! The Constitution is a monument of His Majesty’s vision for his people to protect and preserve their destiny. The French Statesman Turgot said, “The people are the hope of the human race.”2

Indeed, the people of Bhutan are the pillars of the survival of democracy and the preservation of its Constitution. His Majesty Jigme Singye Wangchuck and His Majesty Jigme Khesar Namgyel Wangchuck in devolving power on the people have reposed great trust in the people, so they can realize that constitutional democracy is not so much the end, but the manner in which the people seek that end.

1 Lham Dorji, Wangchuck Dynasty: 100 years of Enlightened Monarchy in Bhutan, 2008, p.83.
It must be said that the preservation of democracy ultimately depends on the will of the people, their sagacity and their vigilance. As aptly said, “eternal vigilance is the price of liberty” and it is this vigilance of the people of Bhutan which will preserve the letter and spirit and indeed the sanctity of the Constitution of Bhutan.

I trust the book will guide the people to understand the Constitution better and help them to play a constructive role in the destiny of Bhutan.

In all humility, I dedicate this book to Their Majesties and the people of Bhutan.
Making of the Constitution

The Constitution is the Supreme Law of a State, which defines the relationship of different entities within a State entailing their powers and responsibilities. It is a document expressed in a simple language, which the ordinary people can understand. It responds to changing and unknown situations. It is an organic law, superior to other laws. It is the mother of all laws with an ever expanding family of laws that keep the nation and its people’s behaviour within the bounds of the Constitution’s philosophy. It has a philosophical basis of internal freedom with external symbiotic existence. Buddhist ethics is founded partly on the notion of social concern and partly on the notion of the perfectibility of the individual. The Constitution will avert the tyrannical laws that will subvert the basic foundation of democracy. Therefore, a Constitution has both worldly and intellectual characteristics.³

The first Constitution in the world was written by Solon, an Athenian lawmaker and reformer, as a reaction to Draco’s harsh laws of 621 BC. His Constitution was adopted in 495 BC by the members, who were all of the Greek ruling class, a group based on wealth (plutocracy). Thereafter, the idea of “the Constitution” engulfed the world. Only 20 of the 190 countries with constitutions pre-date 1950.⁴

Etymologically, the term Constitution comes from the Latin word constitutio, used for regulations and orders. We must know the latent power of that simple word that inspired peoples and nations across the World.⁵

Until 1907, Bhutan fiercely fought and sacrificed in upholding her sovereignty and identity. This ordeal came to an end, on Seventeenth of December Nineteen Hundred and Seven, when the first social contract was signed by the people through their officials and representatives with the First Druk Gyalpo⁶ Gongsar Ugyen Wangchuck. It was in this historic “Genja”⁷ that our forefathers had pledged to serve and repose trust and confidence in the establishment of Monarchy. All members within the Bhutanese society agreed to the terms of the social contract by their popular choice. Since then, Bhutan enjoyed security, tranquility and happiness engendered by the dedicated and selfless leadership of our successive Kings. With the constant nurturing of democracy, many social, economic and political reforms have been introduced during the last one hundred years of Monarchy, the latest being the drafting of the Constitution.

The seeds of Bhutan as a nation state were sown in 1907 with the election of a hereditary monarch akin to “The Great Chosen One (Mahasammatta),⁸ which bore fruits a century later in 2008 with the adoption of the Constitution. The Constitution of Bhutan is the culmination of more than a century of the democratic culture and traditions which existed in Bhutan since 1907. The bedrock of Bhutan as a nation right through the century has been that all men are created equal and that they are endowed with certain inalienable rights of life, liberty and happiness. The Constitution of Bhutan embodies these virtues and secures to the people these rights which are enforceable legally. The Bhutanese Constitution has references to legal, political, social, cultural and spiritual philosophies and principles. The legal and philosophical basis of the Constitution is

⁴Paper presented by Lyonpo Sonam Tobgye at Royal Institute for Governance and Strategic Studies, Phuentsholing, A Perspective on the philosophical basis of the the Bhutanese Constitution, 21st March 2014.
⁵Ibid.
⁶The king of Bhutan.
⁷Refer Article 2 Section 3.
the historic “genja” of 1907. The establishment and election of the Monarchy with inherent succession of responsibility through public choice had democratic imprimatur. It was a rational choice for collective action. In addition, the history of our nation state, the philosophical perspectives concerning the working of human relationships, the resulting social order, the past and existing political institutions, the sacrifices made by our forefathers, and the norms, values, principles and ideals espoused by and through the words and actions of our benevolent monarchs also formed the basis of our Constitution.9

The Monarchy
With the establishment of monarchy and the enthronement of the first hereditary monarch, the Druk Gyalpo Gongsar Ugyen Wangchuck (1907-1926), the temporal and secular administration was consolidated and unified in the person of His Majesty.10 He united the nation, secured stability, ensured domestic tranquility, and strengthened the friendship and co-operation with British India. Speaking at the installation of the Second Druk Gyalpo, Colonel Bailey said, “I cannot refrain from referring to my sorrow at the death of my old friend, His Highness Sir Ugyen Wangchuck. I had the honour of his acquaintance for 24 years. The benefits conferred on Bhutan by uniting the country and giving peace and prosperity to its inhabitants, both lamas and laymen.”11

The Second Druk Gyalpo Jigme Wangchuck (1926-52) continued His father’s centralization and modernization efforts, built more schools and consolidated sovereignty of Bhutan. He was conscious of the protocol and dignity of Bhutan.

The Third Druk Gyalpo, His Majesty Jigme Dorji Wangchuck (1953–72) is revered by Bhutanese as the father of modern Bhutan. His Majesty modernized Bhutanese society by abolishing slavery, serfdom and the caste system. The prominent political reforms initiated by His Majesty include the establishment of the National Assembly (Tshogdu Chhenmo) or the Legislature in 1953, institution of the Royal Advisory Council (Lodre Tshodue) in 1965 and establishment of the High Court (Thrimgkhang Gongma) in 1967, which separated the Judiciary and the Legislature from the Executive. His Majesty also enacted the Thrimzhung Chhenmo (The Supreme Law) in 1959 which inter alia, stands out as a very unique and important piece of legislation. Consisting of seventeen chapters, it guaranteed fundamental rights, equality of persons before the court of law, the right to own and inherit properties without any discrimination, and the right to marriage and family. He also made a major political decision towards the establishment of constitutional monarchy in 1969, where he moved a Bill, which made himself answerable to the National Assembly and empowered the members to pass the vote of no confidence. But due to intense resistance from the people, the Bill did not see the light of the day.

His Majesty, the Fourth Druk Gyalpo Jigme Singye Wangchuck
His Majesty Jigme Singye Wangchuck, upon the premature passing away of His father had to assume the responsibility of kingship at a young age of seventeen years in 1974 and continued to usher in social, economic, political and democratic reforms at an unprecedented scale which Bhutan had never experienced in its glorious history. His Majesty further reformed the three

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9 Paper presented by Lyonpo Sonam Tobgye at Royal Institute for Governance and Strategic Studies, Phuentsholing, A Perspective on the philosophical basis of the Bhutanese Constitution, 21st March 2014.
10 Punakha genja starts with "Lag-nyi" which means temporal and secular system.
11 Colonel Bailey speaking on the installation of the Second King on 14th March 1927.
branches of the government and strengthened the rule of law by enacting various laws. In 1996, His Majesty, despite popular resistance from the people, moved the Bill, once introduced by the third King, which made himself answerable to the National Assembly and empowered the members to pass the vote of no confidence. The Bill was passed by the National Assembly under the title “Vote of No Confidence Act, 1996”.

His Majesty also propounded the philosophy of One Nation-One People. On 1st January, 1974, during the public gathering at Sibsoo, His Majesty said, “You, the citizens of Southern Bhutan must never regard yourselves as aliens, because you and your forbearers also, were born and raised in Bhutan and as such, all of you are Bhutanese. Regarding yourselves thus, you must look to the betterment and progress of Bhutan. All of us must remain united as one people and as one nation and forge ahead together.”

Democracy prior to the Constitutional era
The process of democracy in Bhutan has been evolutionary and not revolutionary. The notion of participatory democracy was ingrained in the Bhutanese psyche. From the very beginning, the process of election existed in the political system. For instance, the Debs\textsuperscript{12} were elected.

His Majesty Jigme Singye Wangchuck initiated democracy by establishing and institutionalizing local governments such as \textit{Gewog}\textsuperscript{13} Yargye Tshogchhung (County Development Committee) in 1980 and the \textit{Dzongkhag}\textsuperscript{14} Yargye Tshogdue (District Development Council) in 1991. With the experience and knowledge of the institutions, the foundation of Local Government was strengthened. At the centre, His Majesty devolved all executive authority from the Throne to an elected Council of Ministers in 1998. With regard to the Dzongkhag, His Majesty informed the National Assembly on 23rd June, 1981, about his new approach to planning: encompassing Dzongkhag self-reliance, the concept of decentralization, reduction of the establishment and maintenance costs of the Royal Government, increasing the government’s revenue and resources, and further encouraging the participation of the people in the development activities and programmes. His Majesty emphasized that the people and the Royal Government must work hand in hand in the development of the country.

Decentralization was facilitated with the building of the road communications. Bhutan had long recognized communication as a lifeline that ushered in development, mobility and facilities, increasing rural income. Thus, changes in Bhutan germinated through internal evolution and not through external imposition or slavish imitation. This evolution was a change in the inherent traits of the Bhutanese from generation to generation.

His Majesty has always desired that the social and political system of the Kingdom should progressively evolve along a path that secures and protects a social order that is founded on justice, peace and harmony, the principal tenets of Gross National Happiness. The country witnessed momentous development in the Kingdom with policies initiated by His Majesty to fully separate and further strengthen the legislative, judicial and executive organs of the Royal Government.

\textsuperscript{12} \textit{Debs} is the title given to temporal ruler of Bhutan.
\textsuperscript{13} \textit{County}.
\textsuperscript{14} \textit{District}.
His Majesty said that the historic transition to democracy is something all Bhutanese must take great pride in. His Majesty elaborated that democracy was not about going from election to election, but a way of life. “The spirit of democracy must be a part of one’s life at home with one’s family, in the community, at work and in the government. It is not a word to be used for politics alone,” he said. “The spirit of democracy depends not on the form of government but on the principles, integrity and values of the individual.”

Alex de Tocqueville mentioned that:

“Democracy does not create strong ties between people. But it does make living together easier”.

**Birth of the Constitution**

The genesis of the Constitutional process began in 2001, when His Majesty Jigme Singye Wangchuck proclaimed that democracy shall be the bulwark of the people of Bhutan, with these words: “that the destiny of the nation lies in the hands of the people, we cannot leave the future of the Country in the hands of one person”. His Majesty’s announcement quoted above was not fortuitous but an article of faith as His Majesty believed in conferring ultimate power to the people of Bhutan.

On 4th September 2001, His Majesty Jigme Singye Wangchuck further decreed a historic Command that a written Constitution be promulgated for the Kingdom. His Majesty astonished the Nation with the proclamation that Bhutan would embrace democracy. His Majesty briefed the Council of Ministers, the Chief Justice of Bhutan and the Chairman of the Royal Advisory Council on the need to draft a written Constitution. The decision of His Majesty to grant power and governance to the people at the grassroot level was the forerunner of what He had in His mind. His Majesty had desired then in 1980s that our Kingdom should eventually evolve into a constitutional democracy in which there will prevail, a government of the people, by the people and for the people. This innate desire led Him to resolve that Bhutan should have a Constitution, which would spell out the rights and obligations of those who govern and those governed. He refuted the idea that the Constitution is a gift from the Throne but firmly believed that it was the King’s duty to initiate drafting of a written Constitution for Bhutan. In His vision, the adoption of a written Constitution would go beyond defining the roles of the organs of the Government and its people. His Majesty desired that the Constitution be written and adopted in times of peace to establish a democratic system, which would be in the best interest of the Bhutanese People, which would reflect the aspirations of a rapidly modernizing state, ensuring Security, Sovereignty, Justice, Peace and Prosperity, and which would uphold the fundamental rights and well-being of the People. He expressed his desire that the *Lhengye Zhungtshog* and the Chief Justice of Bhutan should hold discussions on formulating the Draft Constitution. His Majesty commanded that the Constitution should cover the following major Articles:

1. Introduction/Preamble;
2. Fundamental Rights and Duties;

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15Royal address by His Majesty Jigme Singye Wangchuck during the inaugural session of the 87th session of the National Assembly, reported by Kuensel dated 9th June 2007.
16Markate Daly, Communitarianism: A new Public Ethics, 1994, p.47.
18Council of Ministers or Cabinet.
3. Relevant Articles relating to the role and responsibilities of His Majesty the King;
4. Relevant Articles relating to the Executive;
5. Relevant Articles relating to the Legislature (Reforms and re-organization of the National Assembly and the Lodroe Tshogdue);
6. Local Governments (Dzongkhag Yargay Tshogchungs and Gewog Yargay Tshogchungs);
7. Relevant Articles relating to the Judiciary including the establishment of the Supreme Court of Bhutan;
8. Articles covering the Auditor General, Anti-Corruption Commission, Royal Civil Service Commission etc;
9. Other Articles for the Constitution which are necessary and beneficial to the Country, Government and People; and

His Majesty’s announcement took the people by surprise and almost disbelief and hence the Constitution drafting Committee constituted by the Royal proclamation became acutely conscious of critical scrutiny from the people of Bhutan, skepticism from foreigners and deflected antagonism from our friends. The Drafting Committee was under the glare of history, it could not falter nor fail and hence it took upon itself conscientious study of:

(a) Royal decrees and edicts, laws of Bhutan, speeches of His Majesties and policies of the Kingdom;
(b) Religious, cultural, philosophical and political bases of the Country;
(c) History of the evolution of the democratic process;
(d) The meaning, objectives and nature of the Constitution;
(e) Constitutional values, principles and judicial process;
(f) Salutary provisions of the Constitution;
(g) Types of rights, liberties and freedoms;
(h) Universal Democratic traditions and practices;
(i) Emerging legal paradigms, social and ethical control mechanism;
(j) Concept of sovereignty;
(k) Interest theories and theories on social, political and public moralities;
(l) Lessons from numerous constitutional crises around the World;
(m) Human rights conventions, treaties, protocols, covenants and other international and regional instruments;
(n) The comments on the draft Constitution from international agencies, individuals and the Ministries of the Royal Government;
(o) Clauses, sentences, provisions, dicta of many constitutions, constitutional reforms documents, landmark judgments and constitutional writings; and
(p) Around hundred constitutions (out of which twenty were studied in detail).

One of the apprehensions expressed by the people was that the Constitution and Democracy *per se* was coming too early to Bhutan, and that the interests of the people would be forgotten if the monarchy was to devolve power to the political parties. However, His Majesty Jigme Singye Wangchuck expressed that “Bhutan, through good fortune and fate, could not hope for a better moment than now for this historical development and would never find another opportunity like

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20 For example see, Hiroshi Nishihara, *The Significance of Constitutional values*, 2001.
this to introduce a Constitution that would provide a democratic system of government best suited for the future well-being of the nation. Today the King, government, clergy and the people in all sections of society, enjoyed unprecedented level of trust and fidelity. The security of the country was ensured and the people enjoyed peace and stability. Bhutan’s relations with its close friend and neighbour had reached a new height and the country also enjoyed growing relations with its developmental partners as well as other countries that appreciated the Kingdom’s wholesome policies for development and change. In many countries, constitutions were drafted during difficult times, under pressure from political influences and interests, but Bhutan was fortunate that the change came without any pressure or compulsion.  "21 The Constitution of Bhutan, unlike many other constitutions, was a product of peace with the purest of motives. It emanated from His Majesty, whose vision would advance the country into the distant future, ensuring the well-being of the people and the sovereignty of the nation. His Majesty said “we should not be deterred by the fact that democratic political systems have not been working in some countries. The principles and ideals of democracy are inherently good and a democratic system is desirable for Bhutan. If the lessons of some democracies are not encouraging it is not because the concept of democracy is flawed. It is because of mismanagement and corruption by those who practice it.” 22

Speaking to the people, His Majesty said that in the thirty four years of his reign, we have grown far beyond our own expectations and today created history as a nation that has not only given birth to the unique philosophy of Gross National Happiness, but also achieved an unprecedented transition to democracy. His Majesty has shown that there is no other duty for a king than to serve the people. 23

His Majesty Jigme Singye Wangchuck decreed on Ninth Day of December 2006 that:

“"The time has now come for me to hand over my responsibilities to Trongsa Penlop Jigme Khesar Namgyel Wangchuck.

“While we prepare ourselves for parliamentary democracy in 2008, we must all pledge with our body, speech and mind to be unwavering and steadfast in our efforts to strengthen the sovereignty and security of Bhutan, to secure the blessings of liberty, ensure justice and peace in our country, and enhance the unity, happiness and well-being of our people for all time to come.

“I am confident that a very bright and great future lies ahead for Bhutan with the leadership of a new King and a democratic system of government that is best suited for our country, as enshrined under the Constitution. I have every confidence that there will be unprecedented progress and prosperity for our nation in the reign of our Fifth King.

“As I hand over my responsibilities to my son, I repose my full faith and belief in the people of Bhutan to look after the future of our nation, for it is the Bhutanese people who are the true custodians of our tradition and culture, and the ultimate guardians of the security, sovereignty and continued well-being of our country.”

21 Kuensel, 5th November, 2005
23 His Majesty’s address at the First Session of Democratic Parliament of Bhutan, 8th May 2008.
Aptly, the Constitution of Bhutan draws heavily on various philosophies. The Constitution must satisfy Bhutanese aspirations, have global conformities and, spiritual and philosophical basis. If the context and words fail, principles and philosophical basis must give purposive interpretation. Philosophies encompass explosion of thoughts with tolerance. It gives immortal thoughts and sublime aspirations of the humanity. Anaxagoras said:

“to philosophy, I owe my worldly ruin, and my soul’s prosperity”\(^\text{24}\)

The Constitution of Bhutan is a simple text with the Epicurean philosophy of the document being easily intelligible and expressed in a language, which the ordinary people can understand complex issues. It is the northern star of constellations guiding the diverse nature of a state and its citizens. It responds to the changing and unknown situations. It is the mother of all laws with expanding family that keep the nation and its people’s diverse behaviour with uniform living. It has a philosophical basis of internal freedom with external symbiotic existence. It has many manifested and latent attributes of human nature beside functional objectives of the Constitution espoused by Aristotle and utilitarian objectives by Bentham. Therefore, the Constitution of Bhutan has both worldly prosperity and soaring intellectual pursuit. Above all, it demonstrates that it is a document of the people, by the people and for the people and that people alone shall be the arbiter of their destiny.

**Objectives of the Constitution**

The Constitution is not only a set of fundamental laws\(^\text{25}\) that form the basis of governance of the country, but it embodies and reflects certain values, philosophies and objectives that are held very dear by the people of a country. These values find expression in various articles and provisions of the Constitution. Constitution is neither abandonment of the past nor resistance to change. It must respect and build on the past shaped by history and hence, the provisions of the Constitution should firstly, be preservative to maintain certain existing practices to avoid deterioration, secondly, it should be reformative to usher in certain aspirations and thirdly interventionist to uphold and protect the spirit of the Constitution.

Beside functional and utilitarian\(^\text{26}\) objectives, the Constitution must promote progress, stability and values. The Constitution expresses human desire to build a better society in the future. We are all acquainted with the idea that the destiny of our societies depend largely on having a good Constitution. In that sense, the Constitution is political, creative, and foundational document, which connects the origins of our society to its future.

The Constitution is a sacred document and to quote Joseph Story:

“**The structure has been erected by architects of consummate skill and fidelity; its foundations are solid; its compartments are beautiful as well as useful; its arrangements are full of wisdom and order; and its defences are impregnable from without. It has been reared for immortality, if the works of man may justly aspire to such a title. It may, nevertheless, perish in an hour by the folly, or corruption, or negligence of its only keepers, THE PEOPLE. Republics are created – these are the words which I command to**


\(^{26}\) K.N Jayatilleke mentioned that a utilitarian and pragmatic motive behind the legislation is that “their aim is the attainment of some practical end”. *Ibid.*
you for your consideration – by the virtue, public spirit and intelligence of the citizens. They fall when the wise are banished from the public councils because they dare to be honest, and the profligate are rewarded because they flatter the people in order to betray them.”27

The vision and spirit of the Constitution is at the root of what His Majesty Jigme Singye Wangchuck said:

_The Constitution must go beyond mere words and become the golden pillar which will support and enable the political system to safeguard the sovereignty of the country and the rights of the people._28

_The Constitution must create a political framework that will make democracy effective in our country. It must embody the expectations and aspirations of the people, and draw on the wisdom of the existing system and laws, and the lessons learned by other countries around the world. Bhutan is in a unique position today, with the time and opportunity, to develop a system of governance which will be in the best interest of the Bhutanese people and the country. It is of utmost importance for us to utilize this opportunity to frame a Constitution that will ensure a dynamic system of governance which will uphold the true principles of democracy._

Checks and balances must be framed so that no person or organisation will be able to misuse power and authority to undermine the principles of freedom and individual rights enshrined in the Constitution. However, freedom must be accompanied by responsibilities, particularly when the citizens elect their representatives through periodic, and free and fair elections. To ensure the continued prosperity, security and well-being of our nation, we must have a Constitution that will ensure rule of law, encourage political morality and give us a political system that will provide good governance and fulfill the aspirations of the Bhutanese people.29

The Constitution should reflect the best of Bhutanese traditions, avoid conflict of values, gain acceptance through comprehensive discussions and participations of the people and gain legitimacy by fulfilling the needs of the changing times.30 His Majesty Jigme Singye Wangchuck said:

_The important objectives to be borne in mind while drafting the Constitution are (1) Sovereignty of the country, (2) The security of the country, (3) The national interest, and (4) The welfare of the people._31

**Nature of Constitution**

Constitutions can be monist, dualist, abrogative, constitutive and declaratory. The principles derived from case-laws are only constitutive. According to the declaratory theory of Kant, judges do not create new law but they only declare the law. He mentioned that constitutive analogy lead to errors and a regulative posture leads to a desirable advancement of knowledge. However,

29Royal audience by His Majesty Jigme Singye Wangchuck, 30th Nov.2001.
30Royal audience by His Majesty Jigme Singye Wangchuck, 9th Dec.2002.
under the original law making theories advocated by Bacon, Hale, Blackstone, Dicey and Salmond, judges play a creative role in making laws. Likewise, Austin and Bentham said that by interpreting laws and giving new shape, judges make laws.

**Types of Constitution**

Constitutions can be of different types such as Written Constitution and Unwritten Constitution, Enacted Constitution, Federal Constitution, Unitary Constitution, Flexible Constitution, Rigid Constitution, Colonial Constitution, the Neo-liberal Constitution and the Classic Constitution. Many constitutional scholars have adverted to the limited form of constitutionalism or controlled constitution, as a form of reaction to prevailing situations.

**Theories and Philosophies**

Constitutional principles comprise of (i) Rule of Law: It enshrines that both the people and the government must obey all laws; (ii) Separation of powers: advocated by Montesquieu, Burke, Engels, Locke and John Mill mentions that oppression on part of any organ of government may be checked for preservation of liberty and prevention of tyranny. It was opposed by Plato, Bodin, Hobbes and Madison. Madison mentioned that the power of each organ of government should be so far connected and blended as to give each a constitutional control over the other; (iii) Representative government which confirms the participation of people in the functioning of the government; (iv) Checks and balances that no one branch should dominate the other; and (v) The principle of equality, individual rights, freedoms, federalism and civilian control over the military. The Constitution promotes liberal democracy through a State or political system, which combines the right to individual freedom with the right to representative government through periodic elections. The Constitution also guarantees the right to due process, privacy, equality before law, and freedom of speech and religion.

The Constitution entails constitutionalism with checks and balances ensured through separation of powers. According to Stuart Mill, oppression on part of any organ of government may be checked. It embraces rule of law and incorporates judicial review. Constitutionalism is based on the theory of social contract, whereby liberties and freedoms of individuals are honoured. The obedience to the lawful authority and respect for the rule of law are complemented by security and good governance.

Falis S. Nariman stated:

> "... Constitution is founded on the rule of law, and the rule of law embodies a principle of institutional morality, a principle which suggests feasible limits on power, to constrain abuses which occur even in the most compassionate administration of the laws."  

Constitution is the source of power and vests sovereignty with the people of Bhutan. The people of Bhutan will elect their representaives through free, fair and credible elections, and vote in

32Constitutionalism is the struggle for sovereignty and fundamental rights. Scholars have also talked and written about Western constitutionalism, the modern western form, the Contemporary constitutional processes and constitutional rule through ‘consociationalism’.

33Kate Nash and Alan Scott (eds), The Blackwell Companion to Political Sociology, 2008, p.176.

34Falis S. Nariman, Indian Legal System: Can it be saved, 2006.
referendum to make laws and elect a government of their choice. Human choice promotes intellectual growth and responsibility.

The concept of constitutionalism or the rule of law is premised on the belief that the primary function of a Constitution is to limit the scope of governmental powers and prescribe the method for its exercise. Therefore, our Constitution validates certain fundamental values to their overriding supremacy, establishes a framework for the formation of government and enshrines the conduct of administration of such government. Its emphasis on civil and political rights is underpinned by the concept of equality for all citizens under the law. It recognizes property rights for private ownership that often mitigates inequality and encourages progress. Hence, His Majesty explained that:

Democracy is not about politics alone. Democracy is inherently about values and principles. A good democracy will ensure that the aspirations of the people will always be fulfilled.  

John Stuart Mill commented that:

“The Supreme merit of Democracy lies in the fact that it promotes a better and higher form of national character than another polity or whatever”.  

Features of the Constitution
A nation’s Constitution is the most valued document. Preparing it is a sacred and weighty undertaking that cannot be addressed in isolation of the people. Nothing is more important in the political culture and history of a nation than a Constitution by which citizens are ruled. A crucial feature of democracy is political representation through periodic or regular elections to sustain governance by the people. According to Justice Jackson the democratic principles in the Constitution protect the right of the people freely to form our political will and make un-manipulated choices in elections.

The Constitution of Bhutan reaffirms and reflects national sovereignty and nationhood, and commitment to peace, stability and liberty. It draws its strength from our proud historical foundation which imbues it with a powerful, organic raison d’être which will meet the challenges of time. As Oscar Wilde said, “No man is rich enough to buy his past”. But our Constitution contains the lesson and strength of our past and thus provides a powerful organic foundation for our future. His majesty Jigme Khesar Namgyel Wangchuck said:

We must be aware of the existing problems and future challenges which must be dealt with intelligently and efficiently.

Therefore, through the consultative national enterprise, the people of Bhutan have ensured themselves and future generation of the right to the peaceful enjoyment of liberty, justice and equality, in principles and laws that have been engraved not in stone but in the hearts of men.

35 His Majesty’s address to the Graduates of 2007, 24th October, 2007.
38 Monita Soni, My Light Reflections, 2012, p.60.
39 Royal address by His Majesty to the Judges and Lawyers at the High Court, 19th Sept. 2013.
The Constitution is fully founded in the history, culture and religious principles that underlie the glories of Bhutan. It will fill the future generation with pride. It is different from other constitutions. However, it considers principles underlying other constitutions and incorporates the best of those in a manner, which relates to the specific needs and the unique location, history and culture of Bhutan. As our future generations read the pages, they will forever hear the voice of the nation. It is a Bhutanese Constitution based on Buddhist ethos and values. Bhutan cannot imitate slavishly from other countries in toto and undo the values practiced over the generations. Therefore, there are number of Buddhist terminologies and Buddhist values. Constitution must receive the spiritual, traditional and cultural acceptance of the people of Bhutan interfaced with the emerging modern technological realities. Bhutan must be great and progressive.40

The Constitution enshrines the most fundamental principles of democracy. It is a clear testimony that the strength of Bhutan comes from the unity of our citizens. A united and integrated Bhutan can best ensure its sovereignty and security. The “unity” must start within a family, a community and the country.

The Constitution defines various institutions through which power is to be exercised and specifies roles that the institutions are to perform. It also specifies how those who run the institutions are to be chosen.

The Constitution provides carefully crafted checks and balances. The Constitution prevents power from being fragmented in a manner that could lead to an ineffectual and unstable government. These matters are addressed through well defined roles for the central and local governments, through the functional separation of powers between the three arms of the government and through the institutional separation of the political party and other entities and processes.

In brief, the Constitution provides for:-

(a) The rights of the people and their correlative duties;
(b) The concepts of good governance through sustainable and equitable development;
(c) The principles of administrative law, Natural Justice, including the right to procedural fairness, written reasons for decision, and judicial review;
(d) A detailed procedure for election and formation of the government;
(e) The establishment of independent constitutional bodies such as Anti-Corruption Commission, Royal Civil Service Commission, Royal Audit Authority and the Election Commission;
(f) A laudable declaration that the State will not use military force against a foreign State except in self defence or for the purpose of maintaining its security, territorial integrity and sovereignty;
(g) Constitutive and abrogative power to the representative democracy in Parliament but the change of the basic principle is conferred to direct democracy through referendum; and
(h) Dedicated and professional civil and public servants.

As envisioned by His Majesty Jigme Singye Wangchuck, the Constitution embodies the hopes and aspirations of all the Bhutanese people. It will ensure the well-being of the people and

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40 Quoted from the diary of the Chairman of the Constitution Drafting Committee, 2nd July 2004.
animate the Bhutanese values, which have preserved and strengthened our sacred religious and cultural heritage. The Constitution will promote our traditions so that they endure through the ages. It will sustain the whole edifice of our nation.

Sources of the Constitution
The basic sources of the Constitution consisted of the following:

(a) His Majesty Jigme Singye Wangchuck’s command dated 4th September 2001 to the Council of Ministers, Chief Justice and Zhung Kalyon;
(b) His Majesty the Druk Gyalpo’s visions on the Constitution;
(c) The Policy directives and guidelines issued by His Majesty the Druk Gyalpo;
(d) The Royal Kashos41 and key-note addresses on various policies and rights; [49 Kashos and 43 Speeches]
(e) The historical documents and laws codified by our ancestors and leaders, and the laws enacted by the National Assembly including the Thrimzhung Chhenmo;
(f) Bhutanese and Buddhist texts comprising of 7,455 pages;
(g) The constitutions of 20 different countries;
(h) Various international conventions;
(i) Various political philosophies;
(j) The customs and traditions of Bhutan;
(k) Buddhist philosophies; and
(l) The formal and informal comments received by the Secretariat of the Constitution Drafting Committee. The Secretariat received comments from UNDP (Thimphu), HELVETAS (Switzerland), Centre for Human Rights (Germany), DANIDA (Denmark), Speaker of the National Assembly of Bangladesh, UNICEF (Thimphu), Mr. Chandrashekaran, Mr. John Wilson (Hongkong) and Bhutanese scholars, civil servants, judges, lawyers, jurists and academicians. The Secretariat also collected comments from the Editorials and Press clippings of Kuensel and Kuenselonline. Such press clippings constituted about 40 pages.

Formation of the Constitution Drafting Committee
The Constitution Drafting Committee was formed on the backdrop of the Royal Decree issued to constitute a thirty-nine member Committee42. Thus, on 22nd September 2001, in accordance with this edict, the Chairman of the Council of Ministers wrote a letter43 of nomination to His Holiness the Je Khenpo44 and the Chief Justice of Bhutan45 requiring them to nominate representatives for the formation of the Drafting Committee. The Drafting Committee was then formed with representation from all sections of the society under the chairmanship of the Chief Justice.46 The Committee consisted of one elected member from each of the twenty Dzongkhags,

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41 A written order.
42 The initial discussion was whether to form a “Committee” or a “Commission”. The group decided to form a “committee” than “commission” for the simple reason that the word “committee” would mean and connote wider representation of the Bhutanese society whereas “commission” would mean a group of professional who are homogeneous. The Committee felt that since it had representations from all sections of the society, the phrase “Constitution Drafting Committee” was more befitting.
43 Refer to the letter of Chairman, Council of Ministers dated 22nd September 2001 to the His Holiness the Je Khenpo.
44 The Chief Abbot of the Central Monastic Body of Bhutan.
45 Refer to the letter of Chairman, Council of Ministers dated 22nd September 2001 to the Chief Justice of Bhutan which states as “Your Honour is requested to nominate three representatives from the Judiciary to the drafting committee. Commensurate with the sacred and profound nature of the task, Your Honour is solicited to nominate representatives who will be able to make contributions through their competence, knowledge and wisdom and their understanding of the Laws of the Land. Beyond these qualities, it is imperative that the representatives so nominated are of high moral stature with the highest sense of patriotism.”
46 I was deeply beholden to have been appointed the Chairman of the Constitution Drafting Committee by His Majesty the King.
five Government nominees, seven Royal Advisory Council members including the Kalyon (Head of Royal Advisory Council), the Speaker of the National Assembly, two nominees from the clergy and three lawyers. The drafting of the Constitution by representatives of the Bhutanese people reflected the trust of His Majesty in the people to make their own choice, in their integrity and capability, and in their commitment to the Palden Drukpa.47

His Majesty inaugurated the drafting of the written Constitution for the Kingdom of Bhutan with Zhugdrel Phuensum Tsokpai48 tendrel ceremony at the Throne Room in Tashichhodzong on 30th November, 2001 corresponding to the auspicious 15th Day of the 10th Month of Iron Snake year of the Bhutanese Calendar.

The journey of making the Constitution started with the criticism on the members of the Drafting Committee. There were interferences from the Government, institutions and individuals. The Prime Minister had sent “Terms of Reference for the Drafting Committee of the Constitution” on 23rd November 2001 and “an internal working paper framework for a National Constitution” on 26th November 2001. These documents were unwarranted for His Majesty the King, while accepting the first draft of the Constitution, noted that the draft had been drawn by the Committee, completely independent of all influences. His Majesty said that he had deliberately avoided any involvement in the drafting process as the Constitution would have to be finalized jointly by the Government, the People and His Majesty the King.49

Meetings of the Drafting Committee50
Pursuant to the inaugural ceremony, the First Constitutional Drafting session was convened from 30th November to 14th December, 2001 at the Royal Banquet Hall, Thimphu. His Majesty commanded that the Royal Banquet Hall would be the site for the drafting of such a historic and important document. The committee deliberated on the right to freedom of thought, conscience and speech for the first three days. The members, while deliberating on every thought and issue, spoke freely and without any constraints. Commencing from the fourth day, the Committee discussed the provisions relating to the Articles provided by His Majesty in His Command of 4th September, 2001.

The Second Constitutional Drafting Session was convened at Punakha, as it is the place where the glorious reign of Palden Drukpa was introduced by Zhabdrung Ngawang Namgyel, followed by the introduction of people’s monarchical system in the kingdom. The meeting was held from 4th to 8th February 2002, which coincided with the Puna Dromchhe. The Committee deliberated on the structure of the Constitution, the separation of powers between the three arms of the Government, Constitutional bodies, rights and human responsibilities, social goals, freedom of the press and Local Government. These deliberations were based upon the views expressed during the first meeting.

The Third Constitutional Drafting Session was convened from 27th March to 11th April 2002 at the Royal Banquet Hall in Thimphu. During the session, draft from the second session, which

47 Chairman of the Constitution Drafting Committee interview to the Kuensel dated 4th June 2002.
48 Traditional ceremony for the acquisition of the triple attributes of grace, glory and wealth during a formal and auspicious occasion.
49 Reported by Kuensel on December 13 2002.
50 165 tape recorded cassettes and 463 pages of the verbatim records of the deliberations and debates during the nine consecutive meetings of the drafting of the Constitution. The interventions made during the various meetings. It has been observed that 3,742 interventions were made.
was based on the discussions and issues raised earlier were reviewed and debated in the context of the speeches and policies enunciated by His Majesty and all relevant Laws of Bhutan.

The Fourth Constitutional Drafting Session was conducted from 10th to 19th June 2002 at the Royal Banquet Hall to review refinements and evolutions from the draft of the third Constitutional Session.

The Fifth Constitutional Drafting Session was held from 9th to 18th October 2002 in Bumthang. Bumthang was chosen because it is both a religious and historic centre of the country. Symbolically and spiritually, it accords recognition to the rise of the Wangchuck Dynasty and combination of *Ka Nying Zung Jug*\(^{51}\). The meeting in front of the holy Guru Rimpochhe set the spiritual atmosphere to imbue our work with the spiritual blessing. The members deliberated on various issues and further improved the draft.

The Sixth Constitutional Drafting Session meeting was convened from 23rd to 25th November, 2002 in Thimphu. At the meeting, the members further discussed on the draft from the fifth and other preceding sessions.

The Seventh Constitutional Drafting Session was held from 12th to 14th March 2003 in Thimphu, followed by the Eighth Constitutional Drafting Session held from 7th to 11th April 2003. The Committee deliberated on the various draft bills including Judiciary, Election, Audit, Anti-Corruption.

The Ninth Constitutional Drafting Session of the Constitution Drafting Committee was convened from 14th to 26th of May 2003. In this session the Recommendations and Comments of the Council of Ministers (CCM) on the Draft Constitution were reviewed.

The Constitution Drafting Committee formally submitted the first draft of the Constitution of the Kingdom of Bhutan to His Majesty, the Druk Gyalpo on 9th December, 2002. His Majesty expressed His pleasure and satisfaction with the quality of the draft. He commended the Committee members for their work and indicated his keen interest in receiving the final draft. He thanked them for their historic effort to fulfill the sacred task. He entrusted upon them.

The Constitution Drafting Committee further deliberated and formally submitted the second draft of the Constitution of the Kingdom of Bhutan to His Majesty, the Druk Gyalpo on Tuesday, 11th June 2003.

**Selection of Constitutional Expert**

Many proposed different experts but Bhutan needed an acknowledged authority with positive disposition to Bhutan and conversant with the theoretical and practical knowledge, and experienced in the constitutional order and cases. Further, over representation by experts would not have gained public receptivity and would have compromised the provisions of the Constitution. Experts from different legal backgrounds would not produce homogeneous Constitution. Therefore, Bhutan selected Mr. K.K. Venugopal, Senior Advocate, Supreme Court of India with long and distinguished legal experience, and highly respected by the Judges and the lawyers in India. He had represented many private persons, commercial organizations and

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\(^{51}\) Harmonious existence between two different orders of Mahayana Buddhism (Kagyu and Nyingma).
government institutions in many important cases. He possesses an extensive knowledge of Constitutional cases, with ethical values and independence.

**Review of the draft**

His Majesty proffered a copy of the Draft Constitution to the Indian Ambassador on the same day for the onward despatch to Mr. K.K. Venugopal. Thereafter, eight consultative meetings were held with Mr. K.K. Venugopal.

The corrected draft was submitted to His Majesty, whereupon, He sent the revised draft to the Chairman of the Constitution Drafting Committee on 15th October 2004. It was analyzed and re-submitted to His Majesty on 18th October 2004. After extensive reviews, His Majesty sent the draft to the Council of Ministers on 1st November 2004.

The process of corrections by His Majesty was phenomenal. His Majesty sent His views and corrections to be reviewed by the Legal Committee under the Chairman of the Constitution Drafting Committee. The Chairman then submitted the corrections in the form of “submissions” with justifications, analysis and background. The first of the thirty submissions was submitted on 4th December 2004.

After incorporating relevant changes based on the recommendations and comments received, a special session of the *Lhengye Zhungtshog* was convened on 21st March 2005. His Majesty shared his views on the draft Constitution with the members, which was the last formal discussion on the draft before being distributed to the people of Bhutan.52

**Reference to other Constitutions**

His Majesty said that Bhutan had been able to draft a Constitution with a progressive approach, having studied about 100 constitutions from around the world to ensure the long-term peace and prosperity, socio-economic development and the security and sovereignty of the country. The political system in Bhutan must work well for the country and fulfill the aspirations of the people.53

The reasons for studying other constitutions were to benefit from their wisdom and knowledge, avert the criticisms and to accede to universal values. Rightly, many prominent officials had the courage to study the constitutions of Maldives, Nepal, Bangladesh, Thailand, Finland and Japan. One of the intellectuals told me to study the constitutions of China and one of the Middle East countries. We faithfully and religiously studied them to preempt their criticisms. We tabulated the sections from the constitutions of twenty countries. A few intellectuals were not satisfied. I was told to study the *Vajrayana*54 text of Buddhism. So, we tabulated Buddhist philosophies and Bhutanese sayings. Quite a few of them objected to certain texts later. All these contributed to the improvement of the document.

We learnt that almost every Constitution had unique features and provisions. Bhutan was not wrong to have a few unique features in our Constitution. It appeals to the ideals of nationalism and conservatism.

52 Refer Kuensel dated 23rd March, 2005.
53 Refer Kuensel dated 12th November, 2005.
54 *Vajrayana* (*Rdo Rje Tsegpa*) is also known as Tantric Buddhism, Tantrayana, Mantrayana, Sacred Mantra, Esoteric Buddhism and the Diamond way of or Thunder Bolt way. Vajraya is a complex and multifaceted system of Buddhist thought and practice which evolved over several centuries.
Drafting of Constitution evoked international interests. They offered experts on their constitutions and copies thereof. They asked numerous questions and offered their views.

**Distribution of the Draft Constitution**

His Majesty wanted to ensure participation and involvement of the people of Bhutan in the process of Constitution making. Therefore, copies of the Draft Constitution were widely distributed. The First Draft of the Constitution was publicly distributed and simultaneously launched on the Internet on 26th March 2005.

The copies of Draft Constitution were distributed from the Full Bench of the High Court. On that auspicious day, a conch\(^{55}\) was blown, as the Chairman received boxes of the Draft Constitution in yellow silk cover, for nation-wide distribution. The draft Constitution was handed over to the representatives from *Shar Dungsamkha* (Samdrup Jongkhar), *Nub Dalikha* (Samtse), *Jang Taksikha* (Gasa) and *Lho Pasakha* (Chhukha).\(^{56}\) This was a symbolic tradition established by Zhabdrung Ngawang Namgyal in the 17th century, while demarcating the Bhutanese boundary. Thereafter, the representatives of Dratshang, Ministries, institutions, etc. received the draft Constitution.

Arrangements were made to receive feedbacks and comments from the people. Friends, critics, adversaries and the public were given sufficient time to express their views, comments and suggestions on the draft Constitution. About 40 pages of comments were received on the draft Constitution from online readers including comments of the experts from Europe. However, on 20th April 2005, His Majesty commanded that the terms and words of the Dzongkha\(^{57}\) text needed to be simplified without diluting the meaning of the provisions. Therefore, in obedience to the Royal Command, the Dzongkha version was reviewed and simplified. After receiving feedbacks and comments, the second draft was distributed on 18th August 2005 to every household, every institution in the country and all international organizations based in Thimphu.

In order to fulfill the national objectives and pursuit of individual rights and liberties, the Drafting Committee considered the various political theories, principles, references and comments including the study of different types of constitutions. His Majesty acknowledged it in the following words:

*In the process of making the Constitution, the Government has studied many different constitutions of the world, and finally the Government has come up with a very good Constitution for the well-being of the nation.*

We cannot be the best but the future generations are assured of the relentless and best efforts to have the best Constitution. His Majesty may traverse the transitional turbulences and continue to bestow happiness and under law reign to the people an mould Bhutan a great and progressive country.\(^{58}\)

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\(^{55}\) The early Buddhists adopted it as an emblem of the supremacy of the Buddha's teachings. It symbolizes fearlessness in proclaiming the truth of the Dharma, and call to awaken and work for the benefit of others. One of the thirty two major signs of the Buddha's body is his deep and resonant conch-like voice, which resounds throughout the ten directions of space. In addition to it, the great seal of Zhabdrung has four conch shells.


\(^{57}\) The National Language of Bhutan.

\(^{58}\) Quoted from the diary of the Chairman of the Constitution Drafting Committee, 2nd July 2004.
Cross-checking
The Constitution of Bhutan is comprehensive and brief. It embodies Bhutan’s history and vision for its future guided by virtues of scientific temper, humanism and peace and happiness to usher the nation into the 21st century as the harbinger of peace and advocates scientific temper with a spirit of the humanism.

Mark R. Thomson said:

‘...like Montesquieu, Hegel believed that the best constitution for a nation derived from its own specific cultural, historical, climatic and geographical conditions.’

The Constitution of Bhutan has several unique features. It is among the fifteen shortest constitutions in the world and most of the words and phrases enshrine principles and doctrines with their sources, epistemology and political philosophy. Thus, His Majesty Jigme Singye Wangchuck informed the first public consultation meeting in Thimphu that:

“We studied more than 100 different constitutions, not to copy their contents, but to draw from them and make the contents of the Bhutanese Constitution more meaningful.”

Finally, every provision of the Bhutanese Constitution was compared with the respective clauses of the constitutions of twenty-two countries.

Correction of the Draft
His Majesty devoted considerable time in improving the document and meticulously studied every word, phrase and sentence. Thereafter, His Majesty sent the revised draft to the Chairperson of the Constitution Drafting Committee on 15th October 2004 to be reviewed by the Legal Committee formed under the Chairperson of the Constitution Drafting Committee. The process of corrections between His Majesty and the Legal Committee was phenomenal. The Chairperson submitted to His Majesty the corrections in the form of “submissions” with justifications, analysis and background. The first submission was submitted on 4th December 2004. There were more than four hundred submissions in total. Meanwhile, His Majesty sent the draft to the Council of Ministers on 1st November 2004. The copy of the corrections of the draft submitted to His Majesty by the Council of Ministers was received by the Committee on 19th January 2005. The Legal Committee incorporated relevant changes based on their recommendations and comments. After the submission of the improved draft, a special session

99 See generally, Monarchy and Democracy in the 21st century, Bhutan Centre for Media and Democracy, 2010, p. 28.
60 Dasho Tashi Phuntsog and Drangpon Rabjam Rinzin Wangdi worked hard in Dzongkha. In addition, Rinzin Wangdi conducted research in the Buddhist literature and he worked most diligently without any financial gain and publicity. The Committee had compiled a glossary of the words for future reference. Dorji Bidha, personal assistance to the Chief Justice has been assisting in the compilations and corrections.
61 The process of correction was participatory. Drafts and corrections of Their Majesties were conveyed to me with reasons. However, I was unable to record all their profound thoughts as I was not fast enough to note down everything. I was commanded to study the draft and corrections and submit my submissions either agreeing or respectfully disagreeing. It was the most humbling and exciting opportunity contrary to my earlier apprehension. General Vestop Namgyel, Military Secretary to His Majesty was helpful to me while conveying the corrections and the comments. His stupendous service without public acclaim and recognition are extraordinary.
62 Dasho Pema Wangchen conveyed the Command that I should accept the corrections which are acceptable and reject others. I was dreading the situation and the plight to make choice. I was tired but my hope was rekindled as there was an opportunity of redressing wrongs and fulfilling His Majesty’s often repeated vision of “the best Constitution”.
63 The corrections and proposals of the Council of Ministers provided valuable contributions in giving the final shape to the sacred document. Most of the corrections have been either accepted in whole or were incorporated with modifications and consolidated within the framework of the draft. Drangpon Damcho Dorji has been of great help to me during the corrections.
The process of correcting the draft generated interactive discussion to resolve the differences with positive suggestions, objective criticism and conclusions.

Unveiling of the Draft Constitution
The unveiling of the draft Constitution was unique and signified His Majesty’s hope that the Constitution as finally adopted would be the result of collaboration between His Majesty and the people of Bhutan. Upon the Royal Command, the draft Constitution was distributed to every household, Government officials, students, institutions and foreign agencies based in the country.

With the distribution of the draft to the people on 26<sup>th</sup> March 2005, the people to express their opinion in a free and frank manner. Such unprecedented opportunities unveiled to make Bhutan a great and glorious nation in the world. It was His Majesty’s enduring message to his people to give to them a function and vibrant democracy based on the power and voice of the people. His Majesty desired to confer on his people participative democracy, rights to protect their dignity and economic sustainability through the Constitution.

This historic document is the culmination of His Majesty’s careful, consistent and benevolent endeavour towards democracy with Dzongkhag Yargye Tshogdu, Gewog Yargye Tshochhung, and devolution of power to the elected Council of Ministers and adult franchise, which would have a pervasive and everlasting influence on the future of the country.

Simultaneously, the draft Constitution was uploaded on the internet so that the people of other countries could look at the draft. It was a wise initiative of His Majesty to put the draft on the internet so that not only the views of the Bhutanese living abroad could be sought, but it provided an opportunity to receive the views of any interested person from any part of the world. It generated useful and positive recommendations, and also created awareness amongst the people.

Public Consultation
His Majesty Jigme Singye Wangchuck commenced the process of public consultation from Thimphu on 26<sup>th</sup> October 2005. He personally participated in public consultation in seven Dzongkhags namely Thimphu, Haa, Paro, Punakha, Wangduephodrang, Mongar and Trashigang. Similarly, His Majesty Jigme Khesar Namgyal Wangchuck conducted his first public consultation in Lhuentse on 24<sup>th</sup> December 2005. He covered thirteen Dzongkhags namely Lhuentse, Trashi Yangtse, Pemagatshel, Dagana, Tsirang, Sarpang, Chukha, Samtse, Samdrup Jongkhar, Zhemgang, Gasa, Bumthang and Trongsa. His Majesty Jigme Khesar Namgyal Wangchuck concluded the public consultation at Trongsa on 24<sup>th</sup> May 2006. The draft Constitution was translated and read in three dialects namely Dzongkha, Tshangla and Lhotshamkha.

67 Drangpon Rabjam Rinzin Wangdi translated the draft Constitution into Tshangla and it was read by Dasho Sherub Gyeltshen during the Public Consultation. Similarly, Drangpon Rabjam Bhola Nath Dhalal translated the draft Constitution in Lhotshamkha and Dasho Karma Sherpa read it. The Dzongkha version of the Constitution was read by Dasho Tashi Phuntsog.
Speaking to the people during the public consultations, His Majesty Jigme Singye Wangchuck said that the draft Constitution was distributed to them twice, and reminded them that the public consultation was the forum for them to raise issues, and to try and make the Constitution beneficial for the country. After reading every Article, opportunities were given to the public to comment and raise questions.

The Secretariat of the Constitution Drafting Committee documented the verbatim of the proceedings of all the public consultations and recorded them in toto. There were about 327 persons who gave their opinion on the draft Constitution during the consultation process. Public consultation process further sensitized the public through various medium68, created awareness and helped them understand the concept and purpose of the Constitution and Constitutional Democracy, besides their direct and indirect contributions. Some of the opinions received led to corrections and modification in the language of the final document. The incontrovertible evidence, however, was that every citizen had knowledge of most of the words used in the Constitution.

Preamble of the Bhutanese Constitution

The development of democracy in Bhutan is an elucidation of the premise embodied in its Constitution namely, that all people are created equal, that they are endowed with inalienable rights that government derives its power with the consent of the governed and it is the duty of the Government to protect these rights. The Preamble of the Constitution of Bhutan secures these rights to the people of Bhutan and underlines that all power vests in the people of the Country. It also ensures to the people the virtues of liberty, justice, tranquility, happiness, unity amongst themselves and their well-being.

The Preamble is an explanation of the purpose, directives, and philosophy of the Constitution. It is an integral part of the Constitution and defines its source and the nature of polity. The Preamble of the Bhutanese Constitution promulgates Bhutan to be a sovereign and a democratic country. It enshrines the values and aspirations of the nation and its people. The Preamble begins with the proclamation “We the people of Bhutan…….” representing the collective will of the Bhutanese people and symbolizing that the source of power emerges for all the people.

Justice Michael Kirby provided the following insightful analysis about the Constitution of Bhutan:

“In the preamble to the Constitution of Bhutan there are poetical and beautiful words. ....Blessed by the Triple Gem, the protection of our guardian deities, the wisdom of our leaders, the everlasting fortunes of the Pelden Drupka and the guidance of His Majesty the Druk Gyalpo... They are beautiful words and one word I fixed my eye upon is ‘happiness.’. It’s a most wonderful idea really and today we have an obligation to contribute to the happiness of everybody; to contribute to kindness to everybody and I think this is an essential teaching of the Buddha; that we should re-chart in love and

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68Bhutan Broadcasting Service conducted a series of forum discussion on the theme “The Making of the TsathrimChhenmo” in order to educate the general public on the important political process.
The Constitution must be read as a whole and the Preamble is as much a part of the Constitution as its enactments. The Preamble to the Bhutanese Constitution indicates the source from which the Constitution derives its authority and states the objects which the Constitution seeks to establish and promote. This truism was also enunciated by the Supreme Court of India. The Preamble reflects the hopes and aspirations of the People and declares the basic polity to be followed.

The proclamation “We the People…” in the preamble is not a new concept for Bhutan. The social contract signed between the First King, the Dratshang, the officers and the people of Bhutan in 1907 starts with a profound word “Rang-cha”. “Rang-cha” was changed to “Gnacha”, which means “We”. Thus, the collective noun of “People” is conceived as a collective body with independent action. “We” denote people as collective body capable of independent and consensual action. Democracy entails the primacy of the people. It validates the ultimate “will” of the people, which is the product of our common past, the continuity of the present and our shared concern for the future (due sum).

The process of Constitution making in Bhutan began from the people with His Majesty Jigme Singye Wangchuck seeking the people’s mandate. Every member of the household in the country received a copy of the Draft Constitution. People participated during the historic process in the august presence of His Majesty Jigme Singye Wangchuck and His Majesty the Druk Gyalpo, Jigme Khesar Namgyel Wangchuck. Their Majesties visited every Dzongkhag, read every page of the Draft Constitution and discussed the provisions with the people. The Draft Constitution was simultaneously posted on a webpage in both Dzongkha and English language. Public comments on the Draft Constitution were received online through the webpage devoted solely for the Constitution (www.constitution.bt). Further, the national newspaper Kuensel created a special forum www.kuenselonline.com for comments on the draft Constitution, wherein many comments were received. Therefore, the expression “We the People of Bhutan” in the Preamble is reflective of the holistic participation of the Bhutanese people in the drafting of the Constitution and genuinely symbolizes their true will and mandate. During the public consultation meeting at Samdrup Jongkhar, His Majesty the Druk Gyalpo, Jigme Khesar Namgyel Wangchuck, mentioned that the Constitution is neither a prescriptive document, nor it shows the people what to do on a daily basis, but it is a sacred document that places the power of governance and the future of the nation in the hands of the people of Bhutan.

The Preamble embodies a historical perspective, the prevailing circumstances and the vision for the future in its second paragraph. It invokes the blessings of the Triple Gem, the protection of our guardian deities, the wisdom of our leaders and forefathers, and the everlasting fortunes, which Bhutan and its people have always been blessed with. This invocation denotes the records

69Lecture delivered by Justice Kirby, the former Justice of the High Court of Australia on 14th & 15th of December 2010 to judges and legal fraternity of Bhutan. With adoption of the Constitution and establishment of constitutional democratic monarchy a series of lectures on constitutionalism and democracy was organized for judges and lawyers by the Judiciary of Bhutan.

70See the decision of the Supreme Court of India in Golaknath Vs. State of Punjab A(1967)SC, (1643)

71 According to Carl Schmitt, under the democratic theory of the people’s constitution-making power, the people stand as the bearer of the constitution-making power outside of and above any constitutional norm. Carl Schmitt, Constitutional Theory, Jeffery Seitzer (Eds.),1985, p.271.

72 Public Consultation in Samdrupjongkhar, 22nd April 2005.

73 Buddha, Dharma and Sangha.
of historical and religious beliefs and its derivative values, acknowledges the services and virtues of Bhutan’s past leaders (Gyalwa Gom), a beacon for future generations. The preamble also solicits the guidance of His Majesty the Druk Gyalpo, Jigme Khesar Namgyel Wangchuck, in the making of the Constitution, which embodies the establishment of a democratic polity in the Country.

The second paragraph, which is the soul of the Preamble, reaffirms the sovereign status of Bhutan with a solemn pledge of every Bhutanese to “strengthen the sovereignty of Bhutan.” and emphasizes the aspiration of the people to secure for all citizens “liberty” – the liberty of being born in a country of fortunes where individual and collective freedom shall prevail. It affirms to secure and enhance social, economic and political justice, and the equality of status and opportunity. The Constitution aims to secure perpetual happiness for posterity by laying the broad foundations of government founded upon the principles of justice. It further emphasizes the declaration to enhance the unity amongst the people and promote happiness, peace, tranquility and the well-being of the people for all time to come. Happiness is a virtue whilst peace is one of the conditions for happiness and progress. Therefore, the basic purpose of our Constitution is to ensure the sovereignty and security of the nation and the well-being of the Bhutanese people for all time to come with everlasting peace, prosperity, and justice. The success of the past must be ensured for the future by the Constitution and the policies of the future must also be strengthened by the Constitution. His Majesty Jigme Singye Wangchuck said:

“It is important for all of us today to look into the future and to take the necessary steps to shape the destiny of our country. Bhutan must move with the times to ensure that the nation not only overcomes all internal and external threats, but continues to prosper in an atmosphere of peace and stability.”

The strength of Bhutan comes from the unity of its citizens. It is vested in the belief that if Bhutan remains united, it will gain strength and prosper. As Friedrich Schiller (1729-1805) said “that even weak men when united are powerful.” A united and integrated Bhutan can best ensure its sovereignty and security. Sovereignty and unity are the core values of the Bhutanese Constitution. His Majesty Jigme Khesar Namgyel Wangchuck said:

“Sovereignty and security, peace and stability which form the core values of the Constitution.”

Therefore, the Preamble clearly mentions that the People made the Constitution as they are the source of popular sovereignty with power to adopt their own constitution thereby, declaring Bhutan to be a sovereign and democratic country. The Constitution embodies our best achievements, which have continued to secure peace, economic progress and peaceful political transformation.

74Royal audience by His Majesty Jigme Singye Wangchuck, 19th November 2001.
77The “unity” must start within a family, a community and the country.
78Royal address by His Majesty Jigme Khesar Namgyel Wangchuck during the 21th Annual Judicial Conference, 3th July, 2014
Article 1
Kingdom of Bhutan

Bhutan has an unbroken chain of history. It was referred to as the “Tha-Khob Ri dragpa” in the Dulwa scripture (Vinaya Pitaka) of Buddha's time. Tha-Khob Ri dragpa means the mountainous and rocky border country. Although, the pre-history of Bhutan is shaded in mystery, the number of stone tools and megaliths found in the country prove that Bhutan was inhabited from a relatively early date, probably around 2000-1500 B.C. In the past, Bhutan was referred to by different names, Lho Mon, Lhomon Tsenden Jong (the sandalwood country of Southern Mon), Lhomon Khazhi (the Southern Mon country of four passes or approaches), Lho Menjong (the Southern Country of Medicinal Herbs), etc.

Bhutan was also known to the foreigners by different names. The English merchant Ralph Fitch who was often quoted as the first European to have ‘sighted’ Bhutan around 1585 has referred to Bhutan as Bottanter, a country ‘four days’ to the north of Cooch Bihar, in Bengal.79 According to Dr. Gandolfo, a map of Northern India dated 1683 mentions ‘Regno di Boutan’ (Kingdom of Boutan), which stood where one would expect to find today’s Kingdom of Bhutan. Tavernier, in his book published in French in 1676, has a section titled “The Kingdom of Boutan” in which he explains that this mysterious country was very large and distant from India.80 He described the King as, “there is no king in the world who is more feared and more respected by his subjects, and he is even worshipped by them”. The history of the map of Bhutan defined its territory with international boundaries.

A description of this newly discovered nation (the ‘Bottanthis’) appeared in a book and a map published in Italy in 1597. The Jesuit fathers, Cacella and Cabral, in 1627, had written Bhutan as “the Cambirasi”, “the first kingdom of Potente” and “the Mon”.81 Scientifically, there are many evidences establishing the existence of Bhutan.

According to Dr. Michael Aris: “Much of the ancient history is learnt through the discovery of artifacts from very ancient periods. There are some very old monoliths discovered in several parts of the country such as the namchag and doring, which indicate the presence of human civilization in this country during the stone-age that lasted from approximately 8000 to 3000 BC.” 82

Professor Van Driem pointed out that there are many competing theories about the population history of the Himalayas based on linguistic and/or archaeological findings. According to Professor Dr. Peter de Knijff, the Kingdom of Bhutan is thought to have functioned as a “corridor” through the Himalayas in ancient times. Therefore, it is likely to be one of the oldest inhabited Himalayan regions, a theory that is supported by multitude of lingual communities found in the Kingdom. A genetic study of Bhutan, therefore, may not only provide evidence for the uniqueness and antiquity of residence of the Bhutanese people in the Himalayan region, but may also clarify the discussion about the people of the Himalayas and Eastern Asia in general.83

80 Romolo Gandolfo’s interview to Kuensel dated 24th August 2003.
81 Luiza Maria Baillie, Father Estevao Cacella’s Report on Bhutan in 1627.
In the past, Bhutan had many regional rulers. It was Zhabdrung Ngawang Namgyal\(^{84}\) who united the nation under one government with an apparent federal structure under different Chilas\(^{85}\) and the country was known as “Druk”\(^{86}\). After Zhabdrung Ngawang Namgyal, Debs or temporal rulers were elected. Ultimately, the Kingdom was unified and the sovereignty of Bhutan strengthened under the First Druk Gyalpo of Bhutan in 1907. The Constitution of Bhutan is the culmination of the constitutional culture that existed in Bhutan since 1907.

Article 1 of the Constitution reiterates the inalienable sovereignty of the Kingdom of Bhutan as under:

(a) **The sovereign power** - Section 1 of Article 1 enshrines that “the Sovereign power belongs to the people of Bhutan.” This phrase adopts the doctrine of popular sovereignty.\(^{87}\) It was transferred to the Druk Gyalpo under dual sovereignty on 17th of December 1907. Popular sovereignty is an attribute of direct democracy. According to James Madison, popular sovereignty creates departmental, concurrent or coordinating theory that has a connection to the phrases “We the people” and “ordain and adopt” of the Preamble and demonstrate that the legitimacy of democratic polity belongs to the people of Bhutan.

(b) **Form of Government** – Article 1 Section 2 enshrines that “The form of Government shall be that of a Democratic Constitutional Monarchy”. This section is the immutable principle of the Constitution of Bhutan. Immutable principle is also known as the basic structure of the Constitution, which cannot be abrogated or amended through simple Parliamentary process. In Bhutanese context, it can be abrogated or amended only through a “National Referendum”\(^{88}\) or plebiscitary democracy. This is the original will of the Constitution.

(c) **Democracy** – Democracy entails the primacy of the people by ascertaining the will of the people by democratic means, namely, by direct or indirect elections. This inalienable right has been guaranteed to the people of Bhutan in Articles 23 and 34 of the Constitution. Democratic laws generally tend to promote the welfare of the greatest possible number for they emanate from the majority of the citizens and cannot have an interest opposed to their own advantage. It may therefore be said that the purpose of democracy in its legislation is more useful to humanity than other forms of governments. The advantage of democracy therefore consists in contributing to the well being of the greatest number of people. According to Schmitt: ‘under the democratic theory of the people’s constitution-making power, the people stand as the bearer of the constitution-making power outside of and above any constitutional norm’.\(^{89}\)

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84 Zhabdrung Ngawang Namgyel (1594–1651) was the unifier of Bhutan as a nation state.
85 Chila means executive governor. They were also known as Penlop.
86 Bhutan.
87 The origin of popular sovereignty is the social contract school of the mid 1600s to the mid 1700s. Popular sovereignty is the notion that no law or rule is legitimate unless it rests directly or indirectly on the consent of the individuals concerned. Larry D. Kramer, The People Themselves, Popular Constitutionalism and Judicial Review, 2004, p.106.
88 Section 26 of Article 2, The Constitution of Bhutan.
89 Supra, n.71.
Speaking to the people, His Majesty Jigme Khesar Namgyel Wangchuck said:

At the very outset, with the introduction of democratic governance in Bhutan, we, the people need to keep in mind that the power lies with all the Bhutanese citizens. The power is in the hands of all the people of the twenty Dzongkhags. The people of Bhutan are entrusted with a heavy responsibility.  

Article 1 of the Constitution defines the international territorial boundary of Bhutan. It mentions that territorial integrity of Bhutan is inviolable and any alteration of areas and boundaries thereof has to be done only with the consent of not less than three-fourths of the total number of members of Parliament. The Article also incorporates the State symbols such as the National Flag, the National Emblem and the National Day. Symbols are expressions of national individuality and identity. State symbols like the national flag and the national emblem inspire its citizens visually, the National Anthem stirs the soul and the National Day reminds the people of our great nation. Bhutan has her own national language, coin, currency, postage stamps and a standing army.

The Article emphasizes that the Constitution is the Supreme Law of the State and identifies the Supreme Court as the guardian of the Constitution and the final authority on its interpretation. The original intent of this provision was explained by His Majesty Jigme Singye Wangchuck as:

The Constitution made the Supreme Court the guardian of it against the popular public rhetoric of conferring this responsibility to the King. Guardian is different from being a protector. The guardian must constantly guard the Constitution. Being a guardian, the Supreme Court must know its role and guard the Constitution constantly and consistently. Knowing its role, but not discharging its responsibilities is not guarding the Constitution. The Supreme Court must discharge its responsibilities by interpreting the Constitution. Consequently, the Constitution bestows the final authority on its interpretation to the Supreme Court. Interpretation means respecting the Constitution and not sabotaging it through misinterpretation. Supreme Court should inspire trust and confidence of the people through interpretation and not undermining the Constitution. The Constitution should be the source and not its judgments.

The Article also mandates separation of power. Historically, Zhabdrung’s Kathrim and the Thrimzhung Chhenmo have a provision on separation of powers. Separation of power originated with the golden rule of Aristotle, which was supported by John Locke, Baron de Montesquieu, Tocqueville and other philosophers. The gist of this principle is that no person or institution should be able to usurp all powers of the state for “power corrupts, and absolute power corrupts absolutely”. Separation of powers is one of the fundamental constitutional values and peoples’ sovereign will or choice is to divide and allocate power between the Executive, Legislature and the Judiciary and it entails a harmonious existence of the three pillars of democracy.

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90 Public Consultation in Dagana, 5th Feb. 2006.
91 Royal audience by His Majesty Jigme Singye Wangchuck, 30th November, 2009.
92 "Absolute power corrupts absolutely" arose as part of a quotation by the expansively named and impressively hirsute John Emerich Edward Dalberg Acton, first Baron Acton (1834–1902). The historian and moralist, who was otherwise known simply as Lord Acton, expressed this opinion in a letter to Bishop Mandell Creighton in 1887: “Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men.”
93 Royal address by His Majesty Jigme Khesar Namgyel Wangchuck to the Judges, 11th June 2010.
Article 1
Section 1

“Bhutan is a Sovereign Kingdom and the Sovereign power belongs to the people of Bhutan.”

This section upholds and declares the inviolable legal and absolute status of Bhutan as a “Sovereign Kingdom”. Independent status and sovereignty of Bhutan have been revealed inter alia in the excerpt of the biography of Guru Padma Sambhava. Bhutan had defined boundaries ruled by its monarchs and Debs. She is a member of the United Nations. Sovereignty of Bhutan is absolute. The sovereign attributes are: defined and recognized international territorial boundary, distinct people with culture, traditions and language, form of Government, power of law making, power to enter into Treaties, issuance of national coins and currencies, standing Army, issuance of postage stamps, national flag, signatory to International Conventions, Covenants, protocols and agreements, appointment of foreign Minister. Thus, the sovereign rights were inherent in Bhutan.

While the sovereignty of Bhutan as a nation is absolute, the sovereign power belongs to the people of Bhutan. It is popular sovereignty as explained by His Majesty Jigme Singye Wangchuck:

The sovereign power of the Kingdom has been purposely left to the Bhutanese people. This is because we can never ensure the capability of future Kings/Monarchs to look after the welfare of the People. Therefore, if a King is incapable of performing his duties as a Monarch, the people of Bhutan can move a secret vote of no confidence and if three-fourth of the people support such a motion, the King has to resign and give Kingship to the next capable one. Thus, the Sovereign power has been kept with the people in trust. In our country, the people should know whether their King is capable or not capable to rule the country or whether the king is good or not. For this reason, if in the National Referendum, the people decide against the King, the King has to resign immediately. Hence, in the Constitution, it was purposely intended not to give the sovereign power both to the people and the King jointly. In other countries, where there is a case of the King or the Queen sharing equal power, it is because the people cannot dethrone the King or Queen through secret voting. However, our Constitution is a different Constitution. Our Constitution is drafted by reposing trust and confidence upon the people of Bhutan.

With trust and confidence of the people of Bhutan, this section envisages a cohesive, unified, collative and collective responsibility and defends the greater interests, general welfare and the best interest of the Bhutanese people to promote their common good and common aspiration.

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94 The word ‘Sovereignty’ is derived from the French word ‘Souverain’ and the word ‘Souverain’ is derived from the Latin word ‘Superanus’ which means an authority having no other authority above itself. Sovereign - Sarvabhouna was more or less equivalent to sovereign, which was used in the Buddhist and pre-Buddhist periods. See, Kancha Illiah, God as Political Philosopher: Buddha’s Challenge to Brahmanism, 2001. The concept of sovereignty came into usage only during the medieval period; the first thinker to conceptualize it was Jean Bodin. Bodin defined sovereignty as the ‘absolute and perpetual power of a commonwealth’. Julian H. Franklin (eds), Bodin on Sovereignty, 2004, p.1.

95 “.....from the early period, the border of the Tibetan King was the mountain range of Mari-mugpo in the east, the Himalayan range in the south; unto the Tag-sha-dung-gi-mo in the west; to the Chang-po-gang-gi-ra-wa in the north.” Supra, n. 82.

96 Bhutan entered into treaties with British India such as Sinchula Treaty of 1774, Punakha Treaty of 1910, Darjeeling with the Independent India.

The virtue and sovereignty of the people are the fortresses against the vices and despotism. His Majesty Jigme Singye Wangchuck has stated:

*He can never see Himself as having a future that is not tied to the achievement and success of Bhutan, not because He is the Crown Prince but because He is a citizen of Bhutan and Bhutan is the place where He lives, works and where His children will learn and grow. Therefore, the Constitution carries the trust and confidence bestowed upon the people and must further our cherished fraternity.*

This provision expresses unity and collective aspiration of all the people of Bhutan upon whom the sovereign power is bestowed by the Constitution. Sovereignty belongs to the people. It is only the people who made the Constitution and who can change the Constitution.

Dr. Phramahachanya Khongchinda wrote:

> “The word ‘state’ in English is similar to and practically identical with the term ‘Ratha’ in the Pali language, which means a reign, kingdom, empire, country, or realm. According to Buddhist Scriptures, the state is not an independent thing, such as the ruler, government, or land, but the combination of the four important elements: the territory, people, government, and sovereignty or independence. The concept of the state in the Buddha’s time consisted of four elements just as we find in the modern concept of the state.”

Bhutan is thus, spiritually, historically, and politically a sovereign country and the people are sovereign under the constitutional principle of democracy. The Article enjoins popular sovereignty whereby the people are the ultimate authority over the government.

**Article 1
Section 2**

*“The form of Government shall be that of a Democratic Constitutional Monarchy.”*

This section reaffirms the adoption of the form and the nature of government aspired by the people of Bhutan. It contemplates the adoption of a type of democracy that reflects our own making, which is a Democratic Constitutional Monarchy.

As a Democratic Constitutional Monarchy, the Monarch protects and upholds the Constitution in the best interest and for the welfare of the people of Bhutan. It is not an alien concept. It is ingrained in the Buddhist principle, “Dharma raj or chos rgyal.” It means that the monarch must be guided by spiritual values, moral values and ethical conducts. These are the controlling principles of governance and “all forms of renunciation are to be embodied in Raja Dharma”.

The institution of hereditary monarchy is the foundation of Bhutan’s sovereignty and security,

98 Public Consultation in Zhemgang, 30th April 2006.
100 Section 18, Article 2, *The Constitution of Bhutan*.
101 A religious preceptor-officant and a ruler by (religious) law (chos rgyal = dharma raja).
the source of national unity, and the inspiration for the present and future well-being of the Bhutanese people. The institution of monarchy in Bhutan was founded on a social contract, whereby the country was unified under the First Monarch. It ended incessant civil wars and continuing political instability in the country. Hence, the provision demonstrates the views and emotions, which were expressed by all sections of the Bhutanese population when the first hereditary Monarch was crowned in 1907. This system of Government heralded peace, progress, tranquility and national glory to Bhutan as a nation state. Consequently, the strength of the Constitution and the form of Government is drawn from our past heritage. Generally, constitutional monarchies have thrived well in the World.

Article 1
Section 3

“The international territorial boundary of Bhutan is inviolable and any alteration of areas and boundaries thereof shall be done only with the consent of not less than three-fourths of the total number of members of Parliament.”

Section 3 reaffirms the established international territorial boundaries and frontiers of Bhutan. Territorial integrity ensures sovereignty of a nation. Inviolability of its territorial integrity is supreme and the people of Bhutan must protect and preserve this precious inheritance.

Any alteration of areas must be defended and any change thereof must respect the will of the people. Where circumstances may arise out of legal or political exigency to alter the international territorial boundaries of Bhutan, it must be done only as the last resort by the elected representatives of people in Parliament. It is within the legislative sovereignty.

Although the international territorial boundary of Bhutan is inviolable, the alteration of the areas and boundaries can be made with the consent of not less than three-fourths of the total number of members in Parliament. The consensus of Parliament shall mean the consent of His Majesty, the members of the National Council and the National Assembly. Thus, the provision of this section is intended to meet possible required future exigencies but only with an inbuilt mechanism to protect the territorial integrity of the nation.

Article 1
Section 4

“The territory of Bhutan shall comprise twenty Dzongkhags with each Dzongkhag consisting of Gewogs and Thromdes. Alteration of areas and boundaries of any Dzongkhag or Gewog shall be done only with the consent of not less than three-fourths of the total number of members of Parliament.”

This provision upholds the internal and national territorial integrity and recognizes the historical divisions of our Dzongkhags, which provide local governance, and political, social, economic and administrative convenience. This section further recognizes the division of each Dzongkhag into sub-territorial boundaries, Gewogs (Counties) and Thromdes (municipalities). However, the number of Dzongkhags and Gewogs are intended to be the existing numbers at the time of the adoption of the Constitution. The up-gradation of towns into Thromdes or municipalities may depend on the size of the township and the corresponding population residing in such
towns. Therefore, the Drafting Committee decided to incorporate the word *Thromdes* instead of *Thromde*, in order to ensure that there would be no problem even if there are more than one Thromde in a Dzongkhag.

Based on the existing twenty Dzongkhags and such number of Gewogs, any alteration of areas and boundaries of any Dzongkhag or Gewog should be done only with the consent of not less than three-fourths of the total number of members of Parliament.

The phrase “twenty Dzongkhags” has been included in the provision for the reason that omission of the number of Dzongkhags in the provision will create insecurity and cause instability in the country. Open power of delimitation of Dzongkhags could be used for political gain to upset the regional and population apportionment in order to take advantage of the representations in the National Assembly. Therefore, the specific mention of the number of Dzongkhags is to guard against the manipulation of political interest and vested gain. Gerrymandering is a political acrobat incompatible with the common good and national interest.

**Article 1**

**Section 5**

“The National Flag and the National Emblem of Bhutan shall be as specified in the First Schedule of this Constitution.”

This section upholds our National Flag\(^{103}\) and National Emblem. The National Flag symbolizes our visual sovereignty, political status of independence and representation abroad, on high seas, space and in diplomatic missions. It has an illustrative symbolic meaning depicting unity and identity of Bhutan. The National Flag and the National Emblem are communicative symbols of collective dreams and common aspirations. It evokes national values, reminds patriotism and maintains national conscience. Therefore, the provision symbolizes the unity of the people and external expression of the loyalty to the national flag by the population. It is intended that Bhutanese will identify proudly and express solidarity to the country through the national flag. The Flag Act of 1972 clearly mentions how the dragon should be placed on the flag and how the national flag should be partitioned. After extensive research, the dragon on the National Crest on the cover page of the Constitution was corrected accordingly.\(^{104}\)

Under the description of the National Flag in the First Schedule, people commented that the phrase “*ka ning zung juk*” should be rephrased as “*gyal ten gi ringlug*” because “*ka ning zung juk*” is neither found in earlier Tibetan writings nor used in Bhutan. Je Gombo has used the phrase “*ka chhag zung juk or zung drel*”, not “*ka ning zung juk*”. Further, various learned

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\(^{103}\) History of flags- “People have used flags for over 4,000 years. Authentic flag design of ancient peoples includes a metal flag from Iran, ca. 3000 BC, and reconstructions of vexilloids shown on ancient Greek coins, Egyptian tomb carvings, etc… The first type of flag was called a vexilloid. Vexillology is the scientific study of flags. This word comes from a Latin word which means “guide”. First flags or vexilloids were metal or wooden poles with carvings on top. About 2,000 years ago, pieces of fabric or material were added to some vexilloids for decoration. These looked more like the flags we know today… Usually, flags are messages from a person or a group of people… People use flags to give others information, such as, who they are. Long ago, knights carried flags into battle because it was hard to know who the knights were when they were dressed up and covered in armor ready for battle. Flags were important because they helped soldiers tell their friends from their enemies in battle… Flags include symbols that are used to show ideas which would otherwise take many words. Flags are used for wars, as well as for the celebration of special events. On sad occasions, flags are flown at half-mast to honor the dead, and draped over the coffins of national heroes… One flag that almost everyone knows is the "White Flag of Surrender". Waiving a white flag is the international sign for surrender. Soldiers carrying or waving the "White Flag" are not fired upon. These "White Flags" are not made up in advance and are usually made out of any materials available at the time it is to be used… Another well known flag is the "Red Flag" which means danger.”

\(^{104}\) The presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee, 9th May 2008.
persons including Zhabdrung Ngawang Namgyel have not referred to such term as “ka ning zung juk”.

Flag has religious relevance, personal preference and national objectives. Similarly, nations have a national identity that conjure and unite the people to fight and preserve their nations. Thus, a nation’s flag is a deep seated and indelible expression of nationhood. Flags are fluttered in the temples and in the theatre of wars. Many who held their flags without surrender were confronted with deaths.

The National Emblem holds a revered place because of its symbolic importance to the monarchs, religion and the nation as a whole. It is a sublime aspiration of Bhutan of patriotism and the national values.

**Article 1**
**Section 6**

*“The National Anthem of Bhutan shall be as specified in the Second Schedule of this Constitution.”*

This section is the speech manifestation that expresses the eternal aspiration of the people for unity, sovereignty and peace in inspiring words and throbbing tune. The words are chosen to constantly inspire the hearts of Bhutanese and the tune to reverberate through the valleys and mountains of Bhutan. The National Anthem prays for the well-being of the country, the monarch, and the people. It symbolizes the cardinal values that the Bhutanese treasure and Melody of the national anthem stirs the souls, evokes emotion and unifies the people.

Buddhism encompasses the mind, speech and body. Similarly, in our minds, we think of the sovereign Bhutan, in our speech, we sing the anthem and in body, we serve the nation.

**Article 1**
**Section 7**

*“The National Day of Bhutan shall be the Seventeenth Day of December of each year.”*

On 17th day of December 1907, our forefathers pledged to place their trust and to serve the institution of Monarchy. Thereafter, our enlightened Monarchs have fulfilled their reciprocal duties by strengthening the sovereignty, securing the future, advancing progress and maintaining peace and order. Consequently, Bhutan has advanced politically, socially, culturally and economically under the guidance of it’s succeeding Monarchs. Therefore, it is our inherent responsibility to fulfill the inviolable promise made by our forefathers by offering ‘Oath of Allegiance’ to our Monarch. The ‘Oath of Allegiance’ is both expressed and implied agreement and the Constitution regards this inherent responsibility of an every Bhutanese to maintain and retain tshe glory of Bhutan.

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105 There were few dissenting voices concerning the reflection of two sects in the Schedule.

106 It is said that the National Anthem of Bhutan was written in 1958 when His Majesty the Third Druk Gyalpo visited India. The original version of the Anthem was much longer.
The National Day is the historic reminder of the installation of Monarchy, which is a testimony of a democratic process and the deep root of democracy in this country. The National Day should remind the people and the ruler of this social contract and the commitment contained therein. Thus, the National Day symbolizes the aim of the people and their vision for the future confluence of objectives and the unity of minds. Moreover, the National Day imparts the historical knowledge, motivates the people and stimulates their commitment to the country. Therefore, the Seventeenth Day of December of every year is to be considered and celebrated as the National Day of Bhutan. On this day, collective national conscience cascades in continuity with our glorious history.

His Majesty Jigme Singye Wangchuck used the National Day as a day of remembrance of the sacrifices and patriotism of the past generations and the commitment of Bhutanese to their Country, and initiate development in the Dzongkhags. He celebrated the National Day in different Dzongkhags and let the audience enjoy the fruits of development. Roads followed, development accelerated and the people were reminded of the importance of Bhutanese culture, traditions and unity.

Article 1
Section 8

“Dzongkha is the National Language of Bhutan.”

It is a sovereign right to enshrine national language in the Constitution and this section recognizes Dzongkha as the national language, which is indispensable for the national identity, sovereignty and unity of Bhutan. The use of Dzongkha, as the national language, is easier for political and legal discourse in the country. Bhutan is enriched with numerous other languages and dialects such as Tshangla, Mangdepkha, Khengkha, Lhotsamkha and others.

While the Constitution upholds Dzongkha as a common medium or as the national language, it is equally important that people preserve their regional or local dialects. The recognition of Dzongkha as the national language does not imply that other languages spoken in Bhutan are undermined. The Constitution does not prohibit the use of any other language or dialect. Bhutan has encouraged and protected indigenous dialects. For instance, the Draft Constitution was translated into Tshangla and Lhotsampkha for wider understanding and easy reading during the public consultation. We have around 19 to 20 dialects in our country, which are given importance but it’s not necessary to incorporate in the Constitution. However, it is not that they are not considered for we have been preserving our tradition and culture, which is clearly mentioned in Article 4.

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107 Locke argued that human beings signed two contracts; one was societal and the other governmental, and in both of these contracts, citizens do not surrender all their rights. Locke – the government must be based on the consent of the governed. The natural justice of right to life, liberty and property was the foundation of limited government. See, John Locke, Two Treatises of Government, 1764.


109 Language spoken in eastern Bhutan such Mongar, Pemagatshel, Trashigang etc.

110 Language spoken in Trongsa in central Bhutan.

111 Language spoken in Zhemgang and certain parts of Mongar.

112 Language spoken in southern Bhutan.

113 Explanation of the Chairman of the Constitution Drafting Committee during the Public Consultation in Punakha, 27th Nov. 2005.
The term “national language” provides the oral and written foundation for national unity. It must be given positive interpretation. The recognition of Dzongkha as the national language must be associated with national identity and as the medium of unity. It does not degrade the other regional languages existing in the country and exalt Dzongkha. Language is medium of communication and has inherent values and right words can heal the troubled heart.

Article 1
Section 9

“This Constitution is the Supreme Law of the State.”

Constitution is an organic law, superior to other laws. Laws of the Kingdom should liberate people and not enslave them. The Constitution is meant to avert the tyrannical and draconian laws that will subvert the basic foundation of democracy and humanity. Hence, the Constitution is the supreme law and a beacon to posterity.

His Majesty Jigme Singye Wangchuck said that the Constitution is not a compilation of various laws, but is fundamental to all laws. It is the supreme law of the land and the mother of all laws. Any policies, laws, rules and regulations have to be in consonance with the principles and spirit of the Constitution.

The power of judicial review is based on the fact that the Constitution is the supreme law of the land, and that all governmental organs, which owe their origin to the Constitution and derive their powers from its provisions, must function within the framework of the Constitution, and must not violate its provisions. Any law which contradicts the Constitution will be declared null and void. The Constitution provides the basis for the power of judicial review conferred on the High Court and the Supreme Court. The power of judicial review is derived from this section and section 23 of Article 7. It enjoins limited Constitution with the doctrine of explicit, which is normative in functions. Tocqueville rightly said that judicial review is the most powerful barricade ever erected against the tyranny of assembly.

Article 1
Section 10

“All laws in force in the territory of Bhutan at the time of adopting this Constitution shall continue until altered, repealed or amended by Parliament. However, the provisions of any law, whether made before or after the coming into force of this Constitution, which are inconsistent with this Constitution, shall be null and void.”

This provision lay down that the laws existing at the time of adoption of the Constitution will remain in force unless altered, repealed or amended by Parliament or declared void for being inconsistent with the Constitution. The laws of the past cannot be totally abandoned and nullified. This Constitution is the product of the past wisdom and it does not deprecate it. Therefore, the preamble pays its reverence to the illustrious past and embraces the future.

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114 National language is different from official language. For example, in India, Hindi is the national language whereas English is the official language.

115 Dzongkha is indispensable but English cannot be sacrificed. The treaty signed by Ashley Eden under compulsion was the result of not knowing English. The First King realized the helplessness of not knowing English during his negotiation between the British India Government and Tibet in 1905. Many countries including the Francophone are learning English to access and take advantage of the situation.
Nonetheless, if any provisions of the past, present and future laws are inconsistent with the Constitution, the courts can declare them as null and void. Constitution is an organic law. Therefore, it limits Parliament from infringing the provisions enshrined under the Constitution. Any law which contradicts the Constitution can be declared null and void. Hence, Parliament can neither rush a statute nor stifle liberty, freedom and right under the tyranny of the majority in Parliament. This provision negates the principle of the supremacy of Parliament. James Madison wrote in the famous Federalist papers to secure the public good and private rights against the danger of such a majority faction. Simultaneously, to preserve the spirit in the form of popular government is then the great object to which our inquiries are directed.

The Constitution is the source of law. The governmental organs derive their powers from its provisions. They must function within the framework of the Constitution and their actions must be consistent with the provisions of the Constitution. Discretionary executive decisions are circumscribed through judicial review under this provision.

This section enshrines the supremacy of the Constitution. It contains a few specified exceptions to the legislative authority. The Constitution specifies that the provisions of any law which are inconsistent with this Constitution, whether made before or after the coming into force of the Constitution, are to be null and void. Therefore, the Constitution is the highest law and anything that is inconsistent is void. Being the highest law, any defilement of its spirit and abrogation of are repulsed.

The Constitution is dedicated to the task of building a bright future on the foundations of the golden past. Therefore, all laws in force in the territory of Bhutan at the time of adopting this Constitution shall continue until altered, repealed or amended by Parliament. However, the entrenched principle of any law, which is inconsistent with this Constitution, shall be null and void and guard against the marauding invasion so that the people will be safe.

**Article 1**
**Section 11**

“The Supreme Court shall be the guardian of this Constitution and the final authority on its interpretation.”

It is a standard constitutional practice for the Supreme Court to be the guardian of the Constitution and the final authority on its interpretation. However, during the public consultation meetings, there were suggestions that this provision should be amended to make His Majesty the King the guardian of the Constitution and the final authority on its interpretation instead of the Supreme Court. If the authority to interpret the Constitution is vested in the Head of State, it will be in conflict with the constitutional principles and will be in conflict with the Principle of Separation of Powers. It is within the domain of the Supreme Court to interpret the Constitution, and it is therefore, proper for the Supreme Court to be the guardian of the Constitution.

The Constitution Drafting Committee decided not to establish a separate Constitutional Court. There are instances of conflicts between the Supreme Courts and Constitutional Courts in the world. Deciding jurisdictional issues between the two said courts would unnecessarily prolong a
case and create legal issues. Bhutan is a small country. Therefore, the Supreme Court of Bhutan has been mandated to adjudicate on constitutional matters as well as other legal issues.

This provision is non-interpretive, as the courts, in their judicial pronouncements, especially, when legislature enacts policies and laws that tend to damage the democratic principles, will have to interpret them according to the requirements of our society. While interpreting the Constitution, the Supreme Court will have to take cognizance of the past, address the present and set norms for the future.

The spirit of the Constitution is to be preserved by the Royal Courts of Justice with security of tenure\textsuperscript{116} for the Justices so that right may be done to all in accordance with the law. Justice Michael Kirby said:

\begin{quote}
“Article 1.11 is a very useful statement and it is useful for historical reason. At the beginning of the American republic they had the written Constitution and clash occurred between President Jefferson and the Supreme Court. The question was who would have the last word in deciding what the Constitution requires? It wasn’t impossible for any of the solutions to be adopted. The President might have the last word, the Congress might have the last word or the Judges might have the last word... So if there is ever any doubt of what the Constitution of this country meant, that doubt is resolved by Article 1.11 of the Constitution and it belongs to the Supreme Court.”\textsuperscript{117}
\end{quote}

Emphasizing importance of the Supreme Court, His Majesty Jigme Singye Wangchuck explained:

The Supreme Court is the Guardian of the Constitution and must ensure its credibility and relevance in perpetuity. As the Guardian, the Supreme Court must truly understand the significance and purpose of the Constitution as a living document, interpret its content with incontestable clarity and with unfailing vigilance. As the final authority on the interpretation, the Supreme Court must not allow the Constitution to be undermined through misinterpretation at any time, it must inspire the trust and confidence of the people in the Constitution by safeguarding its integrity as the fountain of legislative wisdom, and it must maintain the independent authority of the Constitution from all other power centres and institutions in the land.\textsuperscript{118}

Judicial review is explicitly recognized to guard the changing opinions, fluctuating emotions and tyranny of majority. The clarion voice of the judicial review is that the Supreme Court shall be the guardian of this Constitution and the final authority on its interpretation.

\textbf{Article 1}

\textbf{Section 12}

\begin{quote}
“The rights over mineral resources, rivers, lakes and forests shall vest in the State and are the properties of the State, which shall be regulated by law.”
\end{quote}

\textsuperscript{116} Section 1, Article 32, The Constitution of Bhutan.

\textsuperscript{117} Supra, n.69.

\textsuperscript{118} Royal audience by His Majesty Jigme Singye Wangchuck, 30\textsuperscript{th} November, 2009.
There were criticisms that the State having the rights over all natural resources contradicted with our tradition that recognized individual ownership of properties of land and forests as well as domains of local deities. The rights over mineral resources, rivers, lakes and forests are the most important rights for the livelihood of mankind. Therefore, it is the primary duty of all Bhutanese citizens to preserve and conserve all natural resources for our future generations as they are national treasures.

Historically, the provisions regarding minerals under the earth were provided under section Ka-11-1 of the Thrimzhung Chenmo. Apprehension of disputes between the Centre and the Local Governments with regard to ownership over mineral resources are unfounded. The rights over mineral resources shall vest in the State and are the properties of the State. If it is vested with the Local Governments, mineral resources cannot be harnessed without financial assistance from the Centre Government. Moreover, if the rights are not vested with the Centre, it would violate section 7 of Article 9, which provides that State shall endeavour to:

“minimize inequalities of income, concentration of wealth, and promote equitable distribution of public facilities among individuals and people living in different parts of the Kingdom.”

His Majesty Jigme Singye Wangchuck had personally initiated the concept of social forestry, community forestry and registered forest in the Forest and Nature Conservation Act of Bhutan 1995. Besides, Article 7, Section 14 of the Constitution safeguards the property of all citizens. It is the responsibility of the government to protect the natural resources and preserve property of the people. However, State ownership does not mean appropriating the resources to favour the few and deny many. It has to be regulated by law and should be in accordance with the laws. No private power and personal wealth should squander the public natural resources. Forests have been important to Bhutan. It has national and spiritual values to the Bhutanese. Indiscriminate destruction and callous attitude towards forest would transform Bhutan nation into an arid region. It is the source for spring water which produces revenue from the generation of hydro electricity. Forest is considered very important as it is religiously sacred, environmentally necessary and economically profitable. Therefore, the present generation is the trustee to preserve and protect the natural resources through the well regulated laws. Without section 12 people will plunder the forests for their private gains and the public at large will suffer the loss.

The rights of property were unquestionably a fundamental concern of the Bhutanese. James Madison in the Federalist No. 10 said that “the first object of government” is to protect the diverse “faculties of men, from which the rights of property originate.” Here was a more sophisticated version of Locke's fundamental dictum that “government has no other end but the preservation of property.” Granting land kidu to 3,173 thram holders in Haa on 30th March 2013, His Majesty said:

“that land is of utmost importance to the people because it is a family heirloom – something that gives people roots and a sense of belonging, and enables them to improve

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119 Explanation of the Chairman of the Constitution Drafting Committee during the Public Consultation in Chukha, 25th March 2006.
120 Explanation of the Chairman of the Constitution Drafting Committee during the Public Consultation in Mongar, 12th Dec. 2005.
121 Explanation of the Chairman of Drafting Committee to the public of Mongar and Trashi Yangsti during Public Consultation Meeting.
122 Explanation of the Chairman of the Constitution Drafting Committee during the Public Consultation in Trashiyangtse, 28th December 2005.
124 Supra, n. 107, p.145.
their lives… I am handing over this land to you with the hope that you will protect it, make the best out of it and use it to benefit the lives of your children.”

Expropriation and transfer of ownership to a few will negate national security, divest private ownership and aggravate poverty. Private ownership fights; common ownership concedes. His Majesty Jigme Singye Wangchuck said that the national wealth belongs to the people, and should be safeguarded for all generations of Bhutanese and therefore, must be managed and enhanced through prudent investments. Success must come from tenacity, focus and respect for the law.

Article 1
Section 13

“There shall be separation of the Executive, the Legislature and the Judiciary and no encroachment of each other’s powers is permissible except to the extent provided for by this Constitution.”

Bhutan adopted a unitary system of government and its powers are separated among the three branches of the government. It is one of the fundamental constitutional principles that there shall be separation of the Executive, the Legislature and the Judiciary with no encroachment in each other’s power. The separation of the Legislative, Executive and Judicial powers of Government is one of the hallmarks of modern popular and constitutional government. Separation of powers is indispensable to public liberty. It is for the prevention of tyranny, preservation of liberty and well-being of the people. Concentration of powers in one hand or organ can lead to gross injustice and unjust amassing of power and wealth. It is also a form of division of labour permitting more efficient distribution of governmental functions. The cardinal function of the Legislature is to legislate or make laws, the executive to execute laws and the Judiciary to interpret laws.

Since absolutism cannot be trusted, it is imprudent to allow any of the branches, unlimited power over the lives of others. Liberty is too precious. Freedom is a necessity. In order to render government safe, one must divide the authority of government in a way which ensures that no single part of the government accumulates enough power to threaten liberty. Checks and balances delineate the responsibilities among the Legislature, Executive and Judiciary. However, if there is strict separation of powers as required by the doctrine of “Separation of Powers”, the government will not be able to function effectively. Effective government requires the creative blending of the three powers into complex political structures designed to solve difficult political problems.125 Therefore, the Drafting Committee designed a Constitution whereby the three branches are connected and blended so as to give each a constitutional control over the others and at the same time allow the others to function in the most effective manner. The phrase “no encroachment of each other’s powers is permissible except to the extent provided for by this Constitution” in this section is an example of such a design. The doctrine of separation of powers should be accommodative and practically reasonable. Apprehension of an overly powerful

125 Montesquieu, Edmund Burke, Engle, Locke and Stuart Mill stated that oppression on part of any organ of government should be checked. However, it was opposed by Plato, Bodin, Hobbes and Madison (in Federalist paper No. 48) which stated that “Unless these departments be so far connected and blended as to give each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained.” However, the Supreme Court of the United States of America had said that “[A] hermetic sealing of the three branches of Government from one another would preclude the establishment of a Nation capable of governing itself effectively.”
branch should not lead to undue prophylactic measures of affecting the working of the nation as a whole. Justice Michael Kirby said:

“In the British tradition the separation is not rigid. It is not completely separate between the Executive and Parliament. It is separate between the Judiciary and the other branches. The Executive and Parliament have to work very closely and in harmony. Montesquieu’s ideas profoundly affected the Constitution of the United States of America. In the United States of America they really have a separation between the President and his Executives and the Congress and the Judiciary. They really have the three separate branches. I happen to think that our system is the better system. If you look at President Obama, I mean from the outside he seems to be very fine President but he doesn’t seem to be able to get anything done by the Congress. Whereas in our system the Head of the government sits in the Congress, sits in the Parliament, sits in the National Assembly and they have to work together to get the laws through. And so that is the difference between our system and therefore when you talk of the separation of powers it is very important to understand that our system is not like the American system. We don’t have an entirely separate executive branch. We have the executive branch which is answerable to Parliament... You don’t leave it to inference. You don’t leave it to reasoning. It’s stated. It’s expressed to stop too much concentration of powers and to make sure that you have checks and balances in the use of the people’s power in the Government of the Country. So both in the preamble which gives the spirit of the entire Constitution that follow and Article 1.13 there is the statement of the separation of powers.”

Article 1, Section 13 invokes constitutionalism with obedience to the lawful authority and respect for the rule of law, which are complemented by security and good governance. Constitution is the source of power with sovereignty vested with the people. The concept of constitutionalism or the rule of law is premised on the belief that the primary function of a Constitution is to limit the scope of governmental powers and to prescribe the method for its exercise. The Constitution will avert the tyrannical laws that will subvert the basic foundation of democracy. The spirit of the Constitution is noble in its motives, virtuous in its actions and progressive in its objectives for un-compromising and undeviating mission of great Bhutan.

The Constitution prevents power from being concentrated into a few hands, resulting in an autocratic and dictatorial government. Simultaneously, the Constitution prevents power from being fragmented in a manner that could lead to an ineffectual and unstable government. These matters are addressed through well defined roles for the central and local governments, through the functional separation of powers between the three arms of the government and through the institutional separation of the political party and other entities and processes. In the words of Lord Acton, “Power corrupts and absolute Power corrupts absolutely.”

In summary, separation of powers means (a) Territorial splitting (Centre, federal and local government); (b) Functional splitting (legislature, executive and judiciary); (c) Individual institution (political and professional). Separation of the Executive, the Legislature and the Judiciary is explicit and expressed. Many countries left it to implication, inference and to

126 Supra, n.69.
reasoning. It is expressed to stop too much concentration of powers and to prevent abuse of power.

Bhutan must flourish under responsible freedom and ordered liberty. Ordered liberty enjoins respect for rule of law, whereby rich and poor, mighty and meek, the people and the authorities must obey all laws. Edmund Burke advocated ‘ordered liberty’. ‘Neither the few nor the many have the right to govern by their will.’

Separation of the Executive, the Legislature and the Judiciary is not antagonistic to each other. National interest is the unifying form and common good is the guiding principle without endangering liberty of the Bhutanese. Encroachment is usurpation of power. Thus, the Constitution barricades the encroachment of power by providing that “no encroachment of each other’s powers is permissible except to the extent provided for by this Constitution.”

Separation provides healthy progress, protects liberty and mutual growth but balance is required for national interest and to protect individual liberty and not individual power. Growth of individual power and negation of mutual respect is sterilization of freedom and lawlessness.

**Article 2**

**The Institution of Monarchy**

Constitutional Monarchy is not a new concept to Bhutan. Dharma Raja is the spiritual and political tradition that existed in Bhutan under which the King is the Dharma Raja. Hegel embraced constitutional monarchy128 while Thomas Hobbes opined monarchy provides stability.129 Dante Alighieri said that “monarchy is the best” form of government and Jean Bodin was of the view that “monarchy brings unity...with a single and unified power”.131 The people of Bhutan in order to establish justice, ensure domestic tranquility, provide for the common defence against external aggression, establish stability and to promote the general well-being, gathered in Punakha and elected Gongsar Ugyen Wangchuck to be the first hereditary monarch of the country in 1907. After that social contract, Gongsar Ugyen Wangchuck and his dynasty ushered in a reign of unprecedented peace and prosperity in the country and the sovereignty of Bhutan was strengthened. Recalling the century of monarchy, His Majesty the Druk Gyalpo Jigme Khesar Namgyel Wangchuck addressed the first elected Parliament as follows:

“The highest achievement of one hundred years of Monarchy has been the constant nurturing of democracy. This has culminated today with the first sitting of Parliament and the start of democracy, whereby my father the Fourth Druk Gyalpo and I, hereby return to our People the powers that had been vested in our Kings by our forefathers, one hundred years ago. We do so with absolute faith and confidence, offer our complete support and our prayers for the success of democracy.”

This historic proclamation bestowed Democratic Constitutional Monarchy and a parliamentary form of government to Bhutan. Section 6 this Article, stipulates the stepping down of the Druk

129 Thomas Hobbes, Leviathan, 1651.
130 Dante Alighieri, De Monarchia, Book III, Ch.XIII, p.187.
132 It has been clearly provided in the social contract agreement of 1907 made between Gongsar Ugyen Wangchuck and the people of Bhutan.
Gyalpo upon reaching the age of sixty-five years, which is a unique and profound provision and universally applauded. Veneration for the institution of Monarchy in Bhutan is enshrined in the Constitution to preserve its continuity and to devote ourselves in maintaining its prestige, respect and authority in the same spirit and strength as that of the generations past.

Commenting on the provisions under Article 2, DANIDA mentioned that “the general retirement age without exception is a positive and remarkably innovative move”\textsuperscript{133}. Similarly, Justice J.S. Verma said that:

“... is some of its salutary provisions of your Constitution. The first one, I find is the King is to voluntarily step down in favor of His successor at the age of 65 years and He shall abdicate for willful violation of the Constitution or for the permanent disability in a motion passed by the joint session of Parliament. Now I am not aware of any other place where anyone in power is prepared to step down voluntarily unless there is a divine mandate. The provision that the Monarch will step down and what more to prove the political sovereignty vested in the people. It is the people’s representative who can sit in judgment over the King’s conduct also to decide whether He has committed violation of the provisions of the Constitution. I think that’s something which is extraordinary.”\textsuperscript{134}

Montesquieu’s idea that monarchy should be based on honour\textsuperscript{135} and Hegel’s notion that hereditary succession is necessary to avoid factionalism\textsuperscript{136} as well as Hobbes observation that monarchies are providers of security\textsuperscript{137} have resonance in Bhutan as the Bhutanese people have also expressed such expectations from the Monarchy. It is in the spirit of these expressions that His Majesty Jigme Singye Wangchuck pronounced that the Kings of Bhutan flourished with proactive actions.

Under Article 2, there are different power structures such as royal prerogative power, executive power and discretionary power. However, they are under absolute power, nominal power, residual power, derivative power and limited power, etc, which are balanced in the provisions of the Constitution.

**Royal prerogative**

The royal prerogative which is a creation of the Constitution is a body of customary authority, privilege, and immunity, recognized as the sole powers vested in a monarch under the Constitution. The monarch remains constitutionally empowered to exercise the Royal Prerogative\textsuperscript{138} but in practice, it has been relegated to executive prerogative. In Bhutan, OM of the Thrimzhung Chhenmo\textsuperscript{139} enshrines:

“Except for His Majesty the Druk Gyalpo, all other citizens of Bhutan, irrespective of their rank, social status or official position are equal under the Thrimzhung Chhenmo.”

\textsuperscript{133} Comments on the draft Constitution by DANIDA (unpublished).

\textsuperscript{134} Lecture delivered by Justice J. S. Verma, the former Chief Justice of India on 13\textsuperscript{th} October, 2010 to judges and legal fraternity of Bhutan.

\textsuperscript{135} Thomas Nugent(trans), *The Spirit of Laws*, 1914.


\textsuperscript{137} Supra, n.129.

\textsuperscript{138} William Blackstone maintained that the Royal Prerogative was any power that could be exercised by only the monarch. Dicey's opinion is that any action of governance by the monarch beyond statute is under the prerogative. Blackstone, however, maintains that the prerogative simply covers those actions that no other person or body in the United Kingdom can undertake, such as the dissolution of Parliament.

\textsuperscript{139} The Supreme Law of Bhutan, 1959.
Absolute power
These are powers exercised by His Majesty without advice or reference to advice. It was criticized by many during the making of the Constitution. However, the drafting Committee was consciously unanimous that certain action should not be diluted and influenced by anyone.

Nominal power
Prerogative powers were formerly exercised by the monarch acting on his own initiative. With passage of time, the advice of the prime minister or the cabinet was required for the prerogative to be exercised. The prime minister or the cabinet is then accountable to Parliament for the decision. Unaccountable decisions are repugnant to public policies. These powers are nominal powers shared between recommending and approving authorities. Accordingly, His Majesty may remove any of the office holders under section 19 of Article 2, other than those office holders who are liable to be removed only through impeachment, in the same manner in which the appointment was made. It is a shared power. Hence, it is a nominal power with checks and balances.

Residual power
Sub section 16 (e) provides that the King may also exercise powers relating to matters which are not provided for under this Constitution or other laws. This residual power is a necessary power to be used in exceptional and grave circumstances of national security and exigencies.

Executive power
There are prerogative powers of the monarchy and the executive powers of the government. According to Prof. Ben Saul:

“But in many countries there is a kind of court agreement that certain matters of international relations cannot be reviewed by the courts... The decision by government to enter into international treaty or to go to war or to declare war on another country almost always regarded as non-justiciable question of international relations. These are inherently political matters for the government to make judgment about. And by respecting the separation of powers the idea is that the judiciary should not interfere in those decisions which are properly made by the elected government. Sometimes this also has special influences on how courts operate in a procedural way. So, for example, under the law of Evidence, in many countries, sometimes courts will take what we call judicial notions of the conclusive opinion of the executive as to serve international affairs of all matters ... This is a matter of international relations and the court must follow the determination of the government and not like its own decision about that question because these are sensitive delicate matters of foreign relations.

“In case the prerogatives and the executives are not explicit, incidental power vests with the Executives in protecting sovereignty and security of Bhutan from illegal and unlawful activities, with good faith and for greater public good. Undemocratic and repugnant to conscience cannot be exercised under prerogative, incidental and residual powers.

“There are numerous provisions which refer to the various legislation powers of Parliament to raise taxes, regulate finances and so on but section 2 under Article 20 vests the executive power in the Lhengye Zhungshog, which consists of the Ministers headed by the Prime Minister. The executive power does not include unwritten powers and the
residual power. Defined written powers are within the Executive functions but residual powers are vested with His Majesty alone. However, this power is so great that it must be used sparingly under extraordinary exigencies.”  

Article 2
Section 1

“His Majesty the Druk Gyalpo is the Head of State and the symbol of unity of the Kingdom and of the people of Bhutan.”

His Majesty the Druk Gyalpo is the embodiment of the historical tradition, future aspirations and is the universal representative of Bhutan. The social contract of 1907 signed between the People of Bhutan and Gongsar Ugyen Wangchuck is the living evidence, which recognized His Majesty as the symbol of national unity. True to the pious expectation, the King brings unity as the King is not identified by any caste, creed, region or party. Non-partisanship and neutrality have universal respect and obedience.

Druk Gyalpo is the King of the Dragon Kingdom. Gyalpo or King has spiritual bases according to Romila Thapar:

“Raja is derived from a root that means “to shine” or “to lead”. As men lost their primeval glory distinctness of class (varna) arose, and they entered into agreement one with another, accepting the institution of private property and the family. With this theft, murder, adultery and other crime began and so the people met together and decided to appoint one man among them to maintain order in return for a share of the produce of their fields and herds.”

The role of the Head of State generally includes legitimizing the State and exercising the political powers, functions, and duties granted to the Head of State in the country’s Constitution. Head of State embodies national values. It is a universal principle in the constitutional monarchies to have the monarch as the Head of State and it is the symbol of unity. Head of State symbolizes sovereignty as only a sovereign State can have a Head of State. Head of State in Bhutan is His Majesty the Druk Gyalpo.

During the process of making of the Constitution, many people had different opinions. They wanted the prefix Dpal before “Druk Gyalkhap” and “Druk Gyalpo”. There are five Shris or dpal in Hindi. In our context, there were seven prefixes which can be used before the title “Druk Gyalpo”. However, our intellectuals wanted to use only one prefix “dpal” before “Druk

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140 Lecture delivered by Ben Saul, professor of the University of Sydney, on 15th Dec. 2010 to the Judges and legal fraternity of Bhutan.
141 Romila Thapar, Early India; From the Origins to AD 1300, 2002, p.150.
142 “The word ‘Shri’ means material auspiciousness. It has to be contrasted with ‘Om’ which is a primal sound, less material, more mystical. Shri is associated with wealth, bounty and affluence. When a man marries a woman, he becomes Shriman, a man with access to Shri, and his wife becomes Srimati, a woman with access to Shri, for in the Hindu scheme of things a man and woman have rights to material pleasures and wealth only after marriage. Traditionally, the word Shri is written on top of certificates, contracts and key documents. The word Shri is seen on top of wedding cards even today. It heralds prosperity and joy and good luck. Shri is another name for Lakshmi, goddess of prosperity. However, in many parts of Maharashtra, Ganesha is identified as Shri. An individual is addressed with one Shri, Ranas of Nepal and the Princes of India were addressed as Shri Tin Sarkar with fifteen gun salutes. Conversely, His Majesty has five Shris with twenty gun salutes. In the Bhutanese context, the address and title of the King has seven Zhabdrung-du.
Gyalkhap” and “Druk Gyalpo”\textsuperscript{143}. Legally and diplomatically, this would have undermined our sovereignty. It was thus a long battle of argument with the scholars of Bhutan.

Monarchs are apolitical and neutral and function without fear or favour. Neutrality is the embodiment of hope, trust and attributes of the Head of State and the symbol of unity of the Kingdom and of the people of Bhutan. Moreover, monarchy provides and preserves useful continuity in maintaining its prestige and authority in the spirit which animated its predecessors. As a sublime institution, the transcendental values unite the Kingdom and it is the citadel of undying hope.

**Article 2**  
**Section 2**

“The Chhoe-sid-nyi of Bhutan shall be unified in the person of the Druk Gyalpo who, as a Buddhist, shall be the upholder of the Chhoe-sid.”

Chhoe-sid-nyi\textsuperscript{144} is a spiritual heritage, traditional custom and general acceptance. The King is the head of both spiritual and temporal like in many countries.\textsuperscript{145} His Majesty is referred as the head of lugs gnyis,\textsuperscript{146} the dual system.

Some people did not want the Chhoe-sid-nyi of Bhutan to be unified in the Druk Gyalpo. They wanted religion to be under His Holiness, the Je Khenpo. His Holiness, the Je Khenpo is not a secular person. Being the head of the spiritual heritage, he must be “a learned and respected monk ordained with the Druk-lu, with nine qualities of a spiritual master and accomplished in ked-dzong.” Therefore, His Holiness, the Je Khenpo cannot be the head of other religions and sects. He cannot be non-partisan. However, His Majesty, being the head of the State and symbol of unity of the Kingdom and of the people of Bhutan, is the right authority to be entrusted with the Chhoe-sid-nyi of Bhutan. Moreover, in Bhutan Chhoe-sid-nyi was unified in the person of the Druk Gyalpo since 1907, when Monarch replaced the temporal head, Desi. Hence, there is an interlocking principle. As Buddhism is the spiritual heritage of Bhutan provided in section 1 of Article 3, the Constitution provides that Druk Gyalpo should be a Buddhist and it is the duty of Druk Gyalpo as reflected herein. Eminently, the Druk Gyalpo is the protector of all religion as enunciated in section 2 of Article 3. His Majesty Jigme Singye Wangchuck said:

*Our country is a Buddhist Country. If Bhutanese people can think positively, even during our children’s time, our country would remain Buddhist in all times to come. Concerning the worries and insecurities with the expression ‘the Druk Gyalpo shall be the protector of all religions in Bhutan’, it is better to bestow a power, to protect all the religions in the country upon a King than to any other person. The King should be given the power to protect all the religion in the country as he is the king of a country. All religious faiths practiced in all Dzongkhags should be treated equally and without any discrimination. Since, the Druk Gyalpo is the King for all the people and not for one Dzongkhag, the*

\textsuperscript{143} There were three Shris addressed to Maharajas and the King of Bhutan was always addressed as Shri Shri Shri Shri Shri His Majesty the Druk Gyalpo. Three Shris were entitled to nineteen gun salutes during the British Raj. Head of state is entitled to twenty-one gun salutes.

\textsuperscript{144} The dual system of religion and politics (temporal and secular). Refer David Seyfort Ruegg, *Proceedings of the Seminar Held in Lumbini, Nepal, March 2000.*

\textsuperscript{145} Explanation of the Chairman of the Constitution Drafting Committee during the Public Consultation in Punakha, 27th Nov. 2005.

\textsuperscript{146} The expression ‘conjunction of “religious law” (bhrama) and government’ (chos srid zung ’brel), .. terms used to refer to this diarchic form of governance are ‘twin system’ (lags gnyis), *The Relationship Between Religion and State (chos srid zung ’brel).* Ibid.
Religions may have been divisive and warring in many countries. Conversely, Bhutan has followed tolerance of Buddhism in practice. Inducement, coercion and conversion are anathema to the principles of Buddhism.

**Article 2**

**Section 3**

“The title to the Golden Throne of Bhutan shall vest in the legitimate descendants of Druk Gyalpo Ugyen Wangchuck as enshrined in the inviolable and historic Gyenja of the Thirteenth Day, Eleventh Month of the Earth Monkey Year, corresponding to the Seventeenth Day of December, Nineteen Hundred and Seven and shall:”

The 1907 “Gyenja” was a historical document with profound meaning. It connotes reciprocity. It was the historic “Gyenja” of 1907, whereby our forefathers had pledged to serve and repose trust and confidence in the establishment of Monarchy in Bhutan. All members within the Bhutanese society agreed to the terms of the social contract by their popular choice and their consent. Therefore, the provision enshrines that the title to the Golden Throne shall be passed onto the legitimate descendants of the first Druk Gyalpo based on the provisions of the “Gyenja”.

The Monarchs of Bhutan must be the legitimate descendants of the Druk Gyalpo Ugyen Wangchuck, without which, legal and social problems would ensue. Moreover, the descendants must be legitimate to avoid social, political and succession problems.

**Article 2**

**Section 3(a)**

“Pass only to children born of lawful marriage;”

By “lawful marriage”, it means that the heir apparent must be born from a queen, who is legally married to His Majesty. The religious ceremony, “Tashi Ngasoel” must be performed and the public must have the official view of the Royal Marriage. The marriages without “Tashi Ngasoel” shall be considered legally invalid under the law and any issue from any such marriage shall not be recognized as a child born of lawful marriage. According to the provision, the title to the Golden Throne shall be conferred only to those children born from legally recognized marriage.

**Article 2**

**Section 3(b)**

“Pass by hereditary succession to the direct lineal descendants on the abdication or demise of the Druk Gyalpo, in order of seniority, with a prince taking precedence over a princess, subject to the requirement that, in the event of shortcomings in the elder...”

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147 Public Consultation in Haa, 2 Nov. 2005.
148 Agreements.
149 In Bhutan, “Golden Throne” is used instead of “Crown.”
prince, it shall be the sacred duty of the Druk Gyalpo to select and proclaim the most capable prince or princess as heir to the Throne;”

The succession to the Throne on the abdication or demise of the Druk Gyalpo is regulated in an adequate and flexible manner. As a general rule, it encompasses the hereditary succession with preference to the direct lineal descendant of the Druk Gyalpo in order of seniority, both princes and princesses with the former having precedence over the latter. Conversely, His Majesty is entitled to derogate from this general rule and may select the most capable successor as heir to the throne in absence of the elder prince. Also, the Druk Gyalpo has a sacred duty to select the most capable prince or princess as heir to the Throne.\textsuperscript{\textsubscript{150}} Bhutan must not be in the hands of an incapable King. For a small and landlocked country like Bhutan, it was very important for the king to be capable.

A princess can also become a Monarch. It is the prerogative of His Majesty to decide on the “shortcomings in the elder prince”. Giving preference to the younger male over female may be argued as discriminatory and violative of our laws but it is to be noted that in Bhutan, there is no gender bias.

His Majesty Jigme Singye Wangchuck also reminded the people that there had never been any tradition of gender discrimination in Bhutan. The Constitution of Bhutan must safeguard gender equality in the same way as the laws of the land and the policies of the government which have always ensured gender equality. His Majesty said in Wangduephodrang:

Wherever I visited schools, I always found that there were more number of girls than boys. Keep this year as an example, there are a total of 2 hundred and 60 thousand boys and girls studying in the school. Upon a study, we found out that there were more girls than boys. If you take in terms of percentage, 51% is composed of girls. So the people and the government should always keep in mind that in Bhutan, the ratio of men and women is equal. Within the next ten to forty years, we are not sure about the ratio of men and women. As of present situation the women are becoming more than men. While making our Constitution, we have considered all these factors.\textsuperscript{\textsubscript{151}}

Referring to the “sacred duty of the Druk Gyalpo to select and proclaim the most capable prince or princess as heir to the Throne”, Bhutan has been very fortunate to have had the most capable and benevolent monarchs. Although Bhutan has not experienced or witnessed the situation problems as specified or contemplated in this sub-section, we cannot guarantee that such problems would not arise in future. It has happened in other countries. Therefore, it is important to have a provision in the Constitution giving the power to the King to select the right heir who will benefit the country, people and the institution of Monarchy.

\textsuperscript{\textsubscript{150}} The sub-section was inserted by His Majesty Jigme Singye Wangchuck during the Public Consultation in Wangduephodrang, 7\textsuperscript{th} Dec 2005, when He said that the King should not select a son or a daughter who would not benefit the country, people and the institution of Monarchy. It is very important to select the right heir who will benefit the country, people and the institution of Monarchy.

\textsuperscript{\textsubscript{151}} Public Consultation in Wangduephodrang, 7\textsuperscript{th} Dec. 2005.
Article 2
Section 3(c)

“Pass to the child of the Queen who is pregnant at the time of the demise of the Druk Gyalpo if no heir exists under section 3(b);”

This section is to ensure the hereditary line of descent. It ensures that if at the time of demise of the Druk Gyalpo, there is no prince or princess born then the child in the womb of the Queen shall be the rightful heir to succeed the Throne.

Article 2
Section 3(d)

“Pass to the nearest collateral line of the descendants of the Druk Gyalpo in accordance with the principle of lineal descent, with preference being given for elder over the younger, if the Druk Gyalpo has no direct lineal descendant;”

Monarchy cannot be terminated in the absence of direct descendant. As William Blackstone, the famous English Judge of the 18th Century said, “the king never dies”\(^\text{152}\). It has to be perpetual. It should be perpetuated through the “principle of lineal descent” or “collateral line of descendants”. However, in case of the passing of the title to the collaterals, it should only be to the nearest line of collateral with the preference of elder over the younger.

Article 2
Section 3(e)

“Not pass to children incapable of exercising the Royal Prerogatives by reason of physical or mental infirmity; and”

The Monarch is the Head of State. Thus, the Constitution ensures that the title to the Golden Throne does not pass to a person who has physical or mental infirmity to exercise the Royal Prerogatives. In deciding issues of succession, interest of the nation should be paramount. His Majesty Jigme Singye Wangchuck said during the consultation meeting in Punakha that it is the duty of kings to carry out their duties well, and when our constitutional democracy begins, the duties of king shall be even more important. Therefore, the successor to the Golden Throne should not be passed onto a person who has physical or mental infirmity. As prophesied by the Dakinis,\(^\text{153}\) entrustment should be laid on a capable spiritual person only. To be a Monarch of Bhutan is not merely the prerogative of birth, but it entails capability to carry out State responsibilities.

Article 2
Section 3(f)

“Not pass to a person entitled to succeed to the Throne who enters into a marriage with a person other than a natural born citizen of Bhutan.”


\(^{153}\) Dakinis means a female embodiment of enlightenment in the ancient Indian language of Sanskrit.
Security of nation is extremely important. The person entitled to succeed and rule the Kingdom should not be influenced by external forces. The Constitution Drafting Committee was concerned that if a King marries a foreigner it could not only endanger the security of Bhutan, but the commitment of such a king towards His country and subjects will also be divided. Therefore, this section mandates the successor to the Throne to marry a natural born citizen of Bhutan.

Article 2
Section 4

“The successor to the Throne shall receive dar\textsuperscript{154} from the Machhen of Zhabdrung Ngawang Namgyal at Punakha Dzong\textsuperscript{155} and shall be crowned on the Golden Throne.”

Receiving dar from the Machhen of Zhabdrung Ngawang Namgyal at Punakha Dzong is a revered and sacred age-old tradition. Therefore, the successor to the Golden Throne should be enthroned only after receiving dar from the Machhen.

Replying to the people during the public discussion, it was clarified that the Raven Crown was very important. However, during the enthronement of the King, receiving the scarf from Zhabdrung Ngawang Namgyel’s Machhen at Punakha Dzong is more important and unique. The King thereafter is adorned with yellow scarf.\textsuperscript{156} Receiving Dar, Kabney and the Sword is a unique system, which has been the custodian of the Bhutanese culture, tradition and the national dress. It is a personal achievement, public acknowledgement and visual diction of acclaim.

Article 2
Section 5

“Upon the ascension of the Druk Gyalpo to the Throne, the members of the Royal Family, the members of Parliament and the office holders mentioned in section 19 of this Article shall take an Oath of Allegiance to the Druk Gyalpo.”

The “Oath of allegiance” is both an expressed and implied agreement and the Constitution regards this as the inherent responsibility of all Bhutanese to maintain the glory of Bhutan. It solemnizes and binds the people emotionally and spiritually. Therefore, it is important that the members of the Royal Family, the members of the Parliament and the office holders mentioned under section 19 of this Article take an Oath of Allegiance to the Druk Gyalpo as enunciated in Section 5 of this Article. His Majesty the Druk Gyalpo Jigme Khesar Namgyal Wangchuck said that the duty to serve the country and people does not fall on the King alone, but upon the members of the Royal Family as well. The honour and privilege of being a member of the Royal Family brings with it a profound duty of service to the King, country and the people. Even in a Buddhist saying it is said that till the attainment of Buddhahood, I confide upon you my trust and confidence. As a lineage of a Monarch is an incarnation, unshakable devotion and respect be rendered.

\textsuperscript{154} Scarf that symbolizes the conferring of rank.
\textsuperscript{155} Fortress, which is commonly used as an administrative centre and traditionally is the abode of monks.
\textsuperscript{156} Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Sarpang, 11\textsuperscript{th} Feb 2006.
This provision may not have been required, as offering of allegiance, loyalty and dedication to the Druk Gyalpo is a succession of responsibility entrusted by our great fathers to the lineage of the Wangchuck dynasty in 1907 in the presence of the guardian deities in Punakha, which are inviolable and inherent. It requires no reaffirmation. However, it was important to specify in the Constitution and avail the opportunity to come together and display unity.

**Article 2**

**Section 6**

*“Upon reaching the age of sixty-five years, the Druk Gyalpo shall step down and hand over the Throne to the Crown Prince or Crown Princess, provided the Royal Heir has come of age.”*

This section is a unique provision incorporated by His Majesty Jigme Singye Wangchuck and demonstrates His Majesty’s vision. However, it was an emotional and rhetoric issue. Every Dzongkhag repeatedly opposed it as it was anathema for them. His Majesty explained:

(a) **If a King continues to occupy the throne till death then as the King grows old he will get sick and will not be able to carry out his duties to the nation. It is of paramount importance that a King should be able to deliver his responsibility to the best of his ability for the benefit of the country. After we introduce the democratic system, it is very important for a king to carry more responsibility without any hindrance. Therefore, the provision that a King should step down at the age of 65 years was included for the benefit of the country and I personally decided that it be included in the draft constitution.**

(b) **If we do not include this provision in the Constitution, future kings may not be willing to step down and hand over the throne. For example, 30 years from now I will be 80 years old. At that age, I could neither be useful to the country nor to the people. I may not be able to be useful to myself.**

(c) **Future is important. Monarchy in Bhutan is about 100 years. However, we should not trust only the hereditary monarchial system because there could be flaws in that system. The biggest flaw is crowning the oldest prince to the throne as the King by virtue of being the oldest prince whether he is capable or not and whether he is incompetent or not. We have to think about this system for 50 to 100 years... I feel that I cannot trust the hereditary monarch system alone for the security and sovereignty of our country. While it would suit a Monarch to rule for life, the interests of the nation and people are more important.**

(d) **Even when the parliamentary democracy is introduced in our country, the King, whoever may be, would still have an important and constructive role to play in upholding the Constitution and also in the nation building process. It is also very important to have a very capable, strong and learned King, and is also of paramount importance that he is able at all times to serve his country and the people to the best of his ability.**

(e) **It will never be a good time for an heir to ascend to the Throne when a King had just passed away and when the entire country is mourning. There could be no better time to enthrone a King when a country is enjoying peace and stability. If a King is enthroned at**

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157 Submission on the draft Constitution dated 28th October 2004 incorporated Crown Princess after “Crown Prince”, so as to make it in consonance with section 9(a) and section 10 of Article 2.”
159 Ibid.
the time of mourning, the security and the sovereignty of the country would be at greater risk.

(f) Bhutan being a small and a landlocked country it is very important that the King should perform his responsibilities and duties as best as possible. It is important to have a capable and a dynamic King. If the King rules for his whole life span, then it would be like the present system where the Crown Prince would succeed only after the King has expired. This would create problems since today, thanks to the government, due to advanced technology, better medical cares and expert doctors the life expectancy of a person has also increased. As the King grows old he would definitely have health problems that would impede his performance thereby causing problems for the people and the country. I see only problems than the benefits if the King stays on the throne for life. Therefore, the inclusion of this provision in the Constitution should actually be a source of happiness for the people instead of being concerned and unhappy about it.

(g) If the king is not physically fit, he will only cause burden to the country and people, and there won’t be any benefit. For this reason, in the interest of our country and for the welfare of the people, such provision is incorporated in the Constitution.

(h) It will be very important for our kings to execute their duties diligently as we begin our new form of government, i.e. democratic system. If I am to explain little bit on the duties of kings; firstly it is to maintain unity, sovereignty and security of the country, and to look after the welfare of the people.

This provision states that His Majesty has to step down at the age of 65 years. His Majesty Jigme Singye Wangchuck himself had explained that Bhutanese should not consider and think only about the present but instead it is imperative to make a Constitution that will last for hundreds of years benefiting the country and the people. Likewise, when the provisions on the Institution of the Monarchy were being drafted, His Majesty commanded that it should not be made for one or two Druk Gyalpos. It is important that the future Druk Gyalpos should always be able to serve in the interest of the country and the people.

His Majesty Jigme Singye Wangchuck had personally introduced this provision of stepping down from the throne at the age of sixty-five keeping in mind the present and future interest of the country and the people. It is a unique and exemplary provision.

His Majesty Jigme Singye Wangchuck pointed out that, although the people were repeatedly asking for this provision to be deleted, it is important for the future benefit of the country and the people. While it might suit a monarch to rule for life, it may not serve the greater interests of the nation and the people. Further, His Majesty mentioned that if such a provision was not included in the Constitution, future kings may not step down and hand over the throne. It may become difficult for His Majesty to effectively serve His country and people when he is old. It was of paramount importance that a King remains able at all times to serve his country and people to the best of his ability. Also, a King must be able to carry out his important role in upholding the Constitution after the introduction of parliamentary democracy.

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160 Royal audience by His Majesty Jigme Singye Wangchuck, 9th Dec. 2002.
161 Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Trashigang, 24th Dec. 2005
Article 2
Section 7

“There shall, subject to the provision of section 9 of this Article, be a Council of Regency when:

(a) The successor to the Throne has not attained the age of twenty-one years;
(b) The Druk Gyalpo has temporarily relinquished, by Proclamation, the exercise of the Royal Prerogatives; or
(c) It has been resolved by not less than three-fourths of the total number of members of Parliament in a joint sitting that the Druk Gyalpo is unable to exercise the Royal Prerogatives by reason of temporary physical or mental infirmity.

This section provides for the establishment of the Council of Regency in case a successor has not attained the minimum age of twenty-one or when it has been resolved by Parliament that the Druk Gyalpo is unable to exercise the Royal Prerogatives or if the Druk Gyalpo has temporarily relinquished, by proclamation, the exercise of the Royal Prerogatives.

The Council of Regency is not a regular feature but is meant to meet certain exigencies. The Council of Regency has to return the power, when the successor to the throne attains the age of twenty-one years or if the Monarch is able to exercise his Royal Prerogatives. Their Majesties said:

(a) The provision of the Council of Regency is incorporated in our Constitution if the King is not in a position to carry out his state responsibilities due to sickness and any other difficulties. When the King recovers and he is in a position to carry out his duties, the power given to the Council of Regency is taken back. This is a good system, which is similar to many countries in the World.¹⁶²
(b) It is of utmost importance that we should have the Council of Regency to exercise and discharge the Royal Prerogatives and the powers vested in the King.

The Constitution provides the minimum age for the rightful successor to the Throne to be twenty-one years. The age of eighteen years, as the age of majority under other laws, was not considered for the purposes of this section, for the King has to play very important Constitutional roles and discharge state responsibilities. Further, the provision provides that motion is to be passed by not less than three-fourths of the total number of members of Parliament in a joint sitting if the Druk Gyalpo is unable to exercise the Royal Prerogatives by reason of temporary physical or mental infirmity.

Article 2
Section 8

“The Council of Regency shall collectively exercise the Royal Prerogatives and the powers vested in the Druk Gyalpo under this Constitution and shall be composed of:

(a) A senior member of the Royal Family nominated by the Privy Council;
(b) The Prime Minister;

(c) *The Chief Justice of Bhutan*\textsuperscript{163};
(d) *The Speaker;*
(e) *The Chairperson of the National Council; and*
(f) *The Leader of the Opposition Party."

During the consultation meetings, the people stated that the Council of Regency should not be given the powers vested in the Druk Gyalpo under the Constitution. Responding to it, His Majesty Jigme Singye Wangchuck said that such provision is universal in any monarchical system. It is incorporated in the Constitution to carry out powers vested in the Druk Gyalpo if the King is not in a position to carry out his responsibilities because of sickness and other difficulties. It is of utmost importance that there should be a Council of Regency to exercise and discharge the Royal Prerogatives and the powers vested in the King. When the King recovers and is in a position to carry out his duties, the power given to the Council of Regency should be given back to the King. The Council should not usurp the power.

Regarding the composition of the Council members, His Majesty Jigme Singye Wangchuck said that the Council of Regency is broad based with representation from the Royal Family, the Executive, the Judiciary and the Legislature including the opposition party to discharge the functions collectively.

Some opined that the Chief Justice of Bhutan under the Constitution was too powerful. During the Samtse Public Consultation Meeting,\textsuperscript{164} a member remarked that the Constitution trusted only the Chief Justice while others thought that the Chief Justice was protected as he was the Chairman of the Constitution Drafting Committee. The Chief Justice of Bhutan is the guardian and the upholder of laws. He is neither affiliated to political parties nor is he a political appointee whereas other members are elected from the political parties.\textsuperscript{165}

The Prime Minister and the Speaker may be from the same political party sharing similar ideology. Similarly, the Prime Minister, Chairman of the Council and the Leader of Opposition party may share similar political ideology. The presence of the Chief Justice of Bhutan as a member of the Council was deemed necessary for the purpose of proper checks and balances in the exercise of the Royal Prerogatives. Therefore, His Majesty commanded that it would be of immense help to the country if the Chief Justice of Bhutan is included in the Council of Regency as a member.\textsuperscript{166}

Furthermore, the Council of Regency is not a permanent and regular feature. When it is necessary, the Council must play an important role for common good and in national interest. Diversity of membership reflects broad base, elimination of biases, political agenda and proper checks and balances for correct decision.

\textsuperscript{163} Submission of 28\textsuperscript{th} October 2004. The words “of Bhutan” may be added to “The Chief Justice” so that it would not include the Chief Justice of the High Court.

\textsuperscript{164} Public Consultation in Samtse, 27\textsuperscript{th} March 2006.

\textsuperscript{165} The presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee, 9\textsuperscript{th} May 2008.

\textsuperscript{166} Public Consultation in Bumthang, 21\textsuperscript{st} May 2006.
Article 2
Section 9

“In the case specified under section 7(b) or 7(c) of this Article, the descendant of the Druk Gyalpo, who is the heir presumptive, shall, instead of the Council of Regency, become Regent by right, if the heir presumptive has attained the age of twenty-one years.”

The Council of Regency should not be a perpetual and a regular feature. When the King recovers and is in a position to carry out his duties, the power given to the Council of Regency is taken back. Further, if the heir presumptive attains the age of twenty-one years, he will become the Regent by right instead of Council of Regency. The Council should be formed only if the situation necessitates. This section is one of the measures to reduce the invocation of section 8 of this Article. This section automatically invalidates the Council when the heir presumptive attains the age of twenty-one.

Article 2
Section 10

“The members of the Council of Regency shall take an Oath of Allegiance before Parliament to faithfully discharge their duties.”

The Oath of Allegiance binds individual conscience and duty to be honest, correct and proper. Therefore, the Council of Regency while exercising the Royal functions and prerogatives must in the national and public interest take the Oath for faithful discharge of their responsibilities and duties. Public proclamation binds personal and private conduct.

Article 2
Section 11

“When the successor to the Throne attains the age of twenty-one years or when the Druk Gyalpo resumes the exercise of the Royal Prerogatives under sections 7(a) and 7(b) of this Article, notice shall be given by Proclamation. However, when the Druk Gyalpo regains the ability to exercise Royal Prerogatives under section 7(c) of this Article, notice shall be given to that effect by resolution of Parliament.”

This section provides that as soon as the successor to the Throne attains the age of twenty-one years or when the Druk Gyalpo resumes the exercise of the Royal Prerogatives under sections 7(a) and (b) of this Article, he shall resume the exercise of authority upon Proclamation. However, when the Druk Gyalpo regains the ability to exercise the Royal Prerogatives under section 7(c) of this Article, Parliament shall give a notice to that effect by resolution. This provision ensures protection from any manipulation or misuse of authority. The power to issue proclamation rests with the Druk Gyalpo and not with the Council.
Article 2
Section 12

“The members of the Royal Family shall be the reigning and past Monarchs, their Queens and the Royal Children born of lawful marriage.”

Bhutan has accorded status of Royal family to Royal Children of the reigning and past Monarchs. His Majesty Jigme Singye Wangchuck said that the definition of Royal Family should be restrictive and it would be good for Bhutan if the recognition of Royal Family members is restricted. During the Constitution consultation meeting in Punakha, His Majesty said:

The most important thing to keep in mind is to think for the benefit and the interest of our country.... Considering this, it would be good if the number of Royal Family is reduced. If the number of the members of the Royal Family increases, in future it will not be beneficial to our country... Moreover, when we look into the Constitution of other monarchial countries, the parents of the Queens, has never been reflected as the Royal Family. Therefore, it is not necessary for us to incorporate as well.167

Article 2
Section 13(a)

The Druk Gyalpo and the members of the Royal Family shall be entitled to:

“Annuities from the State in accordance with a law made by Parliament;”

This provision enshrines a constitutional duty upon the State to provide Royal annuities to the Druk Gyalpo and the members of the Royal Family. The annuities which the Druk Gyalpo and the members of the Royal Family are entitled to are to be determined by the Pay Commission and the law made by the Parliament. With annuities, the Royal Family should not enter public and executive functions. Presence of a Royal Family may create protocol, administrative and institutional difficulties. They must represent the nation for remarkable respect, impeccable and inspiring public image.

Article 2
Section 13(b)

“All rights and privileges including the provision of palaces and residences for official and personal use; and”

This sub-section provides that the Druk Gyalpo and the members of the Royal Family are entitled to all rights and privileges including the facilities of palaces and residences.

Article 2
Section 13(c)

“Exemption from taxation on the royal annuity and properties provided for by sections 13(a) and 13(b) of this Article.”

One of the repeated doubts raised with regard to this provision was that the provision may be misused. People expressed apprehensions that properties other than those mentioned in sections 13(a) & 13(b) may also be exempted from tax. The Drafting Committee was very clear with this sub-section that there was no room for misuse. The exemption from tax applies only to the royal annuity and properties provided for by sections 13(a) and 13(b) of this Article. All other properties would be subject to tax in accordance with the laws.

Article 2
Section 14

“There shall be a Privy Council, which shall consist of two members appointed by the Druk Gyalpo, one member nominated by the Lhengye Zhungtshog and one member nominated by the National Council. The Privy Council shall be responsible for:

(a) All matters pertaining to the privileges of the Druk Gyalpo and the Royal Family;
(b) All matters pertaining to the conduct of the Royal Family;
(c) Rendering advice to the Druk Gyalpo on matters concerning the Throne and the Royal Family;
(d) All matters pertaining to crown properties; and
(e) Any other matter as may be commanded by the Druk Gyalpo.”

This section provides for the purpose, composition and responsibility of the Privy Council. The Privy Council which is composed of members from diverse fields is responsible for matters pertaining to the privileges of the Druk Gyalpo and the Royal Family, conduct of the Royal Family, rendering advice to the Druk Gyalpo on matters concerning the Throne and the Royal Family, matters pertaining to crown properties, and other matters as may be commanded by the Druk Gyalpo.

The provision reposes trust in the Lhengye Zhungtshog and the National Council to use its best judgment in nominating a member to the Privy Council. Though the Lhengye Zhungtshog and National Council have the discretion to nominate any person as the member, it should avoid nominating a Member of Parliament to follow the principle of separation of policy, execution and review. Concentration of power would be wrong and would deprive the principle of checks and balances. Moreover, in principle, members of Parliament should not be in any Committee or Commission other than the Parliamentary committees and commissions for it will undermine its august status and deprive the process of review by Parliament. Participation may often mean indirect involvement.

168 National Assembly Resolution, 28-6, 29-4.
Article 2
Section 15

“The Druk Gyalpo shall not be answerable in a court of law for His actions and His person shall be sacrosanct.”

It is an important principle for the Monarch as the Head of State to be sacrosanct. Moreover, it is an established Bhutanese sentiment that since His Majesty the Druk Gyalpo subscribes to national interest and common good of the people, he should not be made answerable in a court of law. The breach of this sanctity of His Majesty by the Constitution would be against the tradition and sentiment of the Bhutanese people. Bentham said, “neither law of nature nor natural rights could set limits to the power of sovereign authority.” The actions of His Majesty are presumed to be transparent.

This section provides that the King is not answerable for His actions; which is expressed provisions rendering the actions of the King as non justiciable. It means that courts do not have the jurisdiction to deal with such issues and if somebody seeks to bring out writ or process to try and question the actions of the King, the court would simply refer to Article 2.15 and as per the Constitution, declare such an attempt as non justiciable. However, Members of Parliament can’t comment on such matters because Parliament is protected in free speech within the Parliament but in the courts, there is an expressed provision on the courts entertaining jurisdictions in such a case. But there are other instances where it isn’t expressed and it’s therefore a matter for courts to work out how the Constitution is intended to operate. Nonetheless, if Parliament does not follow properly the procedure stipulated in Article 2 (21 to 25), it could be a derivative power for a Court. It is within the power of the courts to review a procedure set down in the Constitution.

A visiting professor, Ben Saul appreciated this section as under:

“Under Article 2 (15): Druk Gyalpo the King is not answerable in a court of law for His actions. Thus, King’s exercise of the prerogative powers is non-justiciable in the Royal Courts Justice in Bhutan. However, Article 2(20) provides a different solutions. The King shall abdicate from the Throne for willful violations of the Constitution and it sets a process. There is a joint sitting of Parliaments, which must follow the procedures set up in Articles in the Constitution. The Courts cannot review the King’s exercise of prerogative powers but the joint sitting of Parliament might be able to do it, if the King exceeds the scope of his prerogatives powers. So the Constitution regards it as a political judgment for Parliament to determine that legal question.”

This comment was reflected by His Majesty during the Public Consultation in Trashigang. A King is not answerable to a court of law but he is within the ambit of the Legislative sovereignty to move a secret vote of no confidence for abdication as sovereign power is conferred upon the People of Bhutan. It is a unique provision to ensure constitutionalism.

169 Dennis Poupard, Mark Scott, Literature Criticism from 1400 to 1800: Excerpts from Criticism of the Works of Fifteenth, Sixteenth, Seventeenth, and Eighteenth-century Novelists, Poets, Playwrights, Philosophers, and Other Creative Writers, from the First Published Critical Appraisals to Current Evaluations, 1997, Vol. 36, p. 146.
170 Supra, n. 140.
Article 2
Section 16

“The Druk Gyalpo, in exercise of His Royal Prerogatives, may:

(a) “Award titles, decorations, dar for Lhengye and Nyi-Kyelma in accordance with tradition and custom;”

An institution has an inherent power. Prerogative power is a long standing inherited power of the monarchs. With the Constitution, prerogatives are democratic prerogative powers. They are enshrined in the Constitution. Prerogative power may not be used indiscriminately and violate the spirit of law and the Constitution. The prerogative powers are divided into absolute, real and nominal powers.

His Majesty is the fountain of honour, the authority to award titles, decorations and dar has been vested with His Majesty the Druk Gyalpo. Moreover, it is an honoured tradition and a well established custom of Bhutan for His Majesty to have the authority to award titles, decorations and dar. Deeds of person must be recognized and words of the nation should be immortalized through recognition. Moreover, they are the hallowed traditions, treasured highly in our country for His Majesty to award dar for Lhengye and Nyi-Kyelma.

In the Buddhist tradition, a Lhengye is considered as one of seven precious jewels. The candidate receiving dar selects an auspicious day and performs prayers from early morning. At the time of appointment, he goes to the Throne Room of His Majesty, prostrates three times and offers a scarf to His Majesty through the chamberlain. The offering of scarf depicts sign of purity and the indelible mark of respect and loyalty. The incumbent prostrates again for three times and receives five rainbow colored scarves from His Majesty. After receiving the dars, he prostrates again for three times. Thereafter, his designation changes and he receives the respect and protocol befitting the designation.

The scarf in Bhutan always had a historical, cultural, religious and social significance. It has become an embodiment of the Kingdom’s national identity and invaluable cultural heritage, a form of visual recognition and dignity in society and public. Bhutanese have and will always continue to aspire for the different scarves and strive to be worthy of the recognition. The gho and kira has conserved its regality against the domination of western attire and relentless cultural onslaught. Consequently, gho and kira with patang and kabney is now preferred by the Bhutanese to the western suit and tie.

For Nyi-Kyelma, the procedure is same except that the person will receive only a white scarf instead of the five rainbow colored scarves from His Majesty.

Modern Bhutan has embraced its role in the 21st century, while maintaining its rich culture and traditions which has been refined and transformed into an institution. The scarves for Rabjam were introduced in 1960s. The Royal Advisory Councilors were granted a designated blue colored scarf, a Royal color in 1968. The scarf for the deputy Minister was conferred for the first time by His late Majesty in 1960. White scarf without frills was introduced in 1980 and a

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171 Ministerial position.
172 Conferring a red scarf (rank and honour with the title of Dasho).
distinctive scarf for the Drangpons and Dzongdas were introduced in early 2000. As the fountain of honour, the Druk Gyalpo has the absolute power to award titles, decorations and dars for Lhengye and Nyi-Kyelma in accordance with tradition and custom. Deserved and sincere recognition is one of the most powerful forms of motivation that all human experience. The title “Dasho”, scarf and sword are the custodian of Bhutanese tradition and culture. It is the manifestation of honour and immortalization of the service.

**Article 2**

**Sub-section 16(b)**

(b) “Grant citizenship, land kidu and other kidus;”

The Drafting Committee was vehement to incorporate the power of granting citizenship within the prerogative of His Majesty. The Committee was of the view that the Nation must not suffer from political caprice which would undermine permanent national security due to short term political gain. This section is in line with section 4 of Article 6. By this sub-section, the authority to grant citizenship is the exclusive authority vested with His Majesty. It is a royal prerogative to grant citizenship. Hence, it is an absolute power.

Land is a possession of a nation and the citizens. Hence, battles are fought over it. Feud and animosities rage. Therefore, the Committee and the Nation bestowed their trust in the just and non-partisan judgment of the sovereign.

Kidu has a long history. It is the refuge for the helpless and the hopeless. It served the nation and provided succour for despair and desperateness. It incorporates a principle of equity and dispensation but the recipient must be deserving.

This section enshrines three main dire necessities of a citizen with hope and trust in our Monarchs whose attributes are passionate, impartial and compassionate.

**Article 2**

**Sub-section 16(c)**

(c) “Grant amnesty, pardon and reduction of sentences;”

One of the most noted prerogative powers is the prerogative of mercy, which are the granting of pardons and the granting of nolle prosequi. Pardons may eliminate the "pains, penalties and punishments" from a criminal conviction, but they do not remove the convictions itself. The granting of a pardon is not subject to judicial review. His Majesty as the fountain of justice may

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173 Judges or Justices of a Royal Court of Justice.
175 "According to Tenzin Tsondre, the Tibetan word "kidu" literally means sharing of prosperity and adversity. As a naturally formed order of nongovermental mutual aid, kidu represents an evolution of customs, conventions and code of ethics in medium-sized and small communities in villages and towns… As pointed out by anthropologist Chen Bo in his book, Life In Shambhala, the structure of kidu is not based on kinsfolk, though brotherhood, sisterhood, consanguinity of both paternal and maternal sides, and affinity constitute the most basic interpersonal layer of its establishment. Chen's research shows that kidu is not a system based on blood relations, and kinsfolk are only a link of the institution." Available at http://www.chinahumanrights.org/CSHRS/Magazine/Text/20110324_724335.htm. The Bhutanese meaning is more profound. It is a principle of equity and dispensation of certain rigid laws. The word is mentioned in Lhoyig Chhoenjug Ngabang Chi Yi Kidy, (3 times), Chhojay Sherub Wangchhuk (Punakha slate once Miser Ki dug).
grant amnesty\textsuperscript{176}, pardon and reduction of sentences. It is a convention in every country for the Head of State to grant amnesty, pardon and reduce sentences.

Misdeed of a certain situation cannot be condemned to eternity. The spiritual heritage of Bhutan is based on reformation, compassion and forgiveness. If one improves, he should be entitled to another opportunity in life. It is the Druk Gyalpo’s absolute prerogative to grant amnesty, pardon and reduction of sentence. According to Oscar Wilde, “Every sinner has a past and every sinner has a future.”\textsuperscript{177} This section unveils that hope.

**Article 2**  
**Sub-section 16(d)**

\textit{(d) “Command Bills and other measures to be introduced in Parliament; and”}

The Royal Prerogative to “command Bills and other measures to be introduced in Parliament” is a prerogative which is vested in the Head of State in almost all the constitutional monarchies. If Parliament omits due to political and vested interest, the national and common interest may invoke His Majesty’s attention to command Bills and other measures as the protector and upholder of the Constitution. Exceptions are necessary for extreme measures in national interest. However, no partisan and ulterior motive should exist. His Majesty is a beacon of impartiality.

**Article 2**  
**Sub-section 16(e)**

\textit{(e) “Exercise powers relating to matters which are not provided for under this Constitution or other laws.”}

No human being can perceive, predict or foresee all possible future circumstances. The nation cannot be a victim of human frailties. Therefore, it is appropriate and necessary to confer upon the Druk Gyalpo the residual power, in matters not provided for under the Constitution or other laws to avoid constitutional crisis. This is the same principle as enshrined under \textit{Kadoen Ka}-2.

Bhutan is a Constitutional Monarchy and the Druk Gyalpo is the protector and upholder of the Constitution in the best interest and for the welfare of the people of Bhutan. This residual power in the Bhutanese Constitution is similar to the intelligible clause of the Constitution of the United States of America, wherein “Intelligible principle” gives the President of USA and his agencies great discretion to set regulations. However, the Bhutanese Constitution grants less discretion to issue orders. It can be done only when such matters are not covered by the Constitution or other laws.

**Article 2**  
**Section 17**

\textit{“The Druk Gyalpo may promote goodwill and good relations with other countries by receiving state guests and undertaking state visits to other countries.”}

\textsuperscript{176} Royal decree 1991 and Section AA and Da 2-15 of the Thrimzhung Chhenmo.  
\textsuperscript{177} Paul Ngr, \textit{Oscar Wilde’s Wit and Wisdom: A Book of Quotation (Dover Thrift Ed.)} 1998.
It is most imperative that Bhutan promote goodwill and good relations with other countries. It is in the spirit of friendship that promotes co-existence, tolerance and understanding in the world. In the words of Buddha, “Goodwill towards all beings is the true religion; cherish in your hearts boundless goodwill to all that lives.” Hence, every country in the world has a sacred responsibility to maintain peace, to save mankind from the scourge of war, and the duty to ensure a friendly environment. Visits of delegates from foreign countries and regular contact with the countries of the world eliminate misunderstanding and enrich friendship and mutual respect. Communication is the beginning of understanding. For these reasons, His Majesty may receive state guests and undertake state visits as the Head of State to promote goodwill and friendly relations with other Countries. Thomas Jefferson once remarked, “Peace and friendship with all mankind is our wisest policy, and I wish we may be permitted to pursue it.”

Article 2
Section 18

“The Druk Gyalpo shall protect and uphold this Constitution in the best interest and for the welfare of the people of Bhutan.”

The Druk Gyalpo being the protector and the guardian of the people’s welfare and interest has the constitutional duty and responsibility to “protect and uphold this Constitution in the best interest and for the welfare of the people of Bhutan.” All his actions must subscribe to the greater national interest, common good and well-being of the people under the Constitution. He cannot therefore, deviate from the Constitution but instead must follow it in letter and spirit, and guide the nation.

His Majesty Jigme Singye Wangchuck was pleased to command on 30th November 2009 that:

The Druk Gyalpo of the Kingdom of Bhutan has the sacred mandate of upholding and protecting the Constitution. As the Upholder of the Constitution, the Druk Gyalpo will ensure its primacy over all institutions and individuals in the kingdom. As its Protector, he will safeguard it from all threats.

Article 2
Section 19

“The Druk Gyalpo shall, by warrant under His hand and seal, appoint:”

The system of warrant under His Majesty’s hand and seal is important to guarantee checks and balances in the appointment of persons. Verbal command can be misused. A written order with seal ensures evidence and eliminates misuse of power. Further, a warrant under His hand and seal imply approving authority. A broad based recommending committee and approving authority of His Majesty are double security systems for checks and balances.

The selection and appointment of persons to constitutional and other important posts require a fair and independent selection with due regard to the highest standard of integrity. In order to eradicate prejudices, corruption and misuse of power, the authority to make the appointments enumerated under this section is vested in His Majesty the Druk Gyalpo following a vetting and

selection of candidates by a pre-established committee. His Majesty Jigme Singye Wangchuck pointed out that, in many countries, persons holding high posts are selected either by the President or the Prime Minister who would often select people who are close to them. Under the Bhutanese Constitution, the holders of constitutional offices will be selected by a committee of five persons consisting of the Prime Minister, Chief Justice of Bhutan, Speaker of the National Assembly, the Chairperson of the National Council, and the Leader of the Opposition Party. This system will ensure fairness in the appointment of persons to the constitutional posts and eliminate bias and prejudices. It is the division of power to ensure accountability and responsibility.

Under the written Constitution, the prerogative has transformed into the executive power. Under section 16 of Article 2, His Majesty can in the exercise of His Royal prerogatives award titles and decorations, grant citizenship, grant amnesty, pardons, reduction of sentences, command Bills and other measures to be introduced to Parliament, and exercise powers relating to matters which are not provided for under the Constitution or other laws.

Under sections 15 and 16 of Article 2 of the Constitution, the King’s exercise of the prerogative powers is non-justiciable in the courts of Bhutan. Sacrosanct actions of His Majesty are immune from the Courts but it is within the legislative and popular sovereignty. Section 20 of Article 2 provides a process for the King to abdicate from the Throne for willful violations of the Constitution. The joint sitting of Parliament must follow procedures enshrined in the Constitution. The Courts cannot review the King’s exercise of prerogative powers. As a political judgment, Parliament can determine the legal question. However, if a joint sitting of Parliament passes a motion requiring the King to abdicate for abusing the prerogative without following the procedures stipulated in sections 21 to 25 under Article 2, then a court can interfere in that internal process of Parliament and evaluate whether Parliament followed proper procedure or not. It is different from other kind of internal parliamentary process. Conversely, if Parliament adopts its own rules of procedure, then compliance or non compliance with those rules is a question for the Speaker of the House to determine.

**Article 2**

**Sub-sections 19(a) (b) (c) and (d)**

“The Druk Gyalpo shall, by warrant under His hand and seal, appoint:”

(a) The Chief Justice of Bhutan in accordance with section 4 of Article 21;

(b) The Drangpons of the Supreme Court in accordance with section 5 of Article 21;

(c) The Chief Justice of the High Court in accordance with section 11 of Article 21;

(d) The Drangpons of the High Court in accordance with section 12 of;”

In most constitutions, the justices and the judges of the courts are appointed by the Head of State to avoid politicization of the Judiciary and to ensure independence of the Judiciary.

Bhutan studied various systems of appointing Judges, and found that involvement of the Legislature in judicial appointment could politicize the Judiciary, thereby affecting the independence of the Judiciary. Appointment of Judges by the Executive could also lead to
bureaucratic excesses. Moreover, the Prime Minister has political affiliation and political interest. Democracy needs political system but the Judiciary is averse to politicization. Therefore, it was decided that selection for judicial appointments should be made by an independent body, the National Judicial Commission and the authority for formal appointment is vested with His Majesty the Druk Gyalpo to ensure selection of the right person.

The National Judicial Commission is composed of four members, with the Chief Justice of Bhutan as the Chairperson. The members of the Commission are the Chief Justice of Bhutan, the senior most Drangpon of the Supreme Court, the Chairperson of the Legislative Committee of the National Assembly and the Attorney General.¹⁸⁰ Inclusion of Attorney General was felt necessary to accord the views of the Prime Minister.

Decisions and recommendations of the National Judicial Commission will be based on majority voting principles and where consensus cannot be achieved, dissenting views regarding the recommendations should be recorded. If votes are equal, the Chief Justice of Bhutan shall have the deciding vote. The National Judicial Commission can fulfill its national objectives if it is transparent. It would be ideal if Potential candidates are announced for public scrutiny.

**Article 2**
**Sub-sections 19(e) to (i)**

(e) *The Chief Election Commissioner and Election Commissioner in accordance with section 2 of Article 24;*

(f) *The Auditor General in accordance with section 2 of Article 25;*

(g) *The Chairperson and members of the Royal Civil Service Commission in accordance with section 2 of Article 26;*

(h) *The Chairperson and members of the Anti-Corruption Commission in accordance with section 2 of Article 27;*

(i) *The heads of the Defence Forces from a list of names recommended by the Service Promotion Board;*

These institutions are important constitutional pillars. The selecting and recommending authority is broad based comprising the Prime Minister, the Chief Justice of Bhutan, the Speaker, the Chairperson of the National Council and the Leader of the Opposition Party. This system is meant to ensure fairness as His Majesty Jigme Singye Wangchuck said on 30th November, 2009:

*Through comprehensive discourse and debate, they accept ownership of and responsibility for the Constitution through their involvement and participation just as they have acknowledged that democracy is a better alternative for the future and voted in a government of their choice.*

The Monarch, as the supreme Commander in Chief of the Armed Forces, is the sole authority of the armed forces, and as such their organisation, disposition and control cannot be questioned by the courts. This exercise of prerogative power gives the Crown authority to recruit members of the armed forces and appoint commissioned officers.

¹⁸⁰ Section 17, Article 21, *The Constitution of Bhutan.*
Article 2
Sub-sections 19(j) (k) (l) (m) (n) and (o)

(j) The Attorney General in accordance with section 2 of Article 29;
(k) The Governor of the Central Bank of Bhutan on the recommendation of the Prime Minister;
(l) The Chairperson of the Pay Commission in accordance with section 1 of Article 30;
(m) The Cabinet Secretary on the recommendation of the Prime Minister;
(n) The Secretary General of the respective Houses on the recommendation of the Speaker of the National Assembly and the Chairperson of the National Council; and
(o) Ambassadors and Consuls on the recommendation of the Prime Minister.

His Majesty is the approving authority of the recommendation submitted by the Prime Minister, and the Prime Minister is both the recommending and the selecting authority. A democratically elected Prime Minister has that authority under these sub-sections.

For the selection of the Secretary General of the respective Houses, His Majesty is the approving authority of the recommendation made either by the Speaker or the Chairperson as the case may be.

Article 2
Sub-sections 19(p) and (q)

(p) The Secretaries to the Government on the recommendation of the Prime Minister who shall obtain nominations from the Royal Civil Service Commission on the basis of merit and seniority and in accordance with other relevant rules and regulations; and
(q) Dzongdags\textsuperscript{181} on the recommendation of the Prime Minister who shall obtain nominations from the Royal Civil Service Commission.

An orderly form of decentralization is highly desirable in high level appointments to assure transparency and broad-based vetting of all candidates. As is often said, the deliberation of three persons is preferable to the thought of a single person. It is dangerous to give all powers to one person or one organization. That person or the organization is likely to abuse it. One incidence of abuse is worse than many good deeds.

A fair and independent selection with due regard to the highest standard of integrity is very essential. Therefore, in order to eradicate prejudices, corruption and misuse of power, the authority to make the appointments enumerated under this section is vested in His Majesty the Druk Gyalpo. However, the selection of people for such appointments would be done by a committee consisting of a group of individuals. Deliberations by adequate number of people in the Commission would be preferable to the dictum of a single person.

\footnote{\textsuperscript{181} District Administrator.}
Similar procedure must be followed for removal and transfer. On the suggestion of the Constitutional advisor, His Majesty removed the provision which states:

“His Majesty may remove any of the office holders under section 19 of this Article, other than those office holders who are liable to be removed only through impeachment, in the same manner in which the appointment was made.”

The bureaucracy has to be stable and secure as Sun Yat-sen wrote:

“The foundation of the government of a nation must be built upon the rights of the people, but the administration must be entrusted to experts.”

Article 2
Section 20

“The Druk Gyalpo shall abdicate the Throne for willful violations of this Constitution or for being subject to permanent mental disability, on a motion passed by a joint sitting of Parliament in accordance with the procedure as laid down in sections 21, 22, 23, 24 and 25 of this Article.”

Under this section, if the Druk Gyalpo willfully violates the provisions of this Constitution or suffers from permanent mental disability, Parliament shall pass a resolution for abdication in accordance with the procedure laid down under sections 21, 22, 23, 24 and 25 of Article 2.

Questions were raised regarding the definition of “willful violation”. This phrase would always be shrouded with mystery. However, it is better not to define and restrict its meaning but allow wiser counsel to prevail. It would be wise to follow His Majesty, who said that the national interest succeeds; personal interest fails. National interest must guide the nation. His Majesty mentioned that the Constitution should not be for personal welfare but for the good of the Bhutanese people, preservation of the country’s sovereignty and the defence and independence of the country. The country is more important than the king, said His Majesty Jigme Singye Wangchuck.

Article 2
Section 21

“The motion for abdication shall be tabled for discussion at a joint sitting of Parliament if not less than two-thirds of the total number of the members of Parliament submit such a motion based on any of the grounds in section 20 of this Article.”

The motion for abdication shall be tabled for discussion at a joint sitting of Parliament, if not less than two-thirds of the total number of the members of Parliament submit such a motion based on any of the grounds enshrined in section 20 of this Article. Two-thirds is required to create stability and to avoid political maneuvering. This is a very powerful constitutional provision as it provides that a motion can be tabled against a king for abdication. However, Parliamentarians

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182 Sun Yat Sen, The Three Principles of the People, 1927.
183 Royal audience by His Majesty Jigme Singye Wangchuck, 29th Nov. 2001.
need broader support to prevent arbitrariness. Motion of abdication may be possible but it is not that easy. Double majority must ensure the triumph of truth and that all decisions are taken in the interest of Bhutan.

The motion for abdication denotes popular sovereignty. It is a unique provision by His Majesty Jigme Singye Wangchuck contrary to William Blackstone, who said, “That the king can do no wrong is a necessary and fundamental principle of the English Constitution.” Justice J.S Verma said:

The provisions for referendum and for abdication by the King at the age of 65 years or for willful violation of the Constitution in Bhutan are unique.184

Article 2
Section 22

“The Druk Gyalpo may respond to the motion in writing or by addressing the joint sitting of Parliament in person or through a representative.”

This section requires the Druk Gyalpo to respond to the motion in writing or by addressing the joint sitting of Parliament in person or through a representative. This section grants the right to defence to the Druk Gyalpo in accordance with the due process of law. Under the Constitution right to defence is made equally available to all whether the person is a prince or a pauper. The process must guarantee the search of truth in the interest of the nation.

Article 2
Section 23

“The Chief Justice of Bhutan shall preside over the joint sitting of Parliament mentioned in section 21 of this Article.”

Some were of the view that the Chief Justice should not preside over the joint sitting under section 21 of Article 2 as they felt that the Speaker would be more appropriate than the Chief Justice. However, it is a universal practice for the Chief Justice to preside over the joint sitting of Parliament in such proceedings, as he is a learned person who is experienced with relevant laws, the principles of natural justice and fair trial. In addition, the Chief Justice has no political affiliations. Conversely, the Speaker is a politician with party affiliation. Consequently, many countries have experienced lack of political fairness and just decisions by the Speaker. There should be clear delineation of responsibilities and separation of powers as envisaged by the Constitution. Political processes rest with Parliament, whereas the interpretation of the laws are the responsibility of the Judiciary and the judges of the courts.

Those who objected to the Chief Justice presiding over removal proceedings of Druk Gyalpo based their objections on the fact that the Chief Justice is appointed by His Majesty. This objection is unfounded because even the Speaker is appointed by the Druk Gyalpo. The Chief Justice as the presiding officer will not take any decision. The decision has to be taken by the

184 Supra, n.152.
185 Supra, n.134.
members of Parliament by way of voting. The Chief Justice only presides over the joint sitting to ensure procedural fairness and adherence to the due process of law.

Due consideration was given to the fact that the Chief Justice of Bhutan is appointed keeping in mind his qualifications, conduct, proven track record and ability. The drafting Committee gave weightage to the fact that it is the Chief Justice’s duty and responsibility to impart justice fairly and justly. And that he is apolitical. Hence, it was decided that the Chief Justice would be the appropriate choice to chair the proceedings.\(^{186}\)

**Article 2**  
**Section 24**

“If, at such joint sitting of Parliament, not less than three-fourths of the total number of members of Parliament passes the motion for abdication, then such a resolution shall be placed before the people in a National Referendum to be approved or rejected.”

A motion for abdication is a serious matter which should be considered only in extreme cases to ensure the stability of the nation. The decision to remove people’s King should remain with the people. Therefore, although the motion for abdication is passed by Parliament, the final decision whether to approve or reject shall have to be done through a National Referendum.\(^{187}\) The people of the country have to render the final judgment. This section ensures sovereignty of the people.

**Article 2**  
**Section 25**

“On such a resolution being approved by a simple majority of the total number of votes cast and counted from all the Dzongkhags in the Kingdom, the Druk Gyalpo shall abdicate in favour of the heir apparent.”

If a resolution of abdication is approved by a simple majority of the total number of votes cast and counted from all the Dzongkhags in the Kingdom during the national referendum, the Druk Gyalpo shall abdicate in favour of the heir apparent. His Majesty always said that the people of Bhutan are more important than a single person. He must admit to the popular voice of the people. In the words of Abraham Lincoln, “no man is good enough to govern another man without that others consent.”\(^{188}\)

**Article 2**  
**Section 26**

“Parliament shall make no laws or exercise its powers to amend the provisions of this Article and section 2 of Article 1 except through a National Referendum.”

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186 Public Consultation in Samste, 27th March 2006.
187 In the 76th Session of the National Assembly, His Majesty the King, in his ultimate trust in the people had restructured the Lhengye Zhungshog (Council of Ministers) and had initiated a bill to register vote of confidence in the Druk Gyalpo. Despite repeated submissions by the members that there was no need for registering a vote of confidence in the Druk Gyalpo, His Majesty the King refused to consider the submissions of the members. Subsequently, a drafting committee drafted a Chathrim as a Mechanism for vote of confidence. The mechanism was tabled in the 77th Session of the National Assembly. The Vote of Confidence Chathrim was deliberated and enacted by the 77th National Assembly Session.
The Drafting Committee incorporated this immutable section as the Constitution is aimed to ensure a stable government and democratic sustainability. Unstable head of the State is equally dangerous and regressive. People must have faith in the goodness and trust the leadership of the Head of State.\textsuperscript{189}

His Majesty said that in a representative democracy, Parliament does not have the power to amend the basic structure of the Constitution. The power to amend the basic structure of the Constitution, through a referendum, is vested with the people because sovereign power belongs to the people of Bhutan under section 1 of Article 1.

The Founding Fathers had this entrenched provision for stabilizing the changing moods and fleeting emotions of the people. Basic structure and principle of the Constitution cannot be altered through clamor in the street, by taking the lawfully elected Government as hostage or by using unlawful means. It can only be done through a referendum. According to His Majesty, the sanctity of the Constitution will rest with the People whilst the power bestowed by the Constitution will rest with the representative Parliament.

**Article 3**

**Spiritual Heritage**

The Article on Spiritual Heritage was a very sensitive and an emotional issue, which required serious deliberations. However, there was a general consensus that the spiritual virtues of faith, hope and duty to help one another is necessary for human beings. It was necessary to think about the applicability of the document for posterity as commanded by His Majesty Jigme Singye Wangchuck. Similarly, many people expressed their concern about religion during the public discussions. Many commented that the Constitution should unequivocally incorporate Buddhism as the State religion or as the official religion. But this was not felt to be necessary as religion is so clearly entrenched into all elements of life in Bhutan. Bhutan is a Buddhist country and will always remain as a Buddhist country.

His Majesty the Druk Gyalpo Jigme Khesar Namgyel Wangchuck reminded the people that the spiritual and cultural heritage of a nation was important for a small landlocked country and encouraged the older generation to impart, not only the physical aspects of this heritage, but a deeper appreciation and understanding of our spiritual and cultural heritage to the younger generation. Justice J.S. Verma stated:

\begin{quote}
“The Buddhism being the basis of the cultural values, which are incorporated in the Constitution, is actually the way of life in Bhutan. The practice of Buddhism are the truth of Buddha, if that is the root, that is the basis on which the entire culture and ethos is based, then naturally its continuance in the Constitution is ensured by mentioning in Article 3 specifically that this culture will be all pervading and it would be a permanent feature.”\textsuperscript{190}
\end{quote}

\textsuperscript{189} In Pali “It became necessary to extend natural socialism to the political foundations of the community when oppression in the community became intolerable. People saw fit to invest a particularly capable, just leader with their trust and power. This leader or raja would govern in such a way that no one could oppress anyone else, and the community would thus enjoy contentment.” Refer Buddhadasa, A Dictatorial Dhammic Socialism, p. 89.

\textsuperscript{190} Supra, n.134.
During the various public consultations of the Draft Constitution, His Majesty Jigme Singye Wangchuck clarified:

*Under our Constitution, Buddhism is the spiritual heritage of Bhutan. Therefore, we will be a Buddhist country for all time, whether we start a democratic form of government, or whether people will be bestowed with human rights.*

*The power pertaining to matters regarding religion is given solely to the people. It is the duty of the people to protect the religion and, therefore, have the option as to how to protect religion ... When it comes to politics; it is essential to separate religion from politics. In most of the countries, friction and conflict between religion and politics is a major cause of most problems... Therefore, to prevent future complications, politics should be separated from religious affairs. It is of immense importance to make the political system conducive to development and the welfare of the people. If our people feel that religion is an indispensable component of our lives, then it is the obligation of the people to protect and uphold it when the power to do so is bestowed fully upon the people.*

Sir Matthew Hale, an English jurist said that “Christianity is part of the Common Law of England.” Likewise, Bhutan has the legacy of culture, traditions and values that are shaped by Buddhism. The Kingdom’s long history of evolution developed a distinct culture, indelible traditions and strong values that were inspired by the teachings of Buddha. The wisdom of cultural relativism tells us that those who belong to one culture cannot form a valid judgment of the custom, institution and belief of another. Ours was not a mandate to change the world but to assimilate change into an existing system. At the same time, we were careful to incorporate secular values that are supplementary and complementary to our aspirations and visions. In the process, we were aware that Bhutanese values are not in conflict with secular ideals. Thus, our Constitution draws on the culture, traditions and inherent spiritual values that also form the basis of Bhutanese identity. This pervasive spirituality is not different from western philosophy, which we understand from the “theory of empiricism” and that of Edmund Burke’s principle of respect for inherited rights and for established customs.

**Article 3
Section 1**

*Buddhism is the spiritual heritage of Bhutan, which promotes the principles and values of peace, non-violence, compassion and tolerance.*

The Constitution has made Buddhism as the spiritual heritage instead of the State religion. It is the basic tenet of democracy to guarantee and protect the personal right of “freedom of thought, conscience and religion” and not to enjoin on people of diverse faiths, a monolithic faith. This has been secured to the people in Section 4 of Article 7 of the Constitution. Spiritual heritage is

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191 Public Consultation in Haa, 2nd November 2005.
192 Public Consultation in Samdrup Jongkhar, 22nd April 2005.
194 Available at www.scriigroup.com
195 It may be similar to moral laws. “In Buddhism, moral law can be defined as the regulations for good conduct which has to be practiced for himself and for the society. It shapes both the internal and external behavior of man… the central tenet of the Buddha’s doctrine ... not to commit any sin, to do good and purify one’s mind.” *Sutra*, n. 99.
based on the history, traditions and beliefs accepted by the Government. The historical role of Buddhism in Bhutan is all pervading and an accepted norm in the Bhutanese society, environment, behavior, architecture and dress, and it’s influence will hold good for all times.

The Constitution stipulates the promotion of the principles and values of peace, non-violence, compassion and tolerance because it promotes those values and principles. Buddhist values conform to universally accepted ideals of tolerance, peace, non-violence and compassion. As this is based on “pharchen dru”, other religions will not be affected. Buddhism has not been evangelical in its doctrine and has not persecuted any other religion.

There were suggestions to incorporate “Drukpa Kargyu” as the spiritual heritage of Bhutan because Bhutan is known as Palden Drukpa, and the King is referred to as the Druk Gyalpo. Others wanted to incorporate Nyingma as the spiritual heritage since it was an older religion and is the prophecy of Zhabdrung given by Guru Rimpochhe. However, incorporating only Kargyu or Nyingma sects would have weakened and desecrate the sacred institution of the spiritual heritage of Bhutan.

His Majesty Jigme Singye Wangchuck reminded his people that the notion of Spiritual Heritage provided under Article 3, reflects a deep and profound thought. Modifying or changing the current general reference to Buddhism could create greater problems. He said that when the Country embarks upon Constitutional democracy, all religions are to be treated equally. According to the fundamental rights under the Constitution and also according to the human rights concept, there should not be any discrimination based on religion. It is mentioned under the fundamental rights that there should be no coercion or inducement for conversion to different religions. The freedom to choose and practice one’s own faith is a conferred individual right. Emphasis on one will divide many other religions. Religions must unite and not divide societies.

**Article 3**

**Section 2**

*The Druk Gyalpo is the protector of all religions in Bhutan.*

The Constitution provides, in accordance with universal human rights concepts that there should not be any discrimination based on religion and as the Head of State, the King should be the protector of all religions. Selective patronage or unequal protection of religious denominations may cause conflict and internal dissension. Therefore, His Majesty Jigme Singye Wangchuck was of the view that it is better that the protection of all religions rests with the King as he does not preach any religion and nor is he affiliated to any political party, as he is the symbol of unity. Moreover, His Majesty is the King of all Bhutanese citizens regardless of different religions or sects and the symbol of unity of the Kingdom and of the people of Bhutan as enshrined under section 1 of Article 2.

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196 The Pharchen Dru means Six Paramitas in Sanskrit.
197 The followers of Kargyupa wanted Je Khenpo to be the protector of all the religions but others objected to the proposal by stating that it will not be right to confer the protector of all religions upon the Je Khenpo. It will undermine the obligations and the responsibilities of His Holiness towards Kargyupa in Bhutan.
198 Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Paro, Mongar, Trashigang and in Trongsa.
Article 3
Section 3

“It shall be the responsibility of religious institutions and personalities to promote the spiritual heritage of the country while also ensuring that religion remains separate from politics in Bhutan. Religious institutions and personalities shall remain above politics.”

The Constitution envisions Bhutan to be a Kingdom of national integrity, unity, harmony, and co-operation among all sections of society without divisive and sectarian roles. By combining religion with politics, the country will be dissected, which would impair the security of the sovereign nation. Religion and politics should flourish independent of each other and ensure symbiotic growth, and promote tolerance among the people.199

Respect for religious belief is an essence of sublime morality and and must promote ethical values and peace, and must not politicize its followers. Peace and compassion are an inherent fact of all religions. His Majesty Jigme Singye Wangchuck explained that Bhutan has many Dratshangs200, Choedeys, Goendeys201, Shedras and Gomdeys as well as many religious personalities. If they involve themselves in political activities, it will foster divisions and disharmony. Independence and separation of religion from politics will ensure and strengthen the mandates of promoting the spiritual and religious heritage of the country and eschews fundamentalism and sectarian policies. Bloodshed and discord are alien to the tenets of religion. Therefore, all political parties must adhere to the mandate of the Constitution.

Separation of religion and state was founded on the teachings of Buddha. Its principle was enunciated when Buddha renounced the world to seek Nirvana. Buddha had renounced politics to embrace religion. Therefore, religious institutions and personalities should remain above politics. It is in consonance with the teachings of Buddha, who said:

“Bhikkhus do not engage in partisan politics but they contribute to building peace, joy, and virtue in society. The fruits of his spiritual practice are not for the bhikkhu’s sole enjoyment and benefit. They are the people’s and country’s inheritance.”202

Historically, a Buddhist king, Bimbisāra did not interfere with or prevent any religion from carrying on their affairs in his kingdom. Dhammapada commentary states that “there were six religious teachers in Rajagaha at that time”.203 It can be surmised that he followed a secular state and no Buddhist King like Ashoka did proclaim any religion as the State religion.

In Bhutan, the separation of politics and religion was initiated from the time of Zhabdrung Ngawang Namgyal. In 1651, Zhabdrung Rimpochhe appointed the First Je Khenpo as the head of the Dratshang and Tenzin Drukdra as the head of temporal affairs. Moreover, it was the noble aspiration of His Majesty Jigme Singye Wangchuck to achieve peace and prosperity of the country and prevent politicization of religion.

199 Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Samtse, 27th March 2006.
200 Monastic Body.
201 Monastic Communities.
Not separating religion from State may ultimately lead to tyranny, making religion subordinate to the State. Therefore, Their Majesties said that separation will promote independence of the religion and stated:

We have given very deep and careful thought before incorporating these provisions. If anyone tried to modify or change the phrase then it would create greater problems. Likewise, there is every possibility of clashes between religion and politics in future.  

It is important and true that religion should be separated from politics. Hence, the power pertaining to matters regarding religion is given solely to the people. It is the duty of the people to protect the religion and therefore has the option as to how to protect the religion. When it comes to politics, it is essential to separate religion from politics. In most of the countries, friction and conflict between religion and politics is a major cause of most of the problems. Till now, our spiritual leaders and monks have excellently conducted rituals for the well being of the people and for the welfare and the sovereignty of the country. We hope that in future also our spiritual leaders and monks will continue to pray for the well being of the people and our country. It is of immense importance to make the political system conducive to development and welfare of the people. If our people feel that religion is an indispensable component of our lives, then it is the obligation of the people to protect and uphold it when the power to do so is bestowed fully upon the people.

Religious personnel also have big responsibilities to carry out in the country. Till now, whenever there was a security problem in the country, or in times of epidemic and famine or whenever there was a difficult time, they had performed prayers and offerings to our deities. These prayers and offerings had been conducted for the well being and interest of our king, our country and the people. Such prayers and offerings are still being continually performed by our abbots and our lay monks. They have played an important role in ensuring the peace and security of our country, and in the future too, I know they will serve our country well. But when it comes to joining politics, our religious personalities will not be allowed to take part in it.

Buddhism is a tolerant and enlightened religion. It does not differentiate and discriminate between other religions and maintains distance from partisan politics. It is a great legacy that religious institutions and personalities follow and promote the spiritual heritage of the country while also ensuring that religion remains separate from politics in Bhutan. Religious institutions and personalities shall remain above politics. Sublime and transcendent Buddhism remains separate from partisan politics.

Article 3
Section 4

“The Druk Gyalpo shall, on the recommendation of the Five Lopons, appoint a learned and respected monk ordained in accordance with the Druk-lu, blessed with the nine qualities of a spiritual master and accomplished in ked-dzog, as the Je Khenpo.”

204 Public Consultation in Paro, 9th Nov. 2005.
205 Public Consultation in Samdrup Jongkhar, 22nd April 2006.
206 Public Consultation in Dagana, 5th Feb 2006.
207 Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Punakha and in Samtse.
It was discussed during the drafting of the Constitution that appointment of the Je Khenpo must not be restricted to the Zhung Dratshang in order to broaden the base for considering holy and learned candidates. Similarly, this issue was raised in almost all the public meetings. Therefore, section 4 of Article 3 of the Constitution mandates that the Je Khenpo has to be a respected monk ordained with the Druk-lu, blessed with the nine qualities of spiritual master and accomplished in Ked-dzog. The provision enshrines that the recommendation has to be made by the five lopons of the Zhung Dratshang and that the appointment shall be made by His Majesty the Druk Gyalpo.

**Article 3**
**Section 5**

“His Holiness the Je Khenpo shall, on the recommendation of the Dratshang Lhentshog, appoint monks blessed with the nine qualities of a spiritual master and accomplished in ked-dzog as the Five Lopons.”

For the effective and better management of the institution, certain powers should be conferred upon a body formed under the Constitution. Hence, the appointment of the heads of the various “Chhoedyes” has been left with the Dratshang Lhentshog.

This section provides that the Je Khenpo shall appoint five lopons on the recommendation of the Dratshang Lhentshog. It was suggested in some of the public meetings to include a provision for the appointment of Lams and Lopens to Dratshang, Rabdey and Choedhey by the Je Khenpo. However, many persons opposed the view during the public discussion. They suggested to leave the authority to appoint lams to the community alone to avoid the danger of conflict arising between Kargyupa and Nyingmapa.

**Article 3**
**Section 6**

“The members of the Dratshang Lhentshog shall comprise:

(a) The Je Khenpo as Chairman;
(b) The Five Lopons of the Zhung Dratshang; and
(c) The Secretary of the Dratshang Lhentshog who is a civil servant.”

The Je Khenpo is the Chairman while the Secretary of the Dratshang Lhentshog shall be from amongst the civil servants to ensure a better coordination between the Dratshang and the Government.

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208 Central Monastic Body.
209 Stages of Development and completion in Vajrayana practice.
210 The Commission for the Monastic Affairs.
211 Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Punakha, 27th Nov. 2005.
The roles and responsibilities of the Lhentshog are to discuss issues and frame policies related to Dratshang, Rabdey, Drubdhey and award promotions to Lopons. There were some stated concerns in the consultation process that if the Dratshang Lhentshog has influence over other sects, those sects must have representation in the Dratshang Lhentshog. However, the Lhentshog is solely meant for Dratshangs and Rabdeys, there is no need for a member from the other sects.

**Article 3**

**Section 7**

*“The Zhung Dratshang and Rabdeys shall continue to receive adequate funds and other facilities from the State.”*

The suggestion by some to amend the section as “The State shall be responsible for the maintenance of the spiritual heritage and the Choedeys to safeguard the security of the country and the well-being of the nation” was not accepted. Likewise, the suggestion to incorporate the support from the Government to the Dratshang and Rabdey for Boomdey and Tenchey Kurim was also not accepted. Rituals must be within the domain of the independence of Dratshang. Je Khenpo should be trusted to follow the established customs and traditions and not have his actions fettered.

In response to public anxiety about support to other Rabdeys and Chhodeys, the Constitution provides that the Government has responsibilities to continue its support to the Zhung Dratshang and the Rabdeys.

**Article 4**

**Culture**

The Constitution is founded on the historical, cultural and religious principles of the Bhutanese people that underline the traditions of Bhutan. Future generations must draw inspiration from the Constitution with pride. Although, the Constitution of Bhutan is unique and different from other constitutions, it has considered the sound principles and practices of other constitutions and draw upon them in a manner including the third generation rights, which relates to the specific needs and the unique location, history and culture of Bhutan. Therefore, as our future generations read the Constitution, they will forever hear the voice of the nation. His Majesty Jigme Singye Wangchuck said, “Bhutan is a very small Country with a rich cultural heritage”.

Mathew Arnold (1822-1908) said that culture is the passion for sweetness, and the passion for making them should prevail. There is no mention of religion and culture in any Constitution of other countries except in the Constitution of Bhutan. Religion and culture play a vital role in the social mores of a Society. Religion provides values and moral fibre whilst culture exhibits a separate identity and unity. Thus, this Article is unique in the Constitution of Bhutan.

Culture includes objects, which are the orientation of action, internalized components of the personalities of individual actors and institutionalized patterns of social systems. It is primarily a

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213 Monastic bodies in dzongs other than Punakha and Thimphu.
214 Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Thimphu, 26th Oct. 2005.
215 Royal Decree 1985 and National Assembly Resolutions 33-12, 34-27.
216 Mathew Arnold, Culture and Anarchy, 1882.
coordination of conduct conveyed through the medium of ordinary words or more complex artistic expressions. Conduct evokes selective responses from the people and it is a psychological orientation towards social objects.

Culture blossoms the mind and scintillates the spirit. It is important for determining the well-being of the social fabric. The future should always reflect the past with its traditions, values and aspirations. The concept of cultural heritage is very broad and encompasses very important principles. It denotes practices, representations, expressions, knowledge and skills, as well as instruments, objects, artifacts and cultural spaces. In Bhutan, it has benefitted from uninterrupted and lawfully recognised traditions express religious, moral spiritual and social values as well as functional utilities.

According to Talcott Parsons: “Culture consists in patterned or ordered systems of symbols which are objects of the orientation of action, internalized components of the personalities of individual actors and institutionalized patterns of social systems. It is primarily a system of symbols conveyed through the medium of ordinary words or more complex artistic expressions. Culture is important for gauging the health of the social system. For instance, every society possesses a certain degree of cultural harmony or strain. While the cultural harmony makes the task of social management and development considerably easy, cultural strain poses grave socio-economic and political problems.”

His Majesty Jigme Singye Wangchuck decreed:

“At a time when the Royal Government has recognized the importance of promoting Driglam Namzha and Lamdro Lugsoel (traditional etiquette) for maintaining and strengthening our unique national identity, in order to ensure and safeguard the continued well-being and sovereignty of the Bhutanese nation and its people, it is important that all Bhutanese citizens observe the practice of wearing “Gho” and “Kira” (national dress) while visiting the Dzongs, monasteries, government offices and institutions in the country.”

Dances, music, languages, Driglam Namzha and other tangible and intangible aspects of culture should be preserved and protected. One cannot change the past and make the future, as Bhutan has its traditions, values and its own aspirations. His Majesty Jigme Singye Wangchuck, added that preserving Bhutan’s culture and tradition is one of the true identities of its independence and sovereignty. Bhutan being sandwiched between two giant and populous countries, cultural identity is its safety value.

His Majesty Jigme Singye Wangchuck is the key advocate for the promotion and preservation of Bhutan’s culture, tradition and environment. To quote His Majesty:

“We have been able to strengthen our unique national identity through the promotion and preservation of our culture and tradition.”

His Majesty further elucidated during the public consultations in various Dzongkhags that:

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217 As quoted in Vidhya Bushan’s, Comparative Politics, 2006, p.143.
218 Royal Decree, 1989.
219 His Majesty’s speech dated 2nd June, 1999.
Constitution has the mandate to enshrine the provision on Culture, so that our good old tradition and customs will be preserved and promoted. This Article is unique to our country for you will not find provisions on culture in other constitutions.\footnote{\textit{Public Consultation in Wangduephodrang, 7\textsuperscript{th} Dec. 2005.}}

With regard to Culture under Article 4, firstly, we have mentioned in our Constitution the importance of preserving and protecting cultural heritage, and secondly, we have incorporated the promotion and strengthening of our cultural heritage. The Dragon Kingdom of Bhutan is a very small country with rich cultural heritage. If the neighbouring countries in the north and the south, who have a population of about 2.4 billions, pose a threat to our national sovereignty and security, we have no other defence but our unique cultural identity.\footnote{\textit{Public Consultation in Paro, 9\textsuperscript{th} November 2005.}}

Our identity is like our foundation for the sovereignty and security of our country. Therefore, besides today, it is important to preserve our culture even in future. And the responsibilities do not lie with anyone other than our people... If I inform you all as news, when we referred to the Constitution of other countries, we couldn’t find any provision on culture like ours. The reason why we have included our culture in our Constitution is because we want our culture to occupy a very important place... One important thing that has to be remembered is that, in order to preserve our culture our young boys and girls should play an important role. As our country is developing year by year and our population is continually growing, it is the responsibility of our young boys and girls to understand our culture and preserve it.\footnote{\textit{Public Consultation in Trashi Yangste, 28\textsuperscript{th} December 2005.}}

The responsibility of preserving our culture and traditions falls on us the people of Bhutan. Furthermore, an even greater responsibility lies upon the youth of our nation. For us to preserve our culture and traditions in future, it is of utmost importance for our young boys and girls to understand our culture and tradition very well. If we look into our draft Constitution and especially in Article 3 to 5, it deals with the issue of our culture, the spiritual heritage and environment. These are enshrined in our Constitution because our people attach so much importance to them.\footnote{\textit{Public Consultation in Tsirang, 8\textsuperscript{th} February 2006.}}

Thus, protection of culture is necessary. The country cannot be economically assimilated, politically complacent and culturally influenced. Prosperity, modernization, and development will not bring satisfaction, if tradition, culture and religion are lost. This will also weaken the social fabric.

\begin{center}
\textbf{Article 4} \\
\textbf{Section 1}
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\textit{“The State shall endeavour to preserve, protect and promote the cultural heritage of the country, including monuments, places and objects of artistic or historic interest, Dzongs, Lhakhangs, Goendeys, Ten-sum, Nyes, language, literature, music, visual arts and religion to enrich society and the cultural life of the citizens.”}

This section accords importance to the preservation and promotion of Bhutan’s cultural heritage, cultural life\footnote{\textit{Royal Decree 1985, and National Assembly Resolutions 51-17, 19, 63-17.}} and objects of artistic values and interest. It seeks to protect the tangible and
intangible arts. His Majesty Jigme Singye Wangchuck referred to additional components of "visual arts" which include "mask dances". The Constitution must uphold, protect and preserve values and principles without needing to preserve all content in detail, although many people felt that other details should be added in the Constitution. Too much detail or specification however would restrict creativity. Unconstrained creativity unfolds the possibility of freedom of growth and development. Culture promotes national heritage with the freedom of creativity. Constitution has the mandate to enshrine the provisions on Culture, so that good old traditions and customs will be preserved and promoted. His Majesty said:

Article 4 of the Constitution mandates to preserve the cultural heritage. The national dress, gho and kira are parts of our culture. Though it does not specifically say gho and kira but broad provisions on culture is there in Article 4 of this Draft Constitution. Our culture is important and the main identity of the independence and sovereignty of the Kingdom of Bhutan is the culture. Therefore, it is very important for us to preserve, protect and promote our culture in future. If we look into other constitutions, there is not a single Constitution wherein a separate Article is reserved specifically for culture. Since our people have high regard for culture and attach importance to culture, our Constitution has a separate Article on culture. To give you the summary of this Article, there are clear and strong provisions on the preservation, protection and promotion of Bhutanese culture and cultural heritage. Such provisions are enshrined very clearly without any ambiguity. Since, there are students participating in this consultation meeting, I suppose I have to tell you little bit more on Bhutanese culture. You should never think that by wearing gho and kira, and by visiting Lhakhangs with kabney and rachu, you have understood what our culture is and that you have preserved our culture. But it is very important that you should always think and understand how our culture will benefit the kingdom of Bhutan and how it should be protected and preserved henceforth. Why I am telling you this is that the responsibility of protecting and preserving our kingdom’s age old culture falls on you.

Culture is important for gauging the health of the social system. For instance, every society possesses a certain degree of cultural harmony or strain. While the cultural harmony makes the task of social management and development considerably easy, cultural strain poses grave socio-economic and political problems. As Talcott Parsons has explained:

“To be oriented is to have a sense of direction-in the simplest meaning, to know where you are in relation to the points of the compass. To be politically oriented would mean, in general, knowing how your government operates. In this connection Beer refers to two maps of the polity-cognitive and normative. Cognitive map simply knows about the process of government. Normative map, however, introduces value judgments-what the

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225 In social and political science one usually distinguishes two kinds of views. The first are the ‘premordialists’ views. According to them, actual ethno-cultural nations have either existed ‘since time immemorial’ (an extreme, somewhat caricatured version, corresponding to nineteenth century nationalist rhetoric), or at least for a long time during the pre-modern period (a more moderate version championed by A. Smith (1991). The second are the modernist views, placing the origin of nations in modern times. They can be further classified according to their answer to a further question: how real is the ethno-cultural nation? The modernist realist view is that nations are real but distinctly modern creations, instrumental in the genesis of capitalism (Gellner 1983, and Hobsbawn 1990). On the opposite side of the fence one finds anti-realist views. According to one such view nations are merely ‘imagined’ but somehow still powerful entities; what is meant is that belief in them holds sway over the believers (Anderson 1965). The extreme anti-realist view claims that they are pure ‘constructions’. These divergent views seem to support rather divergent moral claims involving the concept of a nation.


227 Public Consultation in Bumthang, 21st May 2006.
government ought to do and what it ought not to do.”

To quote Jawaharlal Nehru, “Culture is the widening of the mind and of the spirit.”

Article 4
Section 2

“The State shall recognize culture as an evolving dynamic force and shall endeavour to strengthen and facilitate the continued evolution of traditional values and institutions that are sustainable as a progressive society.”

His Majesty Jigme Singye Wangchuck said that Bhutan is a unique country with a unique history and culture. As a small country with traditional society sandwiched by two of the biggest and most powerful countries of the world, it is confronted with the challenges of modernization and globalization, as well as with the question of how best to preserve its culture. It is the duty of the state to strengthen and facilitate the continued evolution of traditional values and institutions that are sustainable as a progressive society. Therefore, it is the responsibility of the State to recognize and preserve Bhutan’s rich culture and ensure its evolution for eternity.

Article 4
Section 3

“The State shall conserve and encourage research on local arts, custom, knowledge and culture.”

Traditional values and institutions are the keys to Bhutan’s sustainability as a progressive society, which include the customary institution of marriage, forming the basic strands of social fabric, extended family structure, which is the unflaking guarantor of social security, and traditions of community sharing and self help that provides the basis for harmonious and sustainable development. This provision mandates the State to conserve and encourage research on local arts, knowledge and culture. History is a continual expression of the individual's desire to live in a society. This is manifest in social habits, in the way society organizes itself, the way people live together, and endure relationships. These ‘expressions’ may require optimism, but that doesn't make them romantic. Optimism is an essential tool of social progress. To be sensible is not to be pessimistic. Without research, past knowledge and experiences are forgotten and lost. A rootless State is a fragile State. Foreign culture and tradition are aggressive. Consequently, a society which does not focus on preserving its culture loses cohesiveness and values.

Article 4
Section 4

“Parliament may enact such legislation as may be necessary to advance the cause of the cultural enrichment of Bhutanese society.”

Under the dynamic leadership of His Majesty Jigme Singye Wangchuck, the protection and preservation of cultural heritage had been incorporated in the five year developmental plans. The

228 Brain Z. Tamanaha, Understanding Law in Micronesia; An Interpretive Approach to Transplanted Law, 1993, p.5.
issue regarding the protection and preservation of cultural heritage of Bhutan was discussed and resolved in number of sessions of the National Assembly. For instance, the National Assembly ratified the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property in 2003.²³⁰ Bhutan also ratified the Convention for the Safeguarding of Intangible Cultural Heritage.²³¹ Through this provision, Parliament has the legislative responsibility to enact legislations in order to advance the cause of cultural enrichment of Bhutanese society.

Article 5
Environment

Bhutan’s commitment to environmental conservation²³² has been commended worldwide. The World Environment Organization (United Nations Environment Programme) awarded the “Champions of the Earth Award, 2004-2005” to His Majesty the King and the people of Bhutan in recognition of the efforts in the conservation of the environment. His Majesty Jigme Singye Wangchuck was also awarded the prestigious “J. Paul Getty Conservation Leadership Award, 2006” by the World Wildlife Fund.

Environment being the most important issue in Bhutan, the Constitution has a separate Article to recognize it’s importance. A legacy of environment has been the essence of civilization. The flora and fauna, water and solar energy, air and natural resources have been the catalysts in nature. The Nation must protect our sacred environment to protect the sentient beings. Consequently, Bhutan made a conscious decision to place environmental protection at the centre of national policy and preserve the spectacular wildlife and habitats. Bhutan can draw satisfaction of its success in the preservation of it’s natural environment which has become an outstanding example for the rest of the world. The Bhutanese people have many reasons to be truly happy and proud of their achievements.

The past and present achievements need a future. A short-term gain will endanger the long term future. Bhutan has given priority to environmental protection, conservation and advancement so that future generations will inherit the rich flora and fauna, drink crystal clear water, breath fresh air and enjoy rich natural resources. It is essential to sustain an undying faith in nature, unyielding human effort to preserve, conserve and protect the sacred environment so that the Kingdom of Bhutan perched in the Himalayas will continue to discharge its sacred responsibilities to be the home of animals and birds, sources of rivers and land of trees.

Planet earth cannot and must not be a homo-sapiens’ monopoly but a celestial body for all sentient beings. Conservation and protection of the five elements of this planet is the basis of survival and refuge for posterity. It is necessary to avoid an imminent hazard to the public safety.

The protection of environment is one of the main pillars of the Gross National Happiness²³³ concept which is unique to Bhutan and of the Constitution. This innovative and unique

²³⁰ The Convention was ratified in the 81st Session of the National Assembly in 2003.
²³¹ The Convention was ratified in the 83rd Session of the National Assembly in 2005.
²³² Environmental protection was given importance as the national policy during the 19-11, 12, 13, 26-7, 52- 23 National Assembly and was also reflected in Bardo Thodrel.
²³³ Bhutan has rejected Gross Domestic Product (GDP) as the only way to measure progress. In its place, it has championed a new approach to development, which measures prosperity through formal principles of gross national happiness (GNH) and the spiritual, physical, social and environmental health of its citizens and natural environment. According to the Center for Bhutan Studies, the Gross National Happiness Index implies that sustainable development should take a holistic approach towards notions of progress and give equal importance to non-economic
constitutional approach may serve as a model for other constitutions. His Majesty Jigme Singye Wangchuck said that the importance of natural resources and environment has long been felt by the Government even before the state of current conservation efforts. For the last 30 years, the Government has been working towards conservation of our natural environment.

Every Bhutanese citizen is a trustee and has the duty to protect and conserve the rich environment. Simultaneously, the duty of preservation falls on the State. Article 5 incorporates the doctrine of inter-generational equity or the doctrine of trust which in the field of environment is accepted as very well settled. Article 5 is far more elaborate and due to the impact of Buddhism, it was a part of the Bhutanese polity and cultural ethos. Social values, ideals and morality of Bhutanese society, as reflected in the Dances of Purgatory or Intermediary by Karma Lingpa, are showcased during the festivals in Bhutan since the 13th century. The adversarial and inquisitorial Buddhist legal system depicted by Chhogi Gyalpo (Yam Raj) as the Judge, Dre Nagchung as the prosecutor and Lha Karpo as the defence advocate remind us of the accused nyebum’s trial for indiscriminately slaughtering innocent wildlife in the higher mountains and for burning and destroying the natural habitat of innumerable sentient beings. The accused was charged for remorselessly ensnaring and killing countless fishes, poisoning rivers and oceans, vandalizing the sacred monuments and desecrating temples. The charges encapsulate the moral, ethical and spiritual values with legal principles to protect and preserve the environment and sentient beings.

Commenting on Article 5 of the Constitution, the International Agencies in Bhutan like UNDP have opined:

“*There are a number of admirable provisions designed to ensure conservation of Bhutan’s natural environment.*”

Similarly, Helvetas wrote:

*“The protection of environment is one of the main pillars of this Constitution. This innovative and unique constitutional approach may serve as a model for other constitutions.”*

Bhutan is fortunate to have enlightened and benevolent Kings, who in their gracious wisdom have been compassionate in protecting its limited resources, without compromising on the development of the country. Their Majesties during the public consultation in various Dzongkhags explained:

(a) *The reason for maintaining sixty percent of the forest cover in the Kingdom is well deliberated. The main reason being that the country is located in the Himalayan Mountain range where there are hills, stiff mountains, and rivers. Failing to protect the forest would lead to serious consequences like destruction of roads, houses, and agricultural lands. Some of our farmers have to shift their houses due to landslides. Where there is no forest coverage, agricultural lands were spoiled. Therefore, every one*

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aspects of well-being (GNH Index). In order to do this, the GNH consists of a number index that is derived from the ranking of 33 indicators that are a part of nine different domains in a society. The domains include factors such as psychological well-being, health and education.

234 Comments on the Draft Constitution by UNDP (Unpublished).
235 Comments on the Draft Constitution by Helvetas (Unpublished).
of us have to give very serious thoughts on the repercussion of destroying forests. The main asset of our country is a continuous flow of river. We can produce more than thirty thousand megawatts of electricity from the viable existing rivers. In future, we may be able to produce more. For example, Tala Hydropower project will be completing by next year and will generate around one thousand Megawatts of electricity that will generate more than four million Ngultrums of revenue to the country. In order to develop the country, to improve the income of the people, and to provide good job opportunity for our youth, the most important is the development of our country. If we cannot progress in our development, we will not be able to generate employment for our youth. If we can generate hydroelectricity from the existing rivers, our national income will rise at a sustainable rate and our country will develop at an immense rate. In case of an oil producing country, oil being the asset of the soil has to be extracted from the earth. Due to continuous extraction, their oil production has already reached depletion level. In our case, instead of oil, we have sustainable water resource which will never deplete even for hundreds of years. The main asset of Bhutan is our water resources. In order to have good water resources, forest is very important. If forests are depleted, firstly the water sources will dry up and secondly landslides will occur. Therefore, in our Constitution if we do not enshrine the provision maintaining at least sixty percent of forest cover, once democracy starts, there are chances that political parties will exploit our forest to the great extent by making various policy as they have only five years tenure.... if our government for maximizing the revenue of the government and to convince the people cuts the forest and sells them, it will be a serious problem for our country....

(b) In our country, forest, minerals, agriculture, animal husbandry and electricity are our wealth and our source of revenue... Even in future, as we go on developing, water will be the main source of our revenue.... So far, we have been able to preserve our natural resources better than any other country. All the countries as well as our neighboring countries look to us as an example in preserving natural environment and we are quite popular. Even from now, it will be our responsibility to preserve our natural environment and hand it over to our children.

(c) Each one of us in Bhutan is aware of the importance of our environment. Till today we were able to protect our environment. Bhutan had been commended for its environment protection policies in the world. It is true that with rapid economic development and increase in population, it will become more and more difficult to protect our environment year after year. Nevertheless, it is our responsibility to protect our environment. You all know that our main source of revenue is from our water since we have hydro-power which we export to India that earns revenue to the Government. If we do not protect our environment well, there is high risk of natural calamities like floods and drought. As such, it is very important to protect our environment.

Hence, the Constitution of Bhutan mandates sixty percent of national surface area to be maintained under forest cover in perpetuity. It is a unique provision, reflecting the strong commitment of the people to environmental conservation. Article 5 of the Constitution incorporates the doctrine of public trust and it makes every Bhutanese an owner and a trustee of it’s biological resources including the preservation of our wild life. Fifty one percent of the country’s area is formally protected through a network of national parks, protected areas and

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236 Public Consultation in Trashigang, 24th December 2005.
237 Public Consultation in Trashi Yangtse, 28th December 2005.
238 Public Consultation in Lhuentse, 24th December 2005.
biological corridors.

**Article 5**

**Section 1**

“Every Bhutanese is a trustee of the Kingdom’s natural resources and environment for the benefit of the present and future generations and it is the fundamental duty of every citizen to contribute to the protection of the natural environment, conservation of the rich biodiversity of Bhutan and prevention of all forms of ecological degradation including noise, visual and physical pollution through the adoption and support of environment friendly practices and policies.”

Bhutan has been successful in preserving its fragile eco-system for the benefit of the country as well as the world at large. The people were understandably worried because economic development and population growth had direct impact on the environment. But what should be understood is that one of Bhutan’s largest sources of income is hydropower and that this would be endangered, along with land, homes and property if the environment is neglected. Bhutan would then face the problems that neighboring countries are facing today. As per a Bhutanese saying:

“Water, oceans, mountains, cliffs and wonderful trees are the abode of the local deities. Do not let it decline. Preserve them as ornaments”.

The Constitution mandates every Bhutanese to be a trustee of the Kingdom’s natural resources and environment for the benefit of the present and future generations. It is the fundamental duty of every citizen to contribute to the protection of the natural environment, conservation of the rich biodiversity of Bhutan and prevention of all forms of ecological degradation including noise, visual and physical pollution, through the adoption and support of environment friendly practices and policies. It is a shared responsibility. Being the fundamental duty under the Constitution, non-obedience will empower the people to seek redressal in a Court of law. The doctrine of public trust should be the guiding principle, to protect the environment.

**Article 5**

**Section 2**

“The Royal Government shall:
(a) Protect, conserve and improve the pristine environment and safeguard the biodiversity of the country;
(b) Prevent pollution and ecological degradation;
(c) Secure ecologically balanced sustainable development while promoting justifiable economic and social development; and
(d) Ensure a safe and healthy environment.”

The policy of sustainable development has come about from the belief that people and government have to provide for posterity. This section elaborates the responsibility of the Government. The provision entails the mandatory constitutional responsibility upon the

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239 Submission by the Chairperson of the Drafting Committee dated 16th August 2005.
government to improve, protect and conserve our pristine environment and rich biodiversity from pollution and degradation. This section also provides for the principle of balanced sustainable development between the country’s economic development and the ecological protection. It mandates the government to ensure a safe and healthy environment. Additionally, a citizen has the constitutional right to seek remedy and compliance for the violation of the responsibility enshrined in the Constitution.

Article 5

Section 3

“The Government shall ensure that, in order to conserve the country’s natural resources and to prevent degradation of the ecosystem, a minimum of sixty percent of Bhutan’s total land shall be maintained under forest cover for all time.”

His Majesty Jigme Singye Wangchuck has incorporated this provision mandating sixty percent of forest coverage to preserve the environment for posterity. Failing to protect forests would lead to serious consequences including the destruction of roads, houses and agricultural land. Everyone must be aware of the impending dangers due to destruction of forest.\(^{240}\) Their Majesties said:

(a) We endeavour to preserve our culture and protect our environment as we regard them as a priceless treasure and thus indispensable.\(^{241}\)

(b) I would like to say frankly that when we talk of environment it also includes cutting down of the trees and selling of timbers. Hence, if our government for maximizing the revenue of the government and to convince the people, cuts the forest and sells them, it will be a serious problem for our country. Therefore, it is necessary to have a provision mentioning that 60% forest coverage should be maintained. Further, it has been kept in the interest of our country’s security and it is very important.\(^{242}\)

The main asset of the country is hydro-power. Bhutan can produce more than thirty thousand megawatts of electricity from the existing rivers. If forests are preserved, national income tied to hydropower can be sustained. Oil producing countries, however, could not maintain sustainability of national income as their oil production has reached the depletion level due to exploitation. In our case, instead of oil, we have sustainable water resource, which will never deplete unless all forests are destroyed. Therefore, there is a provision for maintenance of at least sixty percent of forest cover in the Constitution.\(^{243}\)

Article 5

Section 4

“Parliament may enact environmental legislation to ensure sustainable use of natural resources and maintain intergenerational equity and reaffirm the sovereign rights of the State over its own biological resources.”

\(^{240}\)Royal Decree 1985, National Assembly Resolution 26-7,30-3,50-3.

\(^{241}\)Public Consultation in Samdrup Jongkhar, 22nd April 2006.


\(^{243}\)Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Trashigang, 24th Dec. 2005.
Within the context of an overall commitment to environmental sustainability, the Constitution assures that the nation’s environmental potential will be responsibly used to meet the needs and aspirations of present and future generations. The Constitution reaffirms the sovereign rights of the State to exploit its own biological resources in accordance with Bhutanese environmental policies. Sustainable use of natural resources ensures intergenerational and intra-generational equity. Intergenerational equity is a notion that is explicit in ecological sustainability. The Constitution holds that each generation has the right to inherit the same diversity in natural and cultural resources enjoyed by previous generations and, to have equitable access to the use and benefits of these resources. As such, the present generation is an environmental custodian for future generations. Thus, intergenerational equity extends the scope of social justice into the future. Inter-generational equity has to do with fairness between present and future members of the community. It is necessary to maintain a reasonable balance between satisfying present needs and setting aside enough to provide for needs of the future. Aiming for inter-generational equity means giving equal consideration to immediate needs, future needs, and needs of future generations.

Intra-generational equity extends to the usage and exploitation of the natural resources in a sustainable manner so as to achieve equitable distribution among the citizens of the same generation.

The Constitution holds the Bhutanese Parliament responsible to ensure the sustainable use of its natural resources by means of legislative tools and enforcement mechanisms, based on some of the well-tested principles.

**Article 5**

**Section 5**

“Parliament may, by law, declare any part of the country to be a National Park, Wildlife Reserve, Nature Reserve, Protected Forest, Biosphere Reserve, Critical Watershed and such other categories meriting protection.”

The Constitution grants statutory power to Parliament to declare any part of the country as a protected area. This scope of the statutory power not only merits various categories of environmental protection but also allows for the protection of major vegetation zones or habitats to set it free from human interference, which will act as a reference area of natural habitat for plants, animals and other micro-organisms.

Bhutan is dotted with virgin mountains that give refuge to many rare species of flora and fauna, which need to be well protected. Parliament has enacted the National Environment Protection Act, 2007.

**Article 6**

**Citizenship**

Life, procreation and security are the innate objectives of a living being. Security is a utilitarian goal provided by the principle of ‘common good, which originated in the writings of Plato,

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244 Social justice in terms of the fair distribution of resources, the impartial rule of law and political freedom in Buddhism is dri-ma medpar gragspa’i mdo(Vimalakirti Nirdesa Sutra) - when one’s mind is purified, society will also be purified.
Aristotle, Cicero, Augustine and Thomas Aquinas. Historically, living beings gravitated towards tribes and nation states to ensure physical and mental security. The ethicist, John Rawls, defined the ‘common good’ as an effective system of public safety and personal security. With progressive civilization, security and protection was provided by the State to its citizens. Subsequently, citizenship was made as a birth right and most dear to the people with undeniable national identity. Roscoe Pound included general security, individual life and physical needs rights. Bhutan is no exception to such a history.

Citizens are persons who compose the nations and who in their associated capacity have established or subjected themselves to the dominion of a government for the promotion of their general welfare and for the protection of the individual as well as the collective rights. It must be borne in mind that a citizen can only be a natural person.

Citizenship is a status of being a citizen a relation of allegiance and protection between individuals and a government and the right of citizenship is a national right. This relationship therefore cannot be granted as largesse by the Government.

The provisions on citizenship in the Constitution are mainly from Bhutan’s 1985 Citizenship Act. Bhutan is a small landlocked country with a small population surrounded by big neighboring countries, which are the most populous in the world. The Citizenship Act was the only way of ensuring Bhutan’s identity and upholding sovereignty. Therefore, for public security, personal safety and national sovereignty, it was vital to preserve and follow the Citizenship Act. The first Citizenship Act was enacted by the National Assembly during its 11th Session in 1958 at Paro to grant citizenship to the people in the South, Bhutan.

Under the Constitution, citizens are classified as (a) natural born citizens; (b) citizens who acquire citizenship by registration; and (c) citizens who acquire citizenship by naturalization. The Royal Government has considered the genuine expressions of the National Assembly on the requirement of the law dealing with citizenship. Copious time and great considerations were devoted to the study of citizenship laws of Bhutan. During the pre-Constitution era, the laws were drafted either by the Royal Advisory Council, the National Assembly or by the concerned agency in consultation with them Acts were thoroughly debated and the necessary amendments were made by the Members of the Royal Advisory Council and the National Assembly sitting, jointly before the enactment. The draft Act was submitted to the House and then the draft was circulated to the people. Therefore, people had time to comment and discuss the provisions of the Act.

Under international law, it has been established by case law that States enjoy very large measure of discretion in the enactment of citizenship laws.

“It is for Liechtenstein, as it is for every sovereign State, to settle by its own legislation, the rules relating to the acquisition of its nationality, and to confer that nationality by

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246 US vs. Cruikshank (1875) 92 US 542.
247 Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Paro, 9th Nov. 2005.
248 A natural born citizen is a person, both of whose parents are citizens of Bhutan.
249 A person domiciled in Bhutan on or before the Thirty-First of December Nineteen Hundred and Fifty Eight and whose name is registered in the official record of the Government becomes a citizen by registration.
250 The person who applies for citizenship by naturalization must fulfill the conditions laid down in Article 6 (3) of the Constitution and the Citizenship Act.
naturalization granted by its own organs in accordance with that legislation. It is not
necessary to determine whether international law imposes any limitations on its freedom
of decision in this domain. Furthermore, nationality has its most immediate, it’s most far-
reaching and, for most people, its only effects within the legal system of the State
conferring it. Nationality serves above all to determine that the person upon whom it is
conferred enjoys the rights and is bound by the obligations which the law of the State in
question grants to or imposes on its nationals. This is implied in the wider concept that
nationality is within the domestic jurisdiction of the State.”

The nation has the fundamental responsibility to protect its citizens over the invading and illegal
immigrants seeking citizenship. The free flow of illegal immigrants will have enormous negative
impact on the country, it’s economy, society, politics and environment. It will endanger the
security and sovereignty of the Nation. A strong citizenship law is the security for the people of
Bhutan. Citizenship is the national identity, security and sovereignty of a nation. His Majesty
Jigme Khesar Namgyel Wangchuck explained:

The provision on citizenship is very important. Firstly, because we are a landlocked
country and secondly our country is a very small country and thirdly we have a very
small population sandwiched between the two giant neighbors with population of no less
than 2400 million. Moreover, the economic development is unprecedented and we are a
happy and a peaceful nation. We have schools for our children, hospital for the sick, and
a strong government that looks after the well being of the people. Therefore, it is very
important that we safeguard the citizenship of our country. The provision on citizenship
enshrined in our Constitution is taken out from the Citizenship Act of 1985. The
Citizenship Act of 1985 is very clear on the issue concerning citizenship. It has been
drafted very clearly and comprehensively. As far as citizenship is concerned, the
Citizenship Act can be referred to accordingly, and this would not lead to any problems.
In the past, problems arose because works were not carried out according to the Act.
From now onwards as we start parliamentary democracy and political reforms,
irrespective of the number of political parties that comes into power, we must remember
that as far as citizenship and security of the country is concerned, we must safeguard the
census of the people. Because of the census record of the people, if we continue to work
without any change in the Citizenship Act, I feel that we would not face any problem
concerning citizenship. If we look at other countries, they have oceans, mountains, big
rivers and some countries even have walls guarding their borders from illegal intrusion.
Our country does not have such things and any number of illegal immigrants can enter
our country through our porous border. We have a very small population and so far, in
all the development and commercial activities, we had to import a large number of
foreign labours. During the last population and housing census, 2005, it was found out
that a total of over 1 lakh 25 thousand foreign workers were residing in our country.
However, in future if we carry our work in accordance with the Citizenship Act, I would
like to inform you that we need not worry at all.

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251 Liechtenstein vs Guatemala (Nottebohm Case), International Court of Justice, April 6, 1955. 1955 I.C.J. 4 Available at:
Article 6
Section 1

“A person, both of whose parents are citizens of Bhutan, shall be a natural born citizen of Bhutan.”

A person shall be a natural born citizen of Bhutan if both of his or her parents are citizens of Bhutan. If, one parent is a citizen of another country, a child, even if he or she is born and lives in Bhutan, is not a natural born citizen of Bhutan. Both the parents must be citizens at the time of the person’s birth.253

A child of a legally married Bhutanese and a non-Bhutanese can apply for Bhutanese Citizenship after lawfully residing in Bhutan for fifteen years. They must comply with the provisions of the Citizenship Act. This is incorporated to grant freedom to that person to choose his nationality and to ensure his or her loyalty to Bhutan.

Article 6
Section 2

“A person, domiciled in Bhutan on or before the Thirty-First of December Nineteen Hundred and Fifty Eight and whose name is registered in the official record of the Government of Bhutan shall be a citizen of Bhutan by registration.”

A person through registration254 can become a citizen of Bhutan, if he or she is domiciled in Bhutan and born before the 31st of December 1958 and if his or her name is registered in the official records of the Government of Bhutan. The person’s name must be registered as a citizen in the record. The descendants of such persons registered in the records are Bhutanese and are considered to be natural born255 citizens of Bhutan.

Article 6
Section 3

“A person who applies for citizenship by naturalization shall:

This section outlines the eligibility criteria to be fulfilled for applying for Bhutanese citizenship by naturalization. The Bhutanese people wanted more strict criteria to apply for citizenship. Replying to the concerns, His Majesty Jigme Singye Wangchuck said, that the people may be worried that each and every person applying for Bhutanese citizenship would be granted citizenship by the Government. However, the grant of citizenship shall take effect only by a Royal Kasho of the Druk Gyalpo. The consequences of granting Bhutanese citizenship to foreign nationals in earlier times were not foreseen, in earlier times. Bhutan must learn from its past to secure the future. Therefore, the nation can assuage their ills, if it is able to implement the Constitution and other relevant Acts very stringently and effectively. His Majesty Jigme Singye Wangchuck said:

253 *Jus Sanguinis* means Right of blood and *Jus Soli* means Place of Birth.
254 Section 3 of the Citizenship Act.
255 Section 4 of the Citizenship Act.
The points that you have raised reflect your Patriotism and it is true that it is lenient in your eyes, but difficult to another’s eyes. In order to get citizenship, knowing and fulfilling the requirements mentioned from sub-sections (a) to (g) of section 3 under Article 6 will not suffice. A person should meet these requirements and then should submit to the Druk Gyalpo for Kasho. It is not as easy as you think. The discretion to grant remains with the government and secondly, it should be granted by the Druk Gyalpo. The period for a person to get citizenship by naturalization is 15 years. But one has to meet the requirements of sub-section (a) to (g) of section 3 of Article 6, which provide inter alia that a person has to be able to speak and write Dzongkha. It is not that easy to become a citizen. The people will have the right to put up application but it will be up to the government, whether to accept or reject the petition. It is not that citizenship is awarded instantly but it is the prerogative of the government.

Article 6
Section 3(a)

“A person who applies for citizenship by naturalization shall:

(a) “Have lawfully resided in Bhutan for at least fifteen years;”

During the public consultations, some persons indicated that the conditions for citizenship by naturalization were too lenient, and particularly that the 15 year eligibility period was too short. However, the matter was resolved by clarifying that the 15 year period was a pre-condition to apply. The Government retains the discretion to grant or deny citizenship to an applicant.

Responding to the public query, His Majesty said under sub-section (b) a foreigner can apply for a Bhutanese citizenship, but the discretion whether to give him the citizenship or not, will lie with the Government. This is in line with the 1985 Citizenship Act. Even if a person has resided for not just 15 years but for 30 years, can write and speak in Dzongkha, knows the Country’s culture and tradition, has committed no offence in Bhutan, and applies for citizenship, the discretion whether to give him the citizenship or not, lies with the Government. Citizenship will not be given as a right. The use of the word “Lawfully” makes the eligibility procedure stringent.

Article 6
Section 3(b)

(b) “Not have any record of imprisonment for criminal offences within the country or outside;”
Under this sub-section, a foreigner applying for a Bhutanese citizenship by naturalization should not have any criminal records within or outside the country. Bhutan should not be a refuge to law breakers.

Article 6
Section 3(c)

(c) “Be able to speak and write Dzongkha;”

In addition to other requirements, the person applying for citizenship by naturalization must be able to speak and write Dzongkha. It is a universal principle that a person acquiring citizenship of a particular country should be able to speak and write the language of that country. Many countries follow these constitutional requirements.

Section 3(c) of Article 6 outlines one of the qualifications required in applying for Bhutanese citizenship by naturalization, and it does not indicate that a person who knows Dzongkha would automatically be granted citizenship. It is the pre-requisite for any person applying for citizenship to satisfy all other requirements outlined under section 3 of Article 6. However, the final power to award Bhutanese citizenship is the discretion of the government.

Article 6
Section 3(d)

(d) “Have a good knowledge of the culture, customs, traditions and history of Bhutan;”

A person applying for Bhutanese citizenship must have a demonstrated interest in all aspects of their future nation including good knowledge of the culture, customs, traditions and history of Bhutan. Lack of interest and knowledge in these subjects leaves the individual at a deficit to be a fully responsible member of Bhutanese society. All Bhutanese must be proud of the culture, customs, traditions and history of Bhutan.

Article 6
Section 3(e)

(e) “Have no record of having spoken or acted against the Tsawa-Sum;”

If a person desires to be a citizen of Bhutan, he must not have spoken or acted against the Tsawa-sum. Speaking or acting against the king, the nation and the people of Bhutan is an evidence of disloyalty. Accepting such applicant is an invitation for danger to the country. All the Bhutanese must serve the nation and be proud of their country. Love for a nation is not expressed through speaking against it.

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260 Section 4 of the Citizenship Act.
261 Comments on the Draft Constitution from the then Council of Ministers.
262 Public Consultation in Paro, 9th Nov. 2005.
263 Section 4 of the Citizenship Act.
Article 6
Section 3(f)
(f) “Renounce the citizenship, if any, of a foreign State on being conferred Bhutanese citizenship; and”

The Constitution does not recognize dual citizenship. Dual citizenship is an indication of divided loyalty. Therefore, if a foreigner is conferred with the Bhutanese citizenship, he or she has to renounce his or her former citizenship of whichever country he or she belongs to. Dual citizenship will affect the population of Bhutan. The Citizenship Act also has not permitted return citizenship. The motive was not to disallow returning, but to deter people from leaving the Country.

Article 6
Section 3(g)
(g) “Take a solemn Oath of Allegiance to the Constitution as may be prescribed.”

After being accepted for citizenship through naturalization, he or she must take an Oath of Allegiance to show his or her loyalty to the country. Taking the “Oath of Allegiance” imposes an inherent duty on the person to maintain and retain the glory of Bhutan. Love for Bhutan must embrace Oath of Allegiance.

Article 6
Section 4
“The grant of citizenship by naturalization shall take effect by a Royal Kasho of the Druk Gyalpo.”

This provision is the final official act conferring legal status of citizenship. It is also the final checks and balances procedure for the citizenship process. The fulfilling of all the requirements of the application for citizenship as stated in Article 6 (3) (a) to (g) does not guarantee citizenship. Although everyone will have the right to apply for citizenship, the final decision lies in the hands of the government.

Article 6
Section 5
“If any citizen of Bhutan acquires the citizenship of a foreign State, his or her citizenship of Bhutan shall be terminated.”

Many countries do not provide for dual citizenship. Similarly, Bhutan also does not allow dual Citizenship for the following reasons:

(a) Dual citizenship is an indication of divided loyalty, especially during conflict between the two countries.
(b) A person may have obligations to both the countries, which may be conflicting in nature (Military service, voting and tax).
(c) Bhutan is too small a country to either lose its citizens or include large number of new people.

Therefore, if any citizen of Bhutan acquires the citizenship of a foreign State, the citizenship of Bhutan will be cancelled and terminated.

His Majesty explained that there is a provision in the Constitution with regard to citizenship and the government will function as per the provisions of the Citizenship Act of Bhutan. Section 5 of Article 6 is purely on the Citizenship Act of Bhutan. Other countries are secured by clear-cut boundaries with fencing or there are oceans, mountains, rocks between the two countries. But when it comes to the security of Bhutan, there are no mountains, rocks and oceans. Only the Citizenship Act secures it. This Act was drafted and enacted by those who had farsighted visions and as such the provisions are very comprehensive and clear.  

**Article 6**  
**Section 6**

“Subject to the provisions of this Article and the Citizenship Acts, Parliament shall, by law, regulate all other matters relating to citizenship.”

The Constitution does not erase the past but rather builds upon the foundation of the past. If the good foundations of the past are not considered, it would be chaotic. The laws should not be amended frequently and the Constitution should not obliterate the past. Relying on or improving upon established practice and laws creates acceptance and stability and adherence to values.

This section empowers Parliament to regulate all other matters relating to citizenship by making laws, subject to this Article and the existing Citizenship Act. This implies that the new law cannot override this Article and the Citizenship Act, which existed before the adoption of the Constitution. In the event of contradiction between the new law and this Article, the former may be declared *ultra vires* the Constitution.

**Article 7**  
**Fundamental Rights**

The rights, liberties and freedoms are the precious jewels of every human being. Fundamental Rights are nothing but the natural rights, which is the preserve of all human beings. Individuals enjoy basic human rights independent of any statute by virtue of the fact that they are members of the human race. Fundamental Rights guaranteed in the Constitution possess intrinsic value. It must be said that Article 7 does not “confer” rights on citizens. On the contrary, Article 7 confirms their existence and gives them legal protection. The purpose of enumerating the rights in Article 7 is to establish them as legal principles to be interpreted by courts. Thus each fundamental right has a foundational value as acts as a limitation on the power of the government.

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265 Mipham Rinpoche in *rajamiti shastra*, p. 22, cautioned that “If the laws are amended repeatedly, respect and obedience will diminish”.  
266 Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Tsirang and Sarpang.
Article 7 of the Constitution guarantees these rights, liberties and freedoms, which were hitherto enjoyed as natural rights by the people. The principles enshrined under this Article are incorporated from the various Royal Edicts, Speeches of Their Majesties and laws of Bhutan in conjunction with various other documents, including the philosophical basis of the following noteworthy historical documents:

(a) Magna Carta of 1215 AD;
(b) The Glorious Revolution in England; (1688-89);
(c) Declaration of the Rights of Man and of the Citizen 1789;
(d) American Bill of Rights;
(e) Thomas Hobbes’ right of nature (jus naturale) and law of nature (lex naturalis).

Rights

Rights are the empowerment of the people that will be preserved with knowledge and vigilance by the people. The rights enshrined in the Constitution of different countries are broadly classified into civil, political, substantive, social, economic, positive, negative, corrective, distributive, perfect, imperfect rights, etc. In addition to these, there are rights in rem, in personam and proprietary rights. Therefore, we must be conscious of the national aspirations, as well as the existence of perfect rights, which are recognized and enforced by the law. (ubi jus ibi remedium, - where there is right, there is remedy).

Fundamental Rights protect the dignity of an individual as a human being. Protection of fundamental rights is the best way to promote a just and tolerant society. Fundamental rights limit the power of legislature, secure individual liberty, act as a barricade against tyranny of the majority and provide security against arbitrary action by the government. It enhances individual’s freedom for his or her development to the fullest potentiality.

Law should be for the welfare of society as a whole and rights of the individual should be protected and respected. Therefore, the fundamental rights were carefully studied and elaborately incorporated. Bhutan has many provisions from the Human Rights Conventions of 1948 and the Covenant on Civil and Political Rights, 1966.

His Majesty Jigme Singye Wangchuck said:

The fundamental rights enshrined in the Bhutanese Constitution are more comprehensive than those granted under the constitutions of most countries. The vision of Bhutan is to have a vibrant democracy.

A Constitution must incorporate vertical rights of an individual against the State and horizontal rights among individuals such as:

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268 The Declaration of the Rights of Man and of the Citizen is a fundamental document of the French Revolution and in the history of human rights, defining the individual and collective rights of all the estates of the realm as universal. Influenced by the doctrine of “natural right”, the rights of man are held to be universal; valid at all times and in every place, pertaining to human nature itself.
269 Similar principle is enshrined in SIGALOVADA SUTTA (The Layman’s Code of Discipline).
270 Thomas Hobbes defined right of nature (jus naturale) as ‘the liberty each man hath to use his own power for the preservation of his own nature, that is to say, life’ and a law of nature (lex naturalis) as ‘a precept of general rule found out by reason, by which a man is forbidden to do that which is destructive of his life.’ Hobbes said that true law of nature is self-preservation, which can be achieved only if the citizen makes a compact among themselves to transfer their individual power to the ‘leviathan’ ruler, who can alone preserve them in security. Supra, n.129.
(a) Absolute rights;
(b) Civil rights;
(c) Political rights;
(d) Social and Cultural rights;
(e) Corrective rights;
(f) Distributive rights;
(g) Divine rights legitimized by Thomas Hobbes;
(h) Economic rights such as the right to buy, sell and trade private property and the right to employment without the government interference;
(i) Emergent rights (including freedom of speech and press as proposed by Bentham);
(j) Inalienable, Inherent or Non derogable rights;
(k) Individual Rights as advocated by Bentham;
(l) Negative and positive rights as described by Spencer;
(m) Perfect rights and Imperfect rights;
(n) Personal rights;
(o) Progressive rights;
(p) Property rights;
(q) Sovereignty and natural rights as classified by Rousseau;
(r) Standing rights, such as access to justice;
(s) Defensive rights; and
(t) Substantive rights which include rights to education and employment.

A Constitution must incorporate protection against torture and other forms of degrading treatment incorporating the essence of the UN Convention against torture and capital punishment. These are progressive guarantees of inalienable human rights. As His Majesty Jigme Singye Wangchuck said, “Human Rights must serve the society”. The Fundamental rights or Bill of Rights provide vertical rights of an individual against the State and also cater to the horizontal rights among individuals.

Further, the Constitution confers the First Generation Rights in the nature of civil and political rights; the Second Generation Rights concerning the right to economic, social and cultural rights; and the Third Generation Rights pertaining to solidarity rights such as the right to peace, happiness and a clean environment. The interest of the society may be predominant over an individual interest because the larger and public interest must far outweigh the smaller one though the extent to which it can be enforced must be a matter of careful judgment. K.N. Jayatilleke mentioned:

“...The ideal state is a democracy working for the material and spiritual welfare of the people, guaranteeing political, religious and personal freedoms as well as economic security with full employment.”

Venerable Thich Nhat Hanh mentions that:

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272 Perfect right is recognized and enforced by law “ubi jus ibi remedium” where there is right, there is remedy.
273 Imperfect rights are recognized but not enforced by law – time based or declarations of principles of state policies.
274 Lord Buddha said – the happiness of an average man depends on his economic security (atthi-sukkha), the enjoyment of one’s wealth (bhoga).
275 Royal audience by His Majesty Jigme Singye Wangchuck, 19th Nov. 2001.
276 Supra, n. 25, p.87.
"It takes great courage to stand up for and protect what is right... Do not violate the rights and commitments of others."  

The provisions under this Article provide vertical rights of an individual against the State and also cater to the horizontal rights among individuals. The Constitution emphasizes civil, political and economic rights in a manner underpinned by the concept of equality for all under the law. However, certain rights are limited to Bhutanese citizens only and some rights are restrictive. The interest of the society may be predominant over an individual interest because the larger and public interest must far outweigh the smaller one. But there are certain rights, which are non-derogable rights. Even in emergencies, these rights cannot be trampled upon or suspended. The guaranteed objectives in the preamble are to secure the blessings of liberty, to ensure justice and tranquility and to enhance the unity, happiness and well-being of the people for all time, which underscore the basic philosophy of the Constitution.

The Article enables a citizen to sue for breach of their rights. In many countries, this right is not expressly provided. Those countries remedied their lacunae in the bill of rights or by judicial activism. A court of one of those countries observed that there is no point in having these statutes of bill of rights, if it does not give rise to the right of action of citizens in the court to uphold their rights.

Commenting on the fundamental rights of the Constitution of Bhutan, UNDP and HELVETAS in Thimphu mentioned:

"The list of rights is extensive, including many of the basic fundamental human rights enshrined in international covenants."  

"The list of rights enshrined in this provision is comprehensive and reflects in an adequate manner the relevant international standards in this field."  

Rights under this Article are the empowerment of the people that will be preserved with a general knowledge and vigilance by the people as John Adams said:

"Liberty cannot be preserved without a general knowledge among the people who have a right from the frame of their nature to knowledge."  

Harold J. Laski said that a State is known by the rights it gives to citizens. The Constitution provides several rights to its citizens and they include the right to life, liberty and security of person. They will not be deprived of such rights except in accordance with the due process of law. Bhutanese citizens will enjoy the right to freedom of speech, opinion and expression. They

278 In Dharmasangiti Sutra, “The Law is equal for all beings. For low or middle or high the law cares nothing. The Law has no regard for the pleasant. Impartial is the Law...The Law does not seek refuge. The refuge of all the world is the Law...The Law has no preferences. Without preference is the Law. So I must make my thought like the Law.” Refer, World Scripture: Comparative Anthology of Sacred Texts, Volume 1991, Part 2.
279 Comment on the Draft Constitution by UNDP (Unpublished).
280 Comment on the Draft Constitution by HELVETAS (Unpublished).
will have the right of freedom of thought, conscience and religion. It was echoed by His Majesty Jigme Singye Wangchuck:

We have included such rights, after identifying the importance of welfare and benefits of those rights to our people. However, when the democratic form of governance and the people’s government is established in our country if you are able to elect a good government which would ensure the aspirations of the people, promote good governance, and strengthen political and economic stability in the country, then such government would guarantee you all these fundamental rights. But if you elect a weak party to form a Government, it would be very difficult for the people to enjoy the fruits of these rights enshrined under the Constitution.  

Civil, political, social, economic and cultural rights are the basis of human progress, and peace and progress of the Nation. These vested and contingent rights prevent trampling of the inalienable rights, crushing of the inherent freedom and pouding of the precious liberty of an individual. No political authority, power and wealth can violate fundamental rights. They are beyond the reach of majority establishing a government of law and not of man. Fundamental rights aim at individual liberty and provide security against arbitrary action by the government. These rights represent the cherished values of the people. Fundamental right contains basic freedoms, prohibition against State, and the limitations on the power of the government.

Liberty

Liberty was prized by the Classical Greeks such as Aristotle, Demosthenes, Cicero and Tacitus. It is classified into positive, negative, individual and collective liberties. It is so reflected in the French Declaration of 1789:

“Liberty consists of the power to do whatever is not injurious to others; thus the enjoyment of the natural rights of every man has for its limits only those that assure other members of society the enjoyment of those same rights; such limits may be determined only by law.”

The growth of liberty, prosperity and representative government is part of the inexorable progress of human institutions that began with Greek democracy. After the Revolution of 1848 in France, the doctrine of individual liberty developed. This was preceded by the 1789 Declarations of the Rights of Man and the Citizen, whereby the idea of human rights and civil rights advanced. The concept of “individual liberty” was criticized by thinkers such as Engels, Marx, Nietzsche and Freud. They viewed equality as a main component of a society’s grade of liberty. Liberty without equality, anarchists argue to this day, is only the freedom of the powerful to exploit the weak.

In the Bhutanese context, the term for liberty is dod bdang (Doe-wang). Liberty is made up of civil, political and economic liberties. The right to liberty protects the physical liberty of the person through a cluster of interrelated rights such as the right against arbitrary arrest or detention, the right to be secure from unreasonable search and seizure, including the right to information and access to legal advice, the right to be brought promptly before a judge, and the right to be treated with humanity and respect.

Isaiah Berlin’s concept of liberty mentions that negative liberty is where an individual has immunity from arbitrary interference except in accordance with law, and the positive liberty is the exercise of civil liberty. According to Russell, individual liberty is the greatest good and Thomas Hobbes advocated a blend of individual and collective liberty. However, Rousseau and Spencer said that an individual is subordinate to the State.

The establishment and the maintenance of human freedoms, dignity and rights are suggested by Buddhist teachings. The rule of righteousness recognizes liberty in its three dimensions, i.e. liberty of thought, liberty of speech and liberty of action. According to Buddhism, liberty of thought depends on the freedom of mind, liberty of speech on what we could express in words, and liberty of body on all external actions. Robert Thurman mentioned that the Buddhist principles of enlightenment, education, individualism, altruism and egalitarianism are realized through democracy.

**Freedom**

Freedom can be negative freedom as espoused by Spencer, positive freedom, ‘self-determination or autonomy freedom as advocated by Kant, freedom of religion by scientific humanist Espinoza and religious toleration advocated by Montesquieu. However, freedom must have rational. Freedom is valuable for more opportunity to pursue objectives that we value and importance to the process of choice itself. Freedom is to be found in rational action. Rational action cannot be based on a single individual’s personal desires but on the whole community.

Kant insisted that actions resulting from desires cannot be free and he differentiated the ‘opportunity aspect’ from the ‘process aspect.’ Apart from other freedoms, The Bhutanese Constitution guarantees six important freedoms:

(a) The freedom of speech and expression;  
(b) The freedom of assembly;  
(c) The freedom to form associations and unions;  
(d) The freedom of movement;  
(e) The freedom to reside in any part of the territory of our country; and  
(f) The freedom of profession, occupation, trade and business.

Buddhism is based on social reforms and freedom for all. Buddha taught eight freedoms and ten advantages. The word for freedom is Daelwa in Choenjug and Zhelung. Hence, the use of the word Dal dbang to mean freedom, which is a more profound word. It was bitterly opposed by the Dzongkha experts and few Parliamentarians. They suggested rangwang, which means

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287 Sharin N. Elkholy(Eds), *The Philosophy of the Beats*, 2012, p.34.  
289 Interview given to Kunesel on 21st No. 2006. Available at http://www.buddhistchannel.tv/index.php?id=40,3448,0,0,1,0#.VCuXhmeSzX8  
290 Negative freedom consists in the absence of coercion, the absence of interference from other people.  
292 Positive freedom is the actual possibility of developing human capacities – enlarged ability to contribute to common good.  
295 Supra, n.135.  
independent or self-determination. The use of proper words must have history, philosophy and inspring values with source.

**Reasonable restrictions**

All the rights, freedoms and liberties are not absolute. The State can place reasonable restrictions on them in certain clearly defined situations. It is in consonance with section 2 of Article 29 of the Universal Declaration of Human Rights 1948:

> “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

The phrase “reasonable restrictions” means that the limitation imposed upon a person in the enjoyment of a particular right, should not be arbitrary or excessive in nature. Legislative or administrative ruling or order which arbitrarily or excessively invades on fundamental rights is not reasonable within the spirit and definition of the Constitution. The reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interests of the general public and not from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations. Therefore, this provision can be invoked only under exceptional circumstances. Bhutan can face dangers to peace, security and sovereignty and hence in extreme cases, fundamental rights should be subject to some limitations. Rights of an individual are protected by the State. When security is endangered, right must yield to security. One cannot violate the security of the Nation that confers the right. The principle “salus reepublicae est suprema lex” which means “the safety of the State is the supreme law” is an accepted norm.

Similarly, one’s right cannot nullify the right of other person. Freedom and rights do not provide exclusive and unfettered license to an individual. Rights are social entitlements, which must be exercised with due care and responsibility to other fellow citizens. Ayn Rand mentioned:

> “The end does not justify the means. No one’s right can be secured by the violation of the rights of others.”

Therefore, the Drafting Committee felt the need to limit individual liberty by allowing the state to intervene in the interests of the people and the country.

**Article 7**

**Section 1**

> “All persons shall have the right to life, liberty, and security of person and shall not be deprived of such rights except in accordance with the due process of law.”

Each individual has the fundamental right to life, liberty, economic freedom and the pursuit of happiness. The right to life is the supreme right of all human beings. It is basic to all human rights and without it, all other rights are meaningless and valueless. It is the duty of the State to protect human life against unwarranted actions by public authorities as well as by private

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persons. No one has the right to take away the life of any person. In almost all of its variants, constitutional liberalism argues that human beings have certain natural (or “inalienable”) rights and that government must accept the basic law, limiting its own powers to secure them.

The right to life, liberty, and security of a person are extremely important in the constitutional doctrine and in Buddhism. These rights cannot be taken away except in accordance with the due process of law. Misuse of this process infringes the Buddhist principle of “Sok choepa.” Buddha said, “Every living being deserves to enjoy a sense of security and well-being. We should protect life and bring happiness to others.”

The expression “due process of law” is a compendious term. The phrase “due process of law” was first used in England sometime during the 13th or 14th century as synonymous for “law of the land”, which was made part of the common law and given a natural law interpretation.

According to Richard Posner,

“Natural law project has never recovered from what Nietzsche called the death of God (at the hands of Darwin).”

Natural law according to Buddhism is the process which controls human life and existence without the creator and supernatural force. The American colonists seized upon the phrase, incorporating it into all the state charters and almost every document surrounding the American Revolution and Constitutional Convention. Historical records from those time periods seem to indicate the founding fathers’ thought of due process as fairness. Due process of law means the measures authorised by the law so as to keep the streams of justice pure, to see that trials and inquiries are fairly conducted, and that arrests and searches are properly made and lawful remedies are readily available, and that unnecessary delays are eliminated. It is one of the most important protections of individual rights. Omission of this phrase will derogate the fundamental rights conferred by the Constitution. The expressions due process of law is traced to the expression Prelegend terrae meaning law of the land used in the Magna Carta of England 1215 which

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298 Constitutional Liberalism emphasizes the value of individual’s rights of equality and of individual freedom of choice and freedom from interference supported by Locke, Montesquieu, Adam Smith and Kant.
299 In Buddhism, Sok choepa is the deprival of right to life.
300 The lineage of the due process clauses of the Fifth and Fourteenth Amendments has been traced to a charter of Henry I in 1100, but it is more commonly found in the Magna Carta of King John in 1215 (and repeated in the more enduring Magna Carta of 1225 issued by his son King Henry III). In Chapter 29, the King declared the great rule of law, that no free man would be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way. Due process connotes fair procedures. Specific procedures, like the right to jury trial, are guaranteed in the fourth, Fifth, Sixth, and Eighth Amendments. But the procedures specifically enumerated in these amendments do not exhaust the rules that apply in criminal prosecutions. As Justice Frankfurter once described the judge's task in delineating those rules: “Regard for the requirements of the Due Process Clause inescapably imposes upon this Court an exercise of judgment upon the whole course of proceedings in order to ascertain whether they offend those canons of decency and fairness which express the nations of justice of English-speaking peoples even to those charged with the most heinous offenses.” (U.S. v. Toscanino, 504 F.2d 1380 (2nd Cir.(N.Y.) Sep. 27, 1974) Due process connoted those basic rights that are of “the very essence of a scheme of ordered liberty.” (Palko v. Connecticut, 302 U.S. 319(1937) or as previous courts had expressed it, “those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions,” (Malloy v. Hogan, 378 U.S. 1, 16-17, 24 (1964) principles so rooted in the traditions and conscience of our people as to be ranked as fundamental. The trial must be open and the hearing officer must be neutral. A judge may not preside over a hearing to try charges that arose out of a grand jury proceeding in which he was the sole grand juror. A judge cannot have a “direct, personal, substantial pecuniary interest in reaching a conclusion” ( Tumey v. State of Ohio, 273 U.S. 510 (1927) against the defendant, as was once the rule in Ohio towns where the mayor, sitting as judge, received a percentage of the fine in cases involving violations of the liquor laws... A proceeding must be free from threats of mob violence. When a white state jury in 1923 was hounded into bringing back a death penalty for black defendants in five minutes after a forty-five minute trial under extremely hostile and ugly circumstances, the convictions would have to be reversed. Knowing use by prosecutors of perjured testimony or false evidence to secure a conviction violates due process, and the conviction cannot stand.
302 Supra, n.99, p.21.
promised that “no freeman shall be arrested or imprisoned or disseized or outlawed or exiled or anyway molested; nor will we proceed against him unless the lawful judgment of his peers or by the law of this land.

Due process is a dynamic concept which negatives anything, which is arbitrary or shocking to the universal sense of justice. It is not technical conception with a fixed content. It means the due course of legal proceedings according to those rules and form which have been established for the protection of private rights.

Due process as ordinarily understood means procedural regulatory of fairness. It focuses on the means of the government to deprive people of life, liberty or property and calls to mind assurances that the policy will be implemented in ways that are not irregular arbitrary or unreasonable.

The right to security includes rights such as the physical integrity of the citizens from external threats, such as invasion and terrorism, from abuse by official authorities and other citizens, etc. Montesquieu elucidated:

“the political liberty of the subject is a tranquility of mind arising from opinion each person has of his safety ... one man need not be afraid of another.”

However, emerging standards are beginning to include other social rights such as the necessities of life, the right to social security, and protection of health and safety, particularly employment, etc.

Article 7
Section 2

“A Bhutanese citizen shall have the right to freedom of speech, opinion and expression.”

Freedom of speech, opinion and expression are the pillars of a very important. Democracy without the right to freedom of speech, opinion and expression has been ineffective to groaning anguish of the people. Censorship and suppression of publication discourages all true scholarship and learning and may lead to travesty of truth.

If there is one right prized above all others in a democratic society, it is the right of freedom of speech, which enables the people to express themselves, to challenge the political orthodoxies of the times, and to criticize the policies of the government without fear of recrimination by the State. One can have one’s own conscience but they cannot coerce. Speech and expression are the unique and basic features of all human beings. Truth is the gift of God and in its pursuit, there should be freedom of speech and expression. With freedom of speech and expression, one can defend his or her rights and make useful comment in public interest.

304 Betts vs. Brady 1942,316 U.S 455.
305 Wistervalt vs. Gragg ix NY 209.
307 Royal audience by His Majesty Jigme Singye Wangchuck, 19th Nov. 2001.
Herbet Spencer opines that, morally, every person should be free to do as he wills provided he does not infringe on anyone else’s freedom. He recognizes this approach as the competitive laissez-faire model of economics expanded from economics to human experience in general. Freedom of speech includes freedom to speak freely and also the right to refrain from speaking at all. Free to speak and right not to speak is complementary components of the freedom of speech.

Freedom does not mean license to be lawless. Freedom of speech is not limitless. Under the doctrine of fairness, one cannot intentionally injure others by saying false things. Human beings are rational beings. Therefore, they should exercise the freedom only for lawful purposes. When Sir William Blackstone defined freedom of speech as “lack of prior restraint”, he meant that the government should not stop someone from saying or publishing what he believed, but once a person had uttered those remarks, he could be punished, if the type of speech was forbidden. Freedom of speech should not be used as an excuse to denigrate, belittle or to malign another person on basis of discrimination or hatred. His Majesty Jigme Singye Wangchuck rightly said, “Freedom must entail duty and responsibility.”

Article 7
Section 3

“A Bhutanese citizen shall have the right to information.”

The right to information is a fundamental human right. It is crucial to human development and for effective democracy. It provides for revealing information and guarding the truth. Therefore, the right to be informed and to educate oneself is enshrined in the Constitution.

Information is knowledge and knowledge empowers people and removes the cobwebs of uncertainty and doubts. When the citizens are well-informed, mutual trust grows between the citizens and their government. A person who is denied such access has the right to remedy. If any agency denies any information, a person should have the right to know the reasons for such denial and how the matter will be resolved in a timely fashion within the framework of the Constitution. It is universally understood that if the information requested concerns national security, the right of access may be restricted or denied. With this right, an agency will act timely with full accountability and responsibility, which will promote efficiency and general happiness.

Article 7
Section 4

“A Bhutanese citizen shall have the right to freedom of thought, conscience and religion. No person shall be compelled to belong to another faith by means of coercion or inducement.”

308 Herbert Spencer, Social Status: or the Conditions Essential to Happiness Specified, 1851.
310 Royal audience by His Majesty Jigme Singye Wangchuck, 30th Nov.2001.
311 Good Governance document by the Royal Government of Bhutan.
312 Ibid.
Freedom of thought, conscience and religion\textsuperscript{313} is the basic right of all individuals. The right to freedom of thought, conscience and religion has many dimensions. Humans differ and human preference diverges. Uniformity and conformity often create diversity. Under the Bhutanese Constitution, all religions will be treated equally. This is a standard global constitutional norm. A Bhutanese citizen shall have the right to freedom of thought, conscience and religion. Thought is the product of thinking. It is the source of intention. Therefore, a Bhutanese citizen shall have the right to freedom of thought, which must be moulded by conscience. The conscience may take refuge in religion.

The State cannot ignore the historical role played by Buddhism in Bhutan. However, we have the responsibility to strike a balance between rights and personal beliefs. We cannot overstretch secularism at the cost of national security.

The right to freedom of thought, conscience and religion is a beacon in any Constitution. Recognition of the right to freedom of thought, conscience and religion of one person entail equal right to freedom of thought, conscience and religion of another person. All persons are entitled to the same right to freedom under the Constitution. One’s right is not superior to others. In Fichte’s words, “the freedom of a man is limited by the freedom of others.”\textsuperscript{314} Freedom of one person cannot be invaded by others, while the equal rights of others should also be preserved.

Divisions may fuel alienation, distrust, separation and exaggerated differences that may affect tranquility and security of the Kingdom. The change should come through internal evolution and not through external imposition. No person should be compelled to belong to another faith by means of coercion or inducement.

There were submissions that Sections 1 and 2 of Article 3 contradicted with this provision, which is not the case. Section 1 of Article 3 stipulates the spiritual heritage. It accords recognition to the historical role of Buddhism and inherited Buddhist values, which cannot be nullified. However, it does not interfere with the personal freedom of thought, conscience and religion. Further, it also prohibits conversion through coercion or inducement. Conversely, these sections preserve the religion which has been professed from times immemorial.

Under Section 4 of this Article, one can practice any religion as per one’s conscience and faith but no person can be compelled to belong to another faith by means of coercion or inducement. It means one can practice any religion but cannot preach faith by means of coercion or inducement. Section 3 of Article 8 enshrines that “A Bhutanese citizen shall foster tolerance, mutual respect and spirit of brotherhood amongst all the people of Bhutan transcending religious, linguistic, regional or sectional diversities.” It confirms that citizens have the right to freedom of thought, conscience and religion but also have the corresponding fundamental duty not to jeopardize the peace, independence and sovereignty of the country, not to create social disharmony, and not to create political disharmony. An individual has the right to freedom of religion under Section 1 of Article 3 but it must be exercised as per the provision of Section 3 of Article 8. Therefore, there is no contradiction between the provisions of the two Articles.

Section 3 of Article 7 grants to a citizen shall have the right to choose any religion. The basic principle of the Constitution is to safeguard the rights of the citizens. It is a fundamental right of

\textsuperscript{313} National Assembly Resolutions 12-71, 16-15, 7-79, National Security Act and CCM.

\textsuperscript{314} See Johann Gottlieb Fichte, Foundations of Natural Right, 1796, p.111.
the people to practice the religion of their own choice. Thus, everyone can practice any form of religion. If this provision is not incorporated in the Constitution and only one religion is allowed, it would be contrary to the principles of democracy and the Constitution.  

Article 7  
Section 5  

“There shall be freedom of the press, radio and television and other forms of dissemination of information, including electronic.”

Democracy dictates representation and interest of the public through direct election of their representatives and dissemination of information by the media. Dissemination of information is ensured by freedom of the press, radio, television and other forms including electronic. William Blackstone said:

"The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity. To subject the press to the restrictive power of a licensor, as was formerly done, both before and since the Revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controvert points in learning, religion and government. But to punish as the law does at present any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty. Thus, the will of individuals is still left free: the abuse only of that free will is the object of legal punishment. Neither is any restraint hereby laid upon freedom of thought or inquiry; liberty of private sentiment is still left; the disseminating, or making public, of bad sentiments, destructive to the ends of society, is the crime which society corrects."

The expression of ideas is within the domain of the individual and not the government. Opinion must circulate freely. Circulation of ideas awakens public conscience. Public should not be exposed to any single view. Justice Blackmun had expressed:

“'The use of the over breadth analysis reflects the conclusion that the possible harm to society from allowing unprotected speech to go unpunished is outweighed by the possibility that protected speech will be muted.'"

However, information must be accurate. It should not mislead people. The relationship between the media and its readers and viewers is based on trust. Misinformation and manipulation of information are violation of that trust and travesty of truth. Blistering attack against the

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315 Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Punakha, Wangdiphodrang, Mongar, Trashigang, Lhuentsie, Dagana, Sarpang and Bumthang.


317 Refer State v. Johnson, 108 Wis. 2d 703 (1982), 324 N.W.2d 447.
institutions, glamorizing violence, demonizing individuals, creating differences and magnifying errors will undermine democracy and endanger the sovereignty of Bhutan. Objective criticism is constructive but subjective criticism is destructive. No institution is totally bad and no individual is wholly wrong. Telling the truth is the virtue of journalists. An American judge said:

“freedom of speech and press does not include the abuse of the power of tongue or pen, any more than freedom of other action includes an injurious use of one’s occupation, business, or property”. 318

The freedom of press does not confer on the press the power to compel government to furnish information or to give the press access to information that is not generally accessible to the public. The press is also entitled to the same treatment as given to any member of the public.

**Article 7**
**Section 6**

“A Bhutanese citizen shall have the right to vote.”

The right to vote (suffrage) is the political right to participate in the selection of government. It is a sacred right to citizenship. According to Alexis de Tocqueville:

“Once a people begin to interfere with the voting qualification, one can be sure that sooner or later it will abolish it altogether. That is one of the most invariable rules of social behavior. The further the limit of voting rights is extended, the stronger is the need felt to spread them still wider, for after each new concession the forces of democracy are strengthened, and its demands increase with the augmented power. The ambition of those left below the qualifying limit increases in proportion to the number of those above it. Finally the exception becomes the rule; concessions follow one another without interruption, and there is no halting place until universal suffrage has been attained.”319

George Eliot said, “the strongest principle of growth lies in human choice.”320 Freedom of choice will produce rational and good preference. The right to vote is expression of one’s freedom. That freedom entails choice. Therefore, the Constitution does not enshrine compulsory voting. The Committee abhorred the prevailing situations in the world as the voting percentage was very low. However, every Bhutanese citizen must participate in the election of the Government. Voting will guarantee that the government represents the will of the majority of the whole population and not merely those individuals who choose to vote. This will help to ensure that governments are not neglecting those sections of the society that are less active politically. Voting is considered a “civic duty” important for the continued functioning of the nation.

**Article 7**
**Section 7**

“A Bhutanese citizen shall have the right to freedom of movement and residence within Bhutan.”

318 Refer State v. McKee, 73 Conn.18 at 28, 46 A. 409 at 413.
319 Alexis de Tocqueville, *Democracy in America*, 1835.
The right to freedom of movement is a fundamental human right to be accorded to all individuals within the country. Under the Constitution, this right is available to Bhutanese alone. The free movement guaranteed by this provision not only includes the general rights of locomotion but also includes right of shifting or moving from one part of Bhutan to another without any barrier but with reasonable restriction provided under this Constitution. The citizens of Bhutan can move and settle or reside in any part of Bhutan.

**Article 7**
**Section 8**

“A Bhutanese citizen shall have the right to equal access and opportunity to join the Public Service.”

It is important to differentiate the Public Service from the Civil Service. Public service is any service, which is related to the general service of the common public. The true test for determination of the question whether a person is a public servant or a civil servant is the existence of master servant relationship between the Royal Civil Service Commission and the person holding a post. The existence of an employment relationship is dependent upon the right of the Royal Civil Service Commission to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his work, and payment of his wages and remuneration. Every Bhutanese citizen should have the right to take part in public affairs without discrimination. The government should create access and opportunity for every Bhutanese citizen to join the public service. Opportunity and chance provides the person a ground to prove his or her capability.

**Article 7**
**Section 9**

“A Bhutanese citizen shall have the right to own property, but shall not have the right to sell or transfer land or any immovable property to a person who is not a citizen of Bhutan, except in keeping with laws enacted by Parliament.”

The right to own property, particularly land is an age-old customary right. That right was accorded through decrees, Kashos, Mar-tham and Chha-Zhag Thram. People have zealously guarded that right, and laws have protected it with vigilance. Therefore, nobody has a right to seize his ownership. This section gives the right to own property and the property must be secure under the law. The Constitution validates the right, so that the high and mighty cannot manipulate a system to acquire from those who possess.

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321 For example, Article 13 (1) of the Universal Declaration of Human Rights, (1948) (UDHR), states that “everyone has the right to freedom of movement and residence within the borders of each State”. Article 12 (1) of The International Covenant on Civil and Political Rights, (1966) (ICCPR), a legally binding instrument, provides for the right to liberty of movement and freedom to choose ones residence for those ‘lawfully’ within the territory of a State. This would therefore exclude irregular migrants entering a State, of which they are not a national, although migrants whose status has been regularised would be considered to be lawfully within the territory for the purposes of Article 12. A number of national constitutions reflect this provision of international law and provide citizens with the right to freedom of movement within the State. However, this right may not be fully extended to migrants present within the territory who may be restricted to residing in certain parts of the country.

322 Royal Decree 1994 and National Assembly Resolutions 54-7.

In juridical history personal rights like the right to vote, freedom of speech and personal liberty occupied a higher status in the hierarchy of values than property rights. The right to enjoy property without unlawful deprivation is a ‘personal’ and basic civil right.

The Drafting Committee enshrined this important right in the Constitution to ensure social justice and happiness of the people. Ownership to land mitigates abject poverty and crunching hunger. A person must not be deprived of his or her property except in accordance with the law.

The fundamental rights, together with the majority of the principles of state policy, elucidate the constitutional conception of social justice. This conception, like all conceptions of social justice, embodies values, which cannot be fulfilled without the right to property.

Ownership of land had never meant absolute control over that property or an unfettered right to use it in any way the owner wanted. The common law doctrine of nuisance prevented owners from using their land in a way that interfered unreasonably with the rights of their neighbors.

Article 7
Section 10

“A Bhutanese citizen shall have the right to practice any lawful trade, profession or vocation.”

Every Bhutanese citizen has the right to choose his or her own business, trade or profession subject to lawful limitation. Citizens can be deprived of their employment if it endangers national security. The right provided under this section to practice any lawful trade, profession or vocation also implies a right not to continue with that trade or profession. Nobody should be compelled to do anything against his or her will.

Article 7
Section 11

“A Bhutanese citizen shall have the right to equal pay for work of equal value.”

This provision enshrines the basic principle that equal pay has to be given for equal value of work. The right to equal pay for equal value of work is a basic human right. This right first found expression in international conventions adopted by the International Labour Organization and later through United Nations human rights treaty law. This right is recognized by most constitutions of the world. Despite the continued affirmation of its relevance and significance as a basic right, the application of the principle of equal pay for work of equal value around the globe remains elusive. Equal pay for work of equal value for men and women is a very complex issue cutting across labour relations, wage fixing, human resource development and human

324 Royal Decree Kasho of 1993 and National Wage Chapter II – 2.
326 The earliest reference in an international legal text to the principle of equal pay for equal work is found in the 1919 Preamble to the Constitution of the International Labour Organisation. The principle was later enshrined in the Universal Declaration of Human Rights. Article 23 of the UDHR declares, in part, that, “everyone has the right to equal pay for equal work”. In 1966, the UN General Assembly adopted two international covenants to give expression to the rights set out in the UDHR. Article 7 of the International Covenant on Social, Economic and Cultural Rights provides that the state parties: “recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure in particular, (b) fair wages and equal remuneration for work of equal value, without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.”
rights. It is a problem that concerns all actors and systems of labour relations and all the means of labour regulation. Many countries continue taking measures to realize and operationalise this right.

The concept of equal pay for work of equal value means that if two persons have the required qualifications and experiences, and perform similar kind of jobs, they should be compensated similarly. The concept of equal value means that when employers set rates of pay, they have to take into account all the significant demands of jobs done by both women and men. Equal value can also mean greater value. The right to equal pay for work of equal value not only applies to situations where the work is of exactly the same or very close value, but also applies to situations where the women are being paid less for work of greater value. In such a situation, the employer would have to give the women parity with her male compatriot.

**Article 7**

**Section 12**

“A Bhutanese citizen shall have the right to freedom of peaceful assembly and freedom of association, other than membership of associations that are harmful to the peace and unity of the country, and shall have the right not to be compelled to belong to any association.”

The right to freedom of association implies the rights to join, form, and withdraw membership from groups, associations and partnerships of different kinds. This right entitles individuals to associate freely, in good faith, without interference from other individuals or from state actors. This includes economic, social, cultural and political activities within a group or with another person. According to the International Labour Organization, freedom of association creates an environment of social dialogue, which, in turn, stimulates a people-centered kind of development.

The right to associate with others and to form or join associations is closely linked with other civil and political rights, especially freedom of expression and opinion, freedom of peaceful assembly, and the freedom of movement. These civil and political rights are vital elements for the promotion and protection of economic, social and cultural rights. In turn, the full exercise of civil and political rights is also dependent on the extent to which economic, social and cultural rights are enjoyed.

The reference to the word “peaceful” implies that a person has a right to peaceful assembly and not to a violent or armed assembly. The Constitution prohibits assembly which disturbs public peace and tranquility or endangers national security and unity.

**Article 7**

**Section 13**

“Every person in Bhutan shall have the right to material interests resulting from any scientific, literary or artistic production of which he is the author or creator.”

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327 Submission by the Chairperson of the Drafting Committee dated 1st November 2004.
The Constitution explicitly specifies ownership over “intellectual property” whether such ownership be in the form of copyright, patent or any other form of property ownership over invention, applied ideas or creative production, whether commercialized or non-commercialized. It is the right to protect the material interest resulting from his or her ideas and creations that enhance human development and progress of the nation. No person should be debarred from advocating his or her ideas through best creation as John F. Kennedy said, “if art is to nourish the roots of our culture, society must set the artist free to follow his vision wherever it takes him.” John Locke said, “As Justice gives every Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him, so Charity gives every man a Title to so much of another’s plenty, as will keep him from extreme want, where he has no means to subsist otherwise…. not charity but a right, not bounty but justice.”

However, it should be noted that such right should not restrict the fair use of the right including such use by reproduction in copies for the purpose of comments, news reporting, teaching, research and for any other educational purpose.

**Article 7**

**Section 14**

“A person shall not be deprived of property by acquisition or requisition, except for public purpose and on payment of fair compensation in accordance with the provisions of the law.”

This provision further extends the right to property guaranteed under section 9 of Article 7. These protections extend not only to land or discernible assets, but to all the rights inherent in property; real or personal, tangible or intangible. Property is associated with every other right, for without the right to own and use, and enjoy one’s property free from arbitrary governmental as well as private interference, there could be no liberty. The right to own what you have created, built, inherited, purchased or received as a gift, knowing that the government cannot take it from you except under stringent legal procedures, provides the material security that goes hand in hand with less tangible freedoms, such as freedoms of speech and privacy. People whose economic rights are threatened are just as much at the mercy of government as are those who find their freedom of expression or their right to vote curtailed. Thus, the government can acquire private property only for public purpose and on payment of fair compensation in accordance with the provisions of the law. The government cannot acquire private property to be given to another individual. The individual cannot use the government as an instrument to his benefit.

The legal principle or authority by which the State can acquire private property for “public use” is variably referred to as eminent domain, compulsory purchase, resumption or compulsory acquisition or expropriation. Eminent domain is an associated terminology, which refers to the power of the State to seize a citizen’s private property, expropriate property, or terminate rights in property, without the owner’s consent. The property is taken either for government use or by delegation to third parties who will devote it to “public use.” The most common uses of property taken under eminent domain are public utilities like highways.

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329 Supra, n. 107, p.31.
Article 7
Section 15

All persons are equal before the law and are entitled to equal and effective protection of the law and shall not be discriminated against on the grounds of race, sex, language, religion, politics or other status.

Buddha mentioned that the caste and creed find no place in the path of Sambodhi. Just as rivers lose their identity after falling into the sea, all are equal in our doctrine and there could not be discrimination against them. However, freedom and equality mean different things to different thinkers.330

A citizen or non-citizen secures liberty under the provision of “equal protection of law” and “equality before law”. When Thomas Jefferson wrote in the Declaration of Independence that “all men are created equal,”331 he did not mean social or economic egalitarianism. Rather he believed that society by its nature could never be socially or economically homogeneous because men differ in their abilities and virtues. They did not want to level society, but rather give to each individual the opportunity to make the most of his abilities. In order for this opportunity to exist, all men had to stand before the law on an equal footing. There could not be one law for the rich and another for the poor. Prof. Dicey said:

“With us every official, from the Prime Minister down to a constable or collector of taxes, is under the same responsibility for every act done without any legal justification as any other citizen”332

The guiding principle of the first part of this provision is that all persons and things similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. “Equality before the law” means that amongst equals, the law should be equal and should be equally administered. It also means that the like should be treated alike. Buddha said:

“equality of all living beings are essentials of Dharma.”333

The second part of this provision prohibits the State from discriminating against individuals on grounds of race, sex, language, religion, politics or other status. The discrimination involves an element of unfavourable bias and it is in that sense that the expression “…discriminated against

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330 Leftist thinkers emphasize equality, while rightist thinkers favor freedom. Nietzsche, who likes aristocracy and does not value equality, is a philosopher to the extreme right. In fact, Nietzsche thought that democratic equality was an impediment to human excellence because it builds “herd morality,” puts people down and promises less than what they deserve. In order for human excellence to develop freely, says Nietzsche, there should not be any equality constraint on people: a noble heart should not be put down in order to make it equal to a base heart, people should be allowed to compete freely for power and, naturally, noble people will win the competition and become rulers of human society. Keith Ansell-Pearson (ed.), *Nietzsche on the Genealogy of Morality*, 2007 In contrast, leftist thinkers, among whom Rousseau and Marx are two examples, hate inequalities. Leftist thinkers generally define freedom as something positive and affirmative. For them, freedom means being able to realize certain higher goods (such as to free and equal participation in political activities, freedom from alienation, etc). In order for people to have the ability and opportunity to achieve these higher goods, the society has to create certain conditions for people. One of the key conditions, say Rousseau and Marx, is equality. Rousseau is regarded as the father of the modern theory of democracy. In his discourse, he raises his doubt about the value of social and scientific progress which he thinks brings about the loss of morality and is associated with vice, alienation, envy, and vanity. Rousseau's second discourse deals with the origins of inequality, from which all human vices develop. Rousseau thinks there are two forms of inequality. The first is natural inequality (such as physical differences) and the second is moral inequality (such as differences in wealth and social status). The development of inequality is an evolution from the natural inequality to the moral one. (*Rousseau, Discourse on Inequality*, 1754).

on...” should be understood. If such a bias is disclosed and is based on any ground mentioned in this provision, the law will be struck down as being violative of the Constitution. Discrimination is vile and a crime.

**Article 7**  
**Section 16**

“A person charged with a penal offence has the right to be presumed innocent until proven guilty in accordance with the law.”

It is a universal law that reason should govern human society. It will protect unjust imprisonment and stop the victim from venomous prejudices and vengeance through legal means. It is a cardinal principle that one is innocent until proven guilty. It was reflected in the first codified law of Bhutan. No person should be held liable until and unless guilt is proven beyond reasonable doubt. This right is so important that it is explicitly included in the constitutions and legal codes. The burden of proving guilt is entirely on the State. The defendant does not have to prove his innocence in the courtroom. The judge must consider him to be an innocent person until the State convinces the court beyond a reasonable doubt that he is guilty of every element of the alleged offense. After all the evidence and arguments, if there is a reasonable doubt as the accused having committed any one or more of the elements of the offense, then the court must find him not guilty.

**Article 7**  
**Section 17**

“A person shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Bhutan is a Buddhist country, the society of which is founded on the values of tolerance and compassion. Therefore, no one should be subjected to torture or cruel punishment. Deprivation of liberty is punishment but torture is a crime. Punishment is a legal sanction by itself and degrading treatment is religiously sinful and legally abhorrent. However, the State must prevent clandestine transgressions that may endanger peace. Legality has primacy and requirement of law.

**Article 7**  
**Section 18**

“A person shall not be subjected to capital punishment.”

Human Rights activists oppose the death penalty, calling it cruel, inhuman, and degrading punishment. Amnesty International considers it to be the ultimate denial of Human Rights, which corresponds to the Buddhist principle of “Sok choepa”. In Bhutan, the capital punishment was

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334 Da 1-7 of the Thrimzhung Chhenmo and Section 96.1 of the Civil and Criminal Court Procedure, 2001.  
335 Virtuous Act under Buddhism.  
336 Daniel Defoe said that justice is always violent to the party offending, for every man is innocent in his own eyes. James T. Boulton (ed), *Selected Writings of Daniel Defoe*, 1975, p.89.
abolished by a Royal Decree on 20th March 2004. Therefore, in Bhutan under any law a person shall not be subjected to capital punishment.

**Article 7**
**Section 19**

“A person shall not be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence nor to unlawful attacks on his honour and reputation.”

Privacy is a fundamental Human Right. Socially, the Bhutanese believe in privacy. A Bhutanese saying states, one is big in one’s own house.

Article 12 of the Universal Declaration of Human Rights states, “No person shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”.

The right against unsanctioned invasion of privacy by the Government, corporations or individuals is part of privacy laws, and constitutions of many countries. Many constitutions contain “penumbras” that implicitly grant a right to privacy. Privacy has no definite boundaries and it has different meanings for different people. However, the right to privacy generally encompasses and protects the personal intimacies of the home, the family, marriage, motherhood, procreation and child bearing. Therefore, a person should not be subjected to arbitrary or unlawful interference with his privacy. Every person should be free from any external impediment.

**Article 7**
**Section 20**

“A person shall not be subjected to arbitrary arrest or detention.”

No one should be deprived of his liberty arbitrarily. This provision protects innocent persons from unlawful arrest. The Constitution prohibits arbitrary arrest or detention so that a person of influence and power cannot misuse against his opponent. It will prevent clandestine transgressions which may endanger liberty of a person, and rampant unlawful activities and exploitive uses. As Montesquieu said, “one man need not be afraid of another.” Fear is incarceration.

Under the equal protection, the rich and poor, powerful and powerless people live symbiotically. The objective of this provision is to safeguard a person from being arrested or detained unlawfully by any authority. However, this section will not defend a person from being arrested in accordance with the laws of the Kingdom.

**Article 7**
**Section 21**

337 Na 1–1 of the Thrinzhung Chhenmo.
338 National Assembly Resolution 17-29, 66-11 Kha 8-1.
“A person shall have the right to consult and be represented by a Bhutanese Jabmi of his choice.”

Right to counsel is generally regarded as a constituent of the right to a fair trial, allowing for the defendant to be assisted by a counsel. If he cannot afford his own lawyer, the government should appoint one for him, or pay his legal expenses.

Legal Counsel is not an alien practice. Bhutan had the system of Jabmi/Barmi/Ngotsap, which was enshrined in the Thrimzhung Chhenmo enacted from 1952 to 1957. This section honours the noble tradition. Under this provision, a person shall have the right to defense, consultation and representation by a Bhutanese Jabmi (counsel) to ensure fair trial. The right to legal representation is an elementary feature of the fair dispensation of justice. No one should be deprived of his liberty due to legal disadvantage. Justice cannot favour strong over the weak. However, this right is an optional right. The discretion to be represented lies in the hand of the individual. Although the Civil and Criminal Procedure Code contains analogous provisions, the Constitution has enshrined it as a fundamental right. The Jabmi belongs to the noble fraternity of legal counsels and holds the onerous responsibility of helping in the administration of justice.

Article 7
Section 22

“Notwithstanding the rights conferred by this Constitution, nothing in this Article shall prevent the State from subjecting reasonable restriction by law, when it concerns:

(a) The interests of the sovereignty, security, unity and integrity of Bhutan;
(b) The interests of peace, stability and well-being of the nation;
(c) The interests of friendly relations with foreign States;
(d) Incitement to an offence on the ground of race, sex, language, religion or region;
(e) The disclosure of information received in regard to the affairs of the State or in discharge of official duties; or
(f) The rights and freedom of others.”

Although the rights included in the Constitution are fundamental and enforceable by courts, they are not absolute. The phrase “reasonable restriction” means that the limitation imposed upon a person in the enjoyment of a particular right, should not be arbitrary or excessive in nature. The security of the nation is a pre-ordinate Constitutional consideration. However, as this provision restricts the rights guaranteed by other Articles, it should be enforced only in extreme cases for limited periods.

One’s right cannot nullify the right of the other person. Freedom and rights do not provide exclusive and unfettered license to an individual. Rights are social entitlements which must be exercised with due care and responsibility. Therefore, the Drafting Committee felt the need to limit individual liberty by allowing the state to intervene in the interests of the people and the country. However, sections 17 and 18 are absolute rights by virtue of being human. Therefore, the restriction under this section is inapplicable.
The general limitations clause under this section is common in some Human Rights context in other countries. In the International Covenants, there are restrictions to safeguard certain public interests like public morality, national security, good public order and the rights and freedoms associated with it which may be interfered with, and hence some of these ideas are recapitulated in subsection 22. Under these sections, Judges must interpret those terms with minimum content to prevent too much intrusion unnecessarily upon protected rights.

In the Bhutanese context, that question is fairly well answered by subsection 22, which enumerates the legitimate aims to restrict rights. Further, the restriction imposed must be necessary to achieve the legitimate aims and must not be excessive. It must be used to protect the general interest and not the individual interest.

**Article 7**

**Section 23**

“All persons in Bhutan shall have the right to initiate appropriate proceedings in the Supreme Court or High Court for the enforcement of the rights conferred by this Article, subject to section 22 of this Article and procedures prescribed by law.”

The rights conferred under this section are fundamental. These rights cannot be abrogated, abridged or otherwise revoked by an Act of Legislature. This section will not tolerate any law that invades the basic fabric of the Constitution. The Supreme Court and the High Court are empowered and obligated to declare such law as null and void.

Fundamental rights provided in the Constitution will be of no avail if there is no adequate machinery for their protection. All persons in Bhutan shall have the right to initiate appropriate proceedings in the Supreme Court or High Court for the enforcement of the rights conferred by this Article through judicial review. The initiation of a proceeding for enforcement of rights is subject to section 22 of this Article and procedures prescribed by the existing laws and future laws made by Parliament. In Tocqueville’s words, power of judicial review is:

“One of the most powerful barriers ever erected against the tyranny of political assemblies”.

A declaration of fundamental rights is futile unless they are effective judicial remedies for their enforcements. The power conferred in this article is the most potent weapon in the hands of the Court. Possession in this article is meant to ensure observance of rule of law and prevent abuse of power. The provisions are made to ensure that each and every authority in the state are bonafide and within the limits of its powers and that when a court is satisfied there is an abuse of power it is incumbent on the Court to afford justice to the proven who knocks on the doors of the Court. The objective is to declare that the courts have a constitutional duty to protect fundamental rights. To quote Dr. B.R.Ambedkar (in the context of the Indian Constitution):

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340 During the presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee on 9th May 2008, he explained that “... with regard to Section 22, actually Constitutional cases must be directly initiated in and adjudicated by the Supreme Court, but we deliberately kept it for the High court. There are few reasons why we have given the original jurisdiction to the High court. First reason, if the Supreme Court commits mistake then it has no other forum to go for correction / review. We thought that there is a necessity to have a review system as such the Constitutional cases shall be initiated first in the high court. If a party to the case is not satisfied with the judgment rendered by the High court then he / she can appeal to the Supreme Court for review.”

“It is the very soul of the Constitution without which the Constitution would be a nullity”

Some praise the power of judges to review and strike legislation as a bastion, defending the rights of the people. Others critique such judicial review as an inappropriate intrusion upon the functions of elected legislatures. A few even dismiss it as nothing more than a further entrenchment of elite-dominated politics. And yet, for all the controversy surrounding judicial review, it appears to be spreading across the world and taking root in many newly emerging or emergent democracies as well. Bhutan has recognized the preservation of liberty and prevention of tyranny against undemocratic and violation of rule of law through the judicial review.

Judicial review is a basic essential feature of any constitutions and no law passed by the legislature can abrogate it, which if done, the Constitution will cease to be what it is. A thriving democracy is based on the twin principles of majority rule and the need to protect fundamental rights. It is the duty of the Judiciary to balance the principles that the government on the basis of its majority does not override the rights of citizens. This concept is harmonious with this concept that power belongs to the people of Bhutan and their rights need to be protected.

Standing rules or standing provisions in the Bhutanese Constitution is much wider than in Australia, Canada or the USA. This section grants rights for cause of action where citizens can take action against the decisions or policies that undermine their rights. It is further reinforced by section 18 of Article 21, which is more powerful as “every person has the right to approach the court in matters arising out of the Constitution or other laws subject to this Article.” Many common law countries have provisions called standing rights, which are much more limited and fairly restrictive rule. Thomas Moriarty said:

“Laws not enforced cease to be laws, and rights not defended may wither away.”

Article 8
Fundamental Duties

According to Bodhidharma “All know the way; few actually walk it”. Rights go with responsibilities and ‘Fundamental Duties’ demands of its citizens to foster tolerance, mutual respect transcending religious, linguistic, regional or sectional diversities. Additional duties of citizens are to help victims of accidents and natural calamity, to pay taxes and to fight corruption. The Constitution confers duty to acknowledge corruption as an evil and empowers the people to play a part in this noble effort, uphold justice and to act against Corruption.

Fundamental duties are based on Buddhism and also on Jenks’ and Austin’s concepts. Sir David Ross’s list of prima facie duties, the concepts of universal duties, general duties and particular duties by Jenks and Austin’s vinculum juris or bond of legal obligation, relative and absolute duties reflects the duties espoused by Lord Buddha. Conscious duties make a responsible human being. K.N Jayatilleke mentioned:

342 Federal Court, Announcements-Native American Rights Funds, 1972, p.114.
344 Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Mongar, 12th Dec. 2005.
345 Jenks’s Universal duty (binding on all normal members of the community), General duty (binding on normal persons) and Particular duties (binding on a person who have undertaken them).
346 Austin’s duties are religious duties which conform with the principle of utilitarian.
“...Buddhist ethics has also been stated from a deontological standpoint, where men in society, including monks and nuns, are said to have certain duties to perform by virtue of the stations in life they occupy, although the fundamental obligation of all should be to seek finally to attain Nirvana for it is only then that one’s obligations are over (kata-karaniya). Man’s social duties are to be performed not merely out of a sense of duty but as far as possible out of a spirit of service (gaga), love (metta) and understanding (panna), the opposite of greed, hatred and ignorance.”

The combination of the Fundamental Rights and the Fundamental Duties of every citizen and of the State are required to realize the Constitutional promise. Whenever the law recognizes that a person has a right, it means that another person is under a legal duty to comply with that right. When a person has a right enforceable against the state, does he have any obligation on his part to perform before he can enforce his right against the Society? This question must be answered in the affirmative because if every person acts as he pleases they will be complete anarchy. Hence, the need to incorporate fundamental duties under the Constitution is necessary.

Amartya Sen rightly noted:

“This is where Gautama Buddha’s argument, presented in Sutta-Nipata (discussed in Chapter 9, ‘Plurality of Impartial Reasons’), becomes directly and immediately relevant. Since we are enormously more powerful than other species, we have some responsibility towards them that links with this asymmetry of power. ...”

The Buddhist theory states that each person had certain hereditary functions to perform by virtue of his birth called “one’s own duty” (svadharma). John Locke said “in the state of nature, there is freedom and reciprocity.”

Lord Buddha said:

“Let no one forget his own duty for the sake of another’s, however great; let a man, after he has discerned his own duty, be always attentive to his duty.”

Modern Constitution must combine both of them. Every person should bear a moral duty to have self-limitation and to enjoy the conferred rights.

Thomas William Rhys Davids said:

“The Buddha’s doctrine of love and goodwill between man and man is here set forth in a domestic and social ethics with more comprehensive detail then elsewhere. And truly we may say even now of this Vinaya or code of discipline, so fundamental are the human interests involved, so sane and wide is the wisdom that envisages them, that the

347 Supra, n.25, p. 52.
348 Lord Buddha said “let no one forget his own duty for the sake of another’s, however great; let a man, after he has discerned his own duty, be always attentive to his duty.” Refer Sacred Books of the East, Vol. 10: the Dhammapada and suttee Nipata, by Max Muller and max Fausboll, (1881), at sacred-texts.com
351 Supra, n 107.
utterances are as fresh and practically as binding to-day and here as they were then at Rajagaha. ‘Happy would have been the village or the clan on the banks of the Ganges where the people were full of the kindly spirit of fellow-feeling, the noble spirit of justice which breathes through these naïve and simple sayings.’

His Majesty said that Bhutanese democracy must have rights, freedoms and duties based on our values, traditions and culture. Indeed, fundamental rights under Article 7 imply corresponding fundamental duties under this Article. When the Government grants rights, duties have to be performed in the interest of the country. Fundamental rights are neither solitary nor exclusive. Corresponding fundamental duties under Article 8 are necessary for peaceful co-existence. The French Declaration states that:

“Liberty consists of the power to do whatever is not injurious to others; thus the enjoyment of the natural rights of every man has for its limits only those that assure other members of society the enjoyment of those same rights; such limits may be determined only by law.”

Further, the Universal Declaration of Human Responsibilities proposed by the interaction council established in 1983 in support of the Article 29 of the Universal Declaration of Human Rights states that:

“Everyone has duties to the community in which alone the free and full development of his personality is possible.”

There are different concepts of duties as explained by Jenks such as Universal duties (binding on all normal members of the community), General duties (binding on classes of normal persons not voluntarily formed), and Particular duties (binding on persons who have voluntarily undertaken them.) Conversely, Austin distinguishes between relative and absolute duties. According to Austin, absolute duties are:

(a) Duties towards God or lower animals. He says rights cannot be vested in gods as they are not legal persons. Duties are owed to persons indefinitely in the community. He states that right cannot be vested in an indeterminate entity like society.

(b) Duties towards self – self-regarding duties. He said that one cannot have any right from its own self.

(c) Duties owed to the sovereign. He states that the sovereign is the creator of the rights at its own will, hence sovereign cannot be the holder of the right.

The Fundamental Duties enumerated in this Article can be classified as duties towards self, duties concerning the environment, duties to society and duties towards the Nation. Thus, citizens are morally obliged by the Constitution to perform these duties. Justice Holmes said:

“The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman.”

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354 French Declaration of the Rights of Man and Citizen (1789).
The law, he said, was founded on duty. Holmes sketched out a logical categorization of duties. There were duties of sovereign powers to each other, duties of all persons to their sovereign, duties of each person to every other person, and of each to all, and so forth. Dereliction of duties can amount to offences under the laws as Parliament may decide. Further, George Bernard Shaw said “Liberty means responsibility. That is why most men dread it”.356

During the last decade, the imbalance between the rights and duties emerged. In this connection, Samuel Gregg reminds:

“Rights-talk’ coined by Mary Ann Glendon (1991), describes a phenomenon whereby political discourse is slowly impoverished by an explosion in the use of the word rights to the point whereby it becomes harder to define critical questions, let alone debate and resolve them. Similarly, Homo democraticus, as Tocqueville characterised him, is obsessive about rights, neglectful of duties, reluctant to believe in anything, anxious, and solitary. These defects make him prey to what Tocqueville called ‘soft despotism’ whereby freedom is abandoned, and a bloated central power administers to the needs of an infantilised population.”357

Rights without duties are legal nihilism. The fundamental duties are the moral obligations and commitments that expand to the citizens as well as the State. Commenting on the Fundamental duties, UNDP stated that:

“Bhutan’s draft Constitution balances a broad list of fundamental rights (for both citizens and all persons) with a concomitant list of fundamental duties. Further, a number of principles of state policy recognize Bhutan’s international human rights treaty obligations.”358

Fundamental rights and fundamental duties of every citizen are the combined efforts of the State and the citizens. Therefore, Buddha in Light of Asia said;

“Be thou content to know not, knowing thus
Thy way of right and duty:”359

In addition, under the Constitution, usage of terms “duty” and “responsibility” has been maintained to avoid wrong interpretation in the future because duty means a legal obligation that is owed or due to another that needs to be satisfied. Duty implies corresponding rights. However, duty may not have liability. Whereas the term responsibility means legally responsible for something under the legal rules and has a liability. Paying taxes is part of responsibility with liability and not a duty without liability. Words have specific meanings and implications.

356 George Bernard Shaw, Maxims for Revolutionists, Man and Superman: A Comedy and a Philosophy, 1903, p.229.
358 Supra, n. 234.
Article 8
Section 1

“A Bhutanese citizen shall preserve, protect and defend the sovereignty, territorial integrity, security and unity of Bhutan and render national service when called upon to do so by Parliament.”

This provision enshrines the sacred duty of citizens to preserve, protect and defend the sovereignty, territorial integrity, security and unity of Bhutan. To preserve is to maintain and make them everlasting. To protect them is to prevent any danger through proactive measures like individual’s vigilance, reporting, inquiring and investigating the status of the sovereignty, territorial integrity, security and unity of Bhutan. Defense is necessary through mind, speech and body. It is a common defence that a nation survives, freedom secured and blessing of liberty enjoyed. Hence, it should inspire the citizens to accomplish their mandated duties and render national service. It is the duty of the Citizens to preserve, protect and defend the sovereignty, territorial integrity, security and unity of Bhutan. Rendering national service should be the basis for our perpetual existence and well-being. We have not inherited Bhutan from our forefathers but borrowed it for our children. Bhutan has to be preserved for posterity.

Article 8
Section 2

“A Bhutanese citizen shall have the duty to preserve, protect and respect the culture and heritage of the nation.”

This section enumerates a person’s duties towards the culture and heritage of the nation. Culture provides ethical, moral and socio-historical values which sustain peace and tranquility within society. In Nehru’s words, “Culture is the widening of the mind and of the spirit.”

The Bhutanese have a duty to preserve their culture for in Mathew Arnold’s words, “Culture is the passion for sweetness and light and, (what is more) the passion for making them prevail.”

This section mandates the citizens to protect the culture and heritage in conjunction with His Majesty Jigme Singye Wangchuck’s speech which reads:

“We have been able to strengthen our unique national identity through the promotion and preservation of our culture and tradition.”

According to His Majesty, the preservation and promotion of Bhutanese traditions and culture has the essence of distinct national identity, which is important for a small country between the two largest and most populous nations in the world.

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360 Refer The Universal Declaration of Human Responsibilities of 1983.
361 K. T. Narasimhachar(ed), The Quintessence of Nehru, 1961, p. 120.
362 Mathew Arnold, Literature and Dogma, 1883.
363 Royal address by His Majesty Jigme Singye Wangchuck, 2nd June 1999.
Article 8
Section 3

“A Bhutanese citizen shall foster tolerance, mutual respect and spirit of brotherhood amongst all the people of Bhutan transcending religious, linguistic, regional or sectional diversities.”

Bhutan comprises of people from different regions, religions and cultures. To unite the nation and progress, the Constitution fosters tolerance and spirit of fraternity amongst all people. Unity in diversity should be our aim. The Constitution must promote unity and strengthen sovereignty and security by uniting the people of Bhutan, based on tolerance. Intolerance is a “total eclipse of reason,” according to Montesquieu.

Respect brings civility. Therefore, respect amongst all the people of Bhutan transcending religious, linguistic, regional or sectional diversities is necessary. Mutual respect promotes understanding and peaceful co-existence and spirit of brotherhood advances peace. It is the recognition of common values, and abandonment of alienation and separation. Pain, pleasure, danger and fear, all unify people.

Article 8
Section 4

“A person shall respect the National Flag and the National Anthem.”

The National Flag is the visual and external manifestation of the country and expresses its indelible identity as a nation. The National Anthem is the song that expresses loyalty and patriotism to the king, country and people. The national flag and the national anthem evoke respect, patriotism and loyalty. It is the speech manifestation of all the Bhutanese, who love their King, Country and Fellow citizens dearly and affectionately. With smile on their faces and songs on their lips, the nation grows stronger in its strength and progress.

Flag and the National Anthem represent the life that the nation lived, the path that the State blazed, the challenges that the Bhutanese overcame, the traditions that the forefathers built in their minds, which inspired them to achieve and aspire more, higher and better. The music of the tears and sweat of toil are planted in their memories. The symphony of the common dreams and the song of their action in the anthem are their indomitable anchor and constant reminder of their duty to the nation that they so dearly love. Therefore, every person has the duty to respect the National Flag and the National Anthem. Respect is external expression of internal values and embodiment of nobility.

Article 8
Section 5

“A person shall not tolerate or participate in acts of injury, torture or killing of another person, terrorism, abuse of women, children or any other person and shall take necessary steps to prevent such acts.”

364 Refer Michhoe Tsangma Chadrug.
This provision expresses the higher and nobler values of human beings. It invokes non-violence, compassion, the sublime human nature of understanding for peaceful coexistence, and transcendental nature for tolerance with equanimity in its treatment and protection. Injury is physically and mentally painful.

Buddha said:

“One should not injure, subjugate, enslave, torture, or kill any living being. This doctrine of non-violence is immaculate, immutable, and eternal. Just as suffering is painful to you, in the same way it is painful, disquieting, and terrifying to all animals, living beings, organisms, and sentient beings.”

Taking necessary steps to prevent the vicious abuse and vilification of women and children must be the relentless pursuit, for it is the fulfillment of the solemn promise made to the Constitution and the tenet of religion. Preparedness and commitment will deter evil. Prevention and intolerance to the causes of terrorism and evil is a duty of every person, for no just cause can be advanced by terrorism, which is cruel and tyrannical.

During the first session of Parliament, some members suggested inclusion of the phrase “other living beings” which would refer mostly to animals in the provision to reflect the Buddhist philosophy of kindness towards all sentient beings. Inclusion of the phrase “other living beings” will have legal implication. The Constitution will sound fundamentalist and any developmental policy can be withheld or halted. Endless constitutional cases may be filed for protection of animals, and insects and use of antibiotics and other preventive medicines may be objected to under this provision. Religious values and sentiments should not be overstretched.

**Article 8**

**Section 6**

“A person shall have the responsibility to provide help, to the greatest possible extent, to victims of accidents and in times of natural calamity.”

Every human being requires help in times of natural calamity. The basic principle of altruism is that man has no right to exist for his own sake. Service to other is the only justification of his existence, and self-sacrifice is his highest moral duty and noblest act. Barrington Moore said:

“Moral responsibility refers to norms prevalent in the society. Ethical responsibility can refer to these but also refers to violations of transcendent standards”.

Therefore, if one needs help, he has a duty of reciprocity. He must provide help to build a society and nation, to share every grief and fight against any foe for the survival of Bhutan. Neither nature’s fury nor human compassion is dispassionate. To help one’s own neighbours in the hour of need is human. A helping hand from many can overcome all tragedies. With help, nothing fails. Helpfulness is a cementing factor.

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Article 8
Section 7

“A person shall have the responsibility to safeguard public property.”

This provision is an important deterrent guiding social behavior vis-à-vis the state’s social infrastructure. It is unfortunately common for persons to destroy, pillage and discard public property. It was felt that without such a section, a person will stand by and see the destruction of public property, and will not have any fear of participating in its vandalism. The preservation of property being important, the Nation and the people must guarantee highest level of safety of life and property.

Article 8
Section 8

“A person shall have the responsibility to pay taxes in accordance with the law.”

Demands from the Government are rising, whilst people want lower taxes or do not want to pay at all. It has negative impacts. Social service will suffer without tax, internal revenue will plummet, services would deteriorate, rich will become richer, and with time, they would dictate the Government with money power. This provision will avert such crisis. Governments should thus tax individual. Keynesian economics suggested:

Adjusting government spending and tax rates are the best ways to stimulate aggregate demand.

Article 8
Section 9

“Every person shall have the duty to uphold justice and to act against corruption.”

Justice is the anguished cry of humanity and lifeline of an individual. This provision accords that recognition. However, justice is not a one-way traffic. It is mutually inclusive. It has the duty to be just.

Plato, the great Greek thinker praised justice as one of the four virtues which are wisdom, courage, temperance, and justice, to support the perfect state. According to Buddhism, justice is the soul of the ruler’s function. Buddha said to the king of Kosala, “My lord king, to judge a cause with justice and impartiality is the right thing.” Mahā- Hangajātaka describes justice as a cause of well-being and happiness. Oppression and arbitrary behaviour was considered as the root of social evil. It was a real cause of social suffering. It was supposed to be a great fetter which made humans suffer. In every society, justice is needed for defeating oppression. According to Buddha, the Principles of justice are based on the four wrong causes of behaviour or prejudice: “(1) prejudice caused by love or desire, (2) prejudice caused by hatred or animosity,

368Sixteen Virtuous acts of Buddhism.
369 Glen Beeson & Reuben E. Slesinger, Economics 83/84, 1983, p.239.
370 V. Venkata Rao, Ancient Political Thought, 1966, p. 44.
(3) prejudice caused by delusion or stupidity, (4) prejudice caused by fear.”

Mahā-Pādumajataka says that the king’s duties in the court, when he decides some cases, are to be performed with care and deliberation. The stanza goes:

No king should punish an offence and hear no pleas at all,
The warrior chief who punishes a fault before he tries, is like a man born blind, who eats his food all bones and flies.
Who punishes the guiltless, and lets go the guilty, knows no more than one blind upon rugged high way goes.
He who all this examines well, in things both great and small, and so administers, decides to be the head of all.

The section also recognizes corruption as a chronic blight on societies which require pro-active state and social diligence to combat. Therefore, in Bhutan, it shall be the duty of every person to fight against any form of corruption. In every polity, corruption is a scourge which eventually destroys the fabric of society. This section empowers and obligates people to act against corruption. By placing a positive obligation upon the people to uphold justice and fight corruption, the nation will progress and the Government will retain the moral authority to rule.

Article 8
Section 10

“No person shall have the duty to act in aid of the law.”

A Bhutanese proverb states, “To follow the deeds of justice is the duty of every individual.” This section reflects the notion that laws will be imposed for the encouragement of virtue and prevention of vice and immorality, and provision shall be made for their due execution.

Enforcement of law is not only the duty of the law enforcement bodies but it is an individual obligation. According to Somadeva:

“The Law is that which leads to welfare and salvation. It forms conduct and character distinguished by the sense of equality among all beings.”

Article 8
Section 11

“No person shall have the duty and responsibility to respect and abide by the provisions of this Constitution.”

It is the duty of every individual to act in accordance with the national law. The Constitution is the supreme law that protects and defines every citizen’s rights and obligations. One cannot violate that law which aids, protects and obligates them. With mutual duty and responsibility, the Constitution will be stronger to protect the citizens. Sustained efforts are required to advance constitutional compliance. It is only by the maintenance of law and order that every person will live

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373 Supra, n. 371, p. 1119.
in peace. Hence, he must respect and abide by the Constitution that supports his liberty, justice, freedom and rights.

**Article 9**

**Principles of State Policy**

This Article comprises guidelines for government policy-making. It received mixed reactions during the consultation process. Some felt that it invaded into the executive and legislative jurisdictions. Conversely, many praised it. Renata Lok Dessallien, UNDP Resident Co-ordinator called it “the noble vision of Bhutan” for current and future generations.\(^{375}\)

The Principles of State Policy embodied in this Article are directions to the Government to guide the establishment of a just society, and endeavor for the attainment of Gross National Happiness. They are the active obligations of the State, which the government must have in mind while framing laws and policies. It acts as a check on executive excess. They are yardsticks in the hands of the people to measure the performance of the government against nationally prescribed goals and principles.

If the Preamble is the key to understand the Constitution or to open the mind and its makers, the Principles of State Policy as enshrined in Article 9 are its basic ideal. They are the affirmative instructions from the people to the Executive established by them, to secure to all citizens justice, liberty, equality and to promote amongst their fraternity ensuring dignity of the individual and unity and integrity of the nation. It becomes the duty of the state to direct its activities in such a manner so as to secure the high ideals set forth in the Preamble and set out in Article 9.\(^{376}\) It can well be said that the Principle of State Policy set out in Article 9 are culmination of the long tradition of the social and humanitarian traditions of Bhutan.

The Fundamental Rights and the Principles of State Policy have to be construed harmoniously. They are complimentary and supplementary to each other. The Fundamental Rights are primarily aimed at assuring political freedom to citizens by protecting them against excessive State action. The Principles of State Policy are aimed at securing social and economic freedom through appropriate action. Buddha said, “A correct economic policy should be based on voluntary participation.”\(^{377}\) Therefore, it is the duty of the courts to apply the Principles of State Policy in interpreting the Constitution and the laws.

This Article implies escalation and flexible response. The Government must pursue sound and progressive economic and social policies. Individual citizens are empowered to be watchful and remind the Government through their representatives or through elections to address the issue of social equity as envisioned by His Majesty. The Government must be committed to continually improve services, promote economic growth and opportunity and meet peoples’ aspirations for a progressive future of Bhutan. The Drafting Committee embodied a preservative principle under this Article to ensure that things do not get worse.

\(^{375}\) Supra, n. 234.

\(^{376}\)Granville Austin’s, *The Indian Constitution, Cornerstone of a Nation*, In Kesavaramanda Bharti Vs. State of Kerala. Granville Austin calls the fundamental rights of the principles of the state policy the conscience of the Constitution.

This Article prescribes general principles of social and economic rights to be followed by the State. Positive obligations are placed on state agencies by the Constitution, where economic, social and cultural rights require them to ensure the people their basic needs. The Article has the enduring vision and pervasive influence for a great Bhutan. However, the principles of State policy are not enforceable in the court of law. This Article is the road map in formulating the policy of the government. Most of them are non-obstante clauses. Prof. Ben Saul observed that:

“Under Article 9 of the Constitution, the principle of state policy looks like what you might describe as social or economic rights under international law. And we said Civil and Political Rights are classically justiciable in many countries through the courts. Whereas a traditionally social and economic rights are not considered justiciable why so these arise to health care, education, work rights and so forth and its traditionally claimed that these are not appropriate for enforcement by the courts.”

According to the former Chief Justice of India, J.S. Verma:

“The provisions are similar for the creation of a welfare state towards the pursuit of the goal of Gross National Happiness. The concept of GNH encapsulates the vision of a welfare state under this Article.”

The Government in power must endeavour to follow the principles, ideals and goals set forth in this Article. Otherwise, erratic changes may occur after every election with uncertainties. The objectives of this Article are to endeavor for up-liftment of the disadvantaged and remove inequality by following these guidelines.

(a) Establish Bhutan as a welfare state and to secure socio-economic democracy by rendering social services to the people and promoting their general welfare;
(b) Set out the aims and objectives of the Government;
(c) Be conscious of these principles while enacting laws and framing policies;
(d) Impose positive obligations on the Government to implement the policies;
(e) Constitute social and economic programmes for a progressive democratic state;
(f) Implement Social, Economic and Cultural rights;
(g) Provide social and economic justice;
(h) Promote social equality to avoid concentration of wealth in the hands of a few people;
(i) Promote justice as harmonious reconciliation of individual conduct with the general welfare of society;
(j) Foster social justice to eliminate inequalities of wealth and opportunity;
(k) Advance economic justice for distribution of material resources for common good, national interests and prevent concentration of wealth;
(l) Avoid any unreasonable or arbitrary distinction among the people in political matters, contest in elections and participate in voting irrespective of race and any other status;
(m) Promote those conditions that is conducive to co-operation in community life and the integrity of the extended family structure;
(n) Strive to create conditions that will enable the true and sustainable development of a good and compassionate society rooted in Buddhist ethos and universal human values;

378 The presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee, 9th May 2008.
379 Supra, n.140.
380 Supra, n.134.
Encourage free participation in the cultural life of the community, promote arts and sciences and foster technological innovation; and

Protect and promote environment.

Commenting on the provisions of the Article, UNDP mentioned that:

“A number of the ‘Principles of State Policy’ under Article 9, designed to guide future legislation, point towards a fair and equitable society and other noble state objectives...The draft Constitution provides guidance for future legislators on how best to manage state finances for the long-term benefit of the people and in pursuit of the social ends discussed above.”\(^{381}\)

Elaborating on the Article, His Majesty Jigme Singye Wangchuck said:

“We have included many more fundamental rights for the wellbeing of our people than in many other developed countries. The main objective of including such rights in our Constitution is, first and foremost to our people. We have included such rights, after identifying the importance of welfare and benefits of those rights to our people... If our country does not progress economically, the fundamental rights, the economic rights, and the human rights enshrined under the Constitution would remain only on paper. They would not be guaranteed and translated into action. Therefore, it is very important to keep in mind that the economic prosperity is an important instrument to guarantee these rights.”\(^{382}\)

Another unique provision of this Article is Section 24 which provides that Bhutan shall promote goodwill and cooperation with nations and foster respect for international law and treaty obligations and encourage settlement of international disputes by peaceful means in order to promote international peace and security. Bhutan, as a peace-loving nation and as an integral member of the international community must respect international law and customary law, including those of Jus Cogens, pacta sunt servanda, principles of equality, principles of reciprocity and other principles.

Principles of State Policy are the guiding lights for good governance of the country, making it the duty of the State to apply these principles in making laws to establish a just society in the country. It aims to create social and economic conditions under which the citizens can lead a good life. They also aim to establish social and economic democracy through a welfare state. State policy enshrines the directive principles of establishing Bhutan as a welfare state and to secure socio-economic democracy, and social and economic justice. Bhutan should have strong, progressive and good governace.

Justice Michael Kirby said:

“If you take, for example, the human rights provisions guarantying the rights to the citizens and then all persons in Bhutan. There are provisions among those in Article 9 that appears arguably non justiciable. Take, for example, the state shall strive to promote those conditions that will enable the pursuit of Gross National Happiness. This is

\(^{381}\) Supra, n. 234.
\(^{382}\) Public Consultation in Paro, 9th Nov. 2005.
possibly the provision in your Constitution that is most known in the world because I don’t think any other Constitution has such a provision and it’s been noticed by lot of people. It’s very innovative provision and I have already said to you that I think that pursuit of happiness is very proper objective and ideal of government but what would happen if somebody came alone and said; while we don’t think that an act requiring, say licenses for digging for garbage half a meter under the ground we don’t think that is pursuing the Gross National Happiness because we think people will be happier if they can get the garbage and sell it to foreigners.”

Article 9
Section 1

“The State shall endeavour to apply the Principles of State Policy set out in this Article to ensure a good quality of life for the people of Bhutan in a progressive and prosperous country that is committed to peace and amity in the world.”

Under this Article, the Government is directed to follow sound and progressive economic policies. However, this provision grants the flexibility required to the State to respond dynamically to changing situations. It allows for a choice of policy tools to achieve the national goals enshrined in the Principles of State Policy.

It was not deemed necessary to strengthen the obligation of the State to pursue the Principles of State Policy nor provide a mechanism to ensure regular accountability to progress towards them through the annual reports of the Prime Minister to Parliament nor in the responsibilities of the Lhengye Zhungtshog.

Trust must be reposed in the future leaders to follow and caution the erring leaders. However, Bhutan must be cautious of new forms of economic and political domination. According to Graham Wallas:

“the master task of civilized mankind is to promote the conditions leading to the good life.”

Article 9
Section 2

“The State shall strive to promote those conditions that will enable the pursuit of Gross National Happiness.”

383 Supra, n. 69.
384 Responsibility of the party in power centers on the conduct of the government, usually in terms of policies. The party in power has a responsibility, broadly defined, for the general management of the government, for its manner of getting results, for the results achieved, for the consequences of inaction as well as action, for the intended and unintended outcome of its conduct of public affairs, for all that it plans to do, for all that it might have foreseen, for the leadership it provides, for the acts of all of its agents, and for what it says as well as for what it does. Party responsibility includes the responsibility of the opposition party, also broadly defined, for the conduct of its opposition, for the management of public discussion, for the development of alternative policies and programs, for the bipartisan policies which it supports, for its failures and successes in developing the issues of public policy, and for its leadership of public opinion. The opposition is as responsible for its record in Parliament as is the party in power. It is important that the opposition party be effective but it is equally important that it be responsible, for an irresponsible opposition is dangerous to the whole political system.
Gross National Happiness is the grand vision of His Majesty Jigme Singye Wangchuck that encompasses a wide spectrum of policies, aspirations and rights, whether political, economic, social, cultural or religious.

“Happiness” is mentioned in the Preamble, section 1 of Article 20 and in the explanation of the National Flag in the Constitution. Consequently, the pursuit of happiness is inviolable. Therefore, the Constitution Drafting Committee incorporated the concept of the Gross National Happiness (GNH) espoused by His Majesty Jigme Singye Wangchuck. The incorporation of Gross National Happiness under the Principles of State Policy would perpetually remind the Government to pursue happiness for the people. It is the national objective of the Kingdom. Gross National Happiness is a dynamic concept, which is unique to Bhutan. If conditions change, the nation must adjust. It is entrusted to the positive and creative actions of the people. It is not the final destination that sterilizes growth, scuttles imagination and undoes its very meaning—the happiness. It is a beckoning call with infinite horizon.

Gross National Happiness is gaining a global perspective. This profound concept is now a subject of discourse among scholars, academics, and all public intellectuals. It is being adopted as a progressive inspiration for policy by leaders around the world. This is good because it means the involvement and participation of the people as well as responsibility and ownership by the people.

His Majesty Jigme Singye Wangchuck introduced this concept at a time when the world was interpreting development as the narrow concept of Gross National Product. That narrow focus on consumerism has now proven to be disastrous on the earth and on human development. Bhutan wanted to raise the level of human contentment and well being with a holistic approach to development and change. Sustainable economic development is necessary to free the people from poverty. Culture is necessary to strengthen national identity and preserve traditional values. Spiritual development strengthens moral and ethical values that laws cannot substitute. The environment is the natural legacy that is our responsibility to preserve for future generations. Bhutan has always preserved this holistic balance and the interdependent existence of all life forms. A disturbance of any of them will destroy the natural balance and cause discontentment and unhappiness.

The Principles of State Policy require the state to secure a social order for the promotion of welfare and happiness of the people. It provides for securing distributive justice and right of development with full dignity. Besides providing for the right to work, it also provides for just and humane conditions of work, free and compulsory education for children, promotion of the educational and economic interests of the weaker sections by prohibiting monopolies, improving public health by raising the level of nutrition and standard of living, and protection of environment, ecology and wild life, which have been enshrined under this Article.

In short, while the Fundamental Rights in Article 7 guarantee the civil and political rights of the individuals, the Principles of State Policy under Article 9 mandate the State to promote a welfare state wherein the economic, social and cultural rights of the people are realized. Therefore, the Constitution of Bhutan is very much in line with one of the theories of politics called the “theory
of democratic prosperity”, which holds that democratic stability is possible only in the presence of general economic prosperity.386

The concept is not absolute, its principle is not dogmatic. Hence, the Constitution does not elaborate it for its operation. The principle cannot be challenged according to personal wishes and micro desires. Thus, it is non-justiciable.

The first component of Happiness is sovereignty. Sovereignty is mentioned thirteen times in the Constitution. The inherent nature of sovereignty is independence and self determination. The first Constitutional right and duty is to the sovereignty of Bhutan. The Buddhist text mentions that independence is happiness and subjugation by another is worry.

Freedom is indispensable to happiness. Freedom of speech, opinion and expression are the expressions of one’s conditions. These are manifested in Buddhism through the liberation of eight freedoms.387 Freedom is facilitated by rights. As a human being, one has certain natural rights, which are enshrined in the Constitution.

George Mason wrote:

“...all men are born equally free and independent, and have certain inherent natural rights ... among which are the enjoyment of life and liberty.”388

Notwithstanding this, every right is correlated with duties towards others. It is for symbiotic living and peaceful co-existence. The duties are not selfish as expressed through the eight fold paths of Buddha. The rights are towards others and for the future generations.

There have always been competing arguments and controversies regarding civil and political rights on the one hand, and socio-economic rights on the other hand. While the developed countries have given more emphasis on the civil and political rights, the third world countries have always argued that economic rights are more important than civil and political rights. Bhutan however, has maintained the right balance by according equal importance to both these set of rights. The Constitution of Bhutan contains a comprehensive list of both the civil and political rights as well as the economic rights. It is a very unique feature of our Constitution. For Bhutan, the civil and political rights as well as the economic rights are equally important. The Government of Bhutan sees the civil and political rights as complimentary to economic rights and not as contradictory.

As Amartya Sen said:

“the civil and political rights help to minimize various un-freedoms that exist in the society”.389

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386 The presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee, 9th May 2008.
387 The eight freedoms are (1) in a hell realm, (2) in the hungry ghost realm, (3) in the animal realm, (4) in the god realm, (5) in an uncivilized region, (6) in a body with incomplete mental or physical faculties, (7) with wrong views, and (8) in a place where the Buddha has not appeared. Refer, Tshangnyon Heruka, The life of Milarepa, 2010.
Bhutan and its Constitution recognize the economic and cultural rights as vital for growth. The social and cultural rights which are exhaustively included under Article 9 aim to ensure that everyone has access to resources, opportunities and services essential for an adequate standard of living. The State has the obligation to create an enabling environment within which people can gain access to these rights and improve their quality of life and well-being. Moreover, the right to culture enables an individual to freely take part in the cultural life of his or her community; to enjoy the benefits of scientific progress and its application. It can be said that the Constitution of Bhutan is not only a political document but a social and economic document.

According to the Constitution, the State is obliged and duty bound to consider these rights in formulating and implementing its policies relating to development, law reform and application of law.

Happiness is not merely a pleasant sensation. It is the objective of the Constitution and of the Government to secure the greatest degree of happiness to the people. John Adams rightly said, “The happiness of society is the end of government”. Similarly, Spinoza begins by making happiness as the goal of conduct. Thus, the Constitution enshrines GNH as a goal to fulfill the promise of happiness enshrined in the Preamble. The Constitution creates a legal framework, a structure of government through which to fulfill the promise of happiness, and the Preamble explains the reason that it lives. The Constitution is a body of law, but the promise of happiness contained in the Preamble and under Article 9 is its soul.

Article 9  
Section 3

“The State shall endeavour to create a civil society free of oppression, discrimination and violence, based on the rule of law, protection of human rights and dignity, and to ensure the fundamental rights and freedoms of the people.”

This provision enshrines the State’s obligation to create a free society based on the rule of law. The phrase ‘civil society’ itself has an obligation of fairness as Michael Powell states that “we owe fairness to all, allegiance to none.” The road to democratic stability requires governmental, private and voluntary associations to work together to constantly rebalance political and social forces as circumstances demand.

Volunteerism is the essence of democracy. The main purpose of civil society is to fight for the maintenance and/or rehabilitation of norms of decency and fairness, which is based on volunteerism. The role of reasoned discussion and debate in democracy cannot be overestimated. In that sense, an active civil society becomes a pre-requisite for democracy. An active civil society provides mechanisms for people to contribute to the building of their society, spreading the roots of democracy broadly and deeply, and giving all citizens a stake in their democratic experiment. Therefore, civil societies can play a constructive role towards successful democracy.

A Civil society facilitates better awareness and a more informed citizenry, which in turn mean

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390 John Adams, Thoughts on Government, 1776, p.2.  
391 Supra, n. 294.  
392 John Simons, Just Don’t Call Him Junior Michael Powell’s Father is a War Hero named Colin. But Michael, as FCC Chairman, is the Powell corporate America cares about most, Fortune, 2001.
better voting choices, greater participation in politics and an augmented capacity to hold the
government accountable. It is for these reasons that the state must allow for the functioning of a
civil society which is free of oppression, discrimination and violence, which is based on the rule
of law, protection of human rights and dignity, and, which can in turn ensure the fundamental
rights and freedoms of the people.

Alexis de Tocqueville observed:

“\textit{The health of a democratic society may be measured by the quality of the functions}
\textit{performed by private citizens.}”\textsuperscript{393}

Civil society has heavy responsibilities under this section. If Government fails in certain areas,
the civil societies must supplement. However, civil society cannot be a parallel government and
should not undermine an elected government. Unelected organizations must have restraint under
the democratic principle or else unbridled chaos will reign.

\textbf{Article 9}

\textbf{Section 4}

\textit{“The State shall endeavour to protect the telephonic, electronic, postal or other}
\textit{communications of all persons in Bhutan from unlawful interception or interruption.”}

It is the fundamental right of the people to be secure in their persons, houses and effects, against
unreasonable searches, seizures and interception. Therefore, it is the duty of the state to
guarantee the right to privacy. Any invasion of personal privacy must be clearly prescribed by
law.

\textbf{Article 9}

\textbf{Section 5}

\textit{“The State shall endeavour to provide justice through a fair, transparent and}
\textit{expeditious process.”}

It is the duty of the State to guarantee and administer justice.\textsuperscript{394} This section is complimentary to
the right to information under Section 3 of Article 7. Socrates said, \textit{“Justice is virtue and
wisdom.”}\textsuperscript{395} Every legal action by the state must be just, fair and characterized by transparent
and expeditious processes. According to Lord Denning, \textit{“No public authority was free of duty to
be fair.”}\textsuperscript{396} Transparency is supplementary to fairness. Public gaze deters transgression.

Expeditious process must be an ongoing policy. Endless snarls and indefinite delays must be
curbed. Thus, the State organ must ceaselessly improve the methods of public service through
timely and regular review, to respond to changing situations. However, expeditious process must
not include the process without proper investigation and inquiry. Incomplete process would deny
fair trial and cause miscarriage of justice.

\textsuperscript{394} There are three types of justice (a) Corrective Justice where infringed justice is rectified through corrective justice by Court. (b) Distributive
justice where fair division of social benefits and burden through Constitutional and Legislation through sumnum bonus (the greatest good) –
right to vote, own property, etc. (c) Social Justice giving food, clothing, etc and distributing surplus in a fair and equitable manner.
Article 9
Section 6

“The State shall endeavour to provide legal aid to secure justice, which shall not be denied to any person by reason of economic or other disabilities.”

Legal aid upholds the rule of law and stabilizes the society as a whole, by enabling the poor to regularly seek redress of their grievances through formal legal processes. The right to free legal service is a constitutional right of every accused person who is unable to engage a lawyer. The role of legal aid is to ensure that all people, regardless of income, have access to justice. It is one of the indispensable components of fair trial. In Bhutan legal aid is not a new concept, it is already provided in the Civil and Criminal Procedure Code 2001 on the Royal Command of His Majesty Jigme Singye Wangchuck.

Article 9
Section 7

“The State shall endeavour to develop and execute policies to minimize inequalities of income, concentration of wealth, and promote equitable distribution of public facilities among individuals and people living in different parts of the Kingdom.”

This section incorporates the scope of social benefits. The Government must try to minimize inequalities through tax and other methods. The Government must not favor particular groups or promote the patronage of the few. It is as Roosevelt said, “true individual freedom cannot exist without economic security and independence. Necessitous men are not free men.” Income disparities cause migration and instability. The mitigation of inequalities ensures good governance and happiness.

Article 9
Section 8

“The State shall endeavour to ensure that all the Dzongkhags are treated with equity on the basis of different needs so that the allocation of national resources results in comparable socio-economic development.”

The Government of Bhutan must not favour a few and neglect the rest of the Dzongkhags. Equal treatment and fairness must be the cardinal principle of the administration of the Government. Aggressive power and numbers must not dictate to the silent and suffering minority. This section complements the policies under section 5 of Article 17, section 18(c) and (d) of Article 22.

His Majesty Jigme Singye Wangchuck embarked upon the path of equal treatment by celebrating the National Day in different Dzongkhags. All the senior officers from various Ministries and departments were there to sensitize the public. The people spoke to their King.

Article 9

397 Franklin D. Roosevelt, FDR’s Fireside Chats, 1944, p.292.
Section 9

“The State shall endeavour to achieve economic self-reliance and promote open and progressive economy.”

In His Coronation Speech, His Majesty Jigme Singye Wangchuck proclaimed,

“the most important task before us at present is to achieve economic self-reliance to ensure the continued progress of our country in the future. Bhutan has a small population, abundant land and rich natural resources and sound planning on our part will enable us to realize our aim of economic self-reliance in the near future.”

In His successive speeches, He explained:

“All of us today must be aware of economic self-reliance or the capacity to stand on our own feet is vitally important in safeguarding the sovereignty and independence of our country.”

In His Majesty’s words, in the Fifth Five year plan policies, the following five points encompass the essential aspects of all policies and development strategies:-

“The first policy is to bring about Dzongkhag self-reliance. Towards this purpose, specific plans have been prepared for each Dzongkhag with the objective of making them economically self sustaining in the shortest possible time, taking into account the local characteristics, potentials and needs. The practice, so far, has been to make only one National Plan that covered all the Dzongkhags in the country.

“The second policy is the decentralization of administration and implementation of Dzongkhag Plans. This policy is directed at bringing about greater involvement of local officials and people in the formulation and implementation of Dzongkhag Plans. Under this policy the Royal Government has so far appointed 31 competent and senior officers in various Dzongkhags. These are in addition to those officers already transferred along with the decentralized programmes.

“The third policy is to reduce expenditure on Government establishment. The total establishment cost of the Government during the Fifth Plan had been initially estimated at Nu.144.00 crores. However, after extensive discussions and with great difficulties, the total establishment cost has been reduced by Nu.29.14 crores. It is our policy to reduce such costs even further wherever possible, since this is recognized as one of the key factors in our effort to achieve economic self-sufficiency.

“The fourth policy is to increase the revenue of the Government. In order to fulfill this policy objective, we propose to invest Nu.50.00 crores in revenue generating industries

398 During the presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee on 9th May 2008, the Chairman explained that with regard to the term ‘open economy,’ much time on the term has been spend and found many explanations to it. Under the word open, one is that the Government allows the trades openly on the same terms will all other countries and other is that the trade is but with conditions which restricts the trading of certain items. The current system is called the ‘progressive economy’.
such as wood and mineral based industries and other economically profitable venture. In doing so, we hope to be able to raise our net national revenue.

“The fifth and the most important policy is to motivate and mobilize people’s participation in all developmental activities. The time has now come when the people must realize and be grateful to the Government for what it has done for their welfare and development. We all must now respond positively and participate actively in all the development programmes that will have to be implemented during the Fifth Plan.”

Article 9
Section 10

“The State shall encourage and foster private sector development through fair market competition and prevent commercial monopolies.”

The Government considers the private sector as the “engine of growth”. His Majesty Jigme Singye Wangchuck sold shares to the private persons from the Government Corporations and privatized many industries and Corporations. He encouraged private persons to make investments in which the Government supplemented eighty percent of investment against twenty percent by private persons. Management was divested to the share holders. This policy had a positive impact. However, commercial interest and public interest should not collide. The Government must be vigilant. Monopolies restrict free economic competition and can result in unfair pricing and restrictive trade practices to the detriment of the populace, especially the less privileged competitors and the State.

Competition avails economic or participative justice. The value of unrestricted competition generates public good. Free and fair competition enhances public confidence in a government. Privatization without monopoly is service to consumer and incentive for growth. In the absence of competition, privatization will stifle growth and improvement. Entrenched economic position will make the industries struggle in open competition and annihilate public confidence. Therefore, this section contends against monopolies and monopolistic practices. Public must benefit from economic prosperity. Buddha said, “The best way to assist the people and provide for their security was to concentrate on building a healthy economy.”

Article 9
Section 11

“The State shall endeavour to promote those circumstances that would enable the citizens to secure an adequate livelihood.”

This section enumerates the Government’s obligation to provide an adequate livelihood. Life is illuminated by right to livelihood according to Buddha. The Government should try to promote the circumstances that would aid in creating opportunities and prospects to enable the citizens an adequate livelihood. The Government should try to create self-employment and also ensure old age pensions as a component of this obligation. This provision does not include the granting

399 Supra, n.202, p.312.
400 In a Bhutanese Proverb - The work is being done by young people; the food is eaten by older people.
of employment in the Civil Service or public service, as these posts are restricted in number and based on merit.\textsuperscript{402}

Montesquieu said:

\begin{quote}
\textit{“The alms given to a naked man in the street do not fulfill the obligations of the state, which owes to every citizen certain subsistence, proper nourishment, convenient clothing, and a kind of life not incompatible with health.”}\textsuperscript{403}
\end{quote}

Public service is not charity. It must deter laziness and promote merit. \textit{“We should try to succeed by merit, not by favour”}\textsuperscript{404} said Plautus.

\textbf{Article 9}
\textbf{Section 12}

\textit{“The State shall endeavour to ensure the right to work, vocational guidance and training and just and favourable conditions of work.”}

This section generally falls under substantive right. The Nation needs agricultural infrastructure and industrial high-tech bases to enable the Government gainfully employ every person and make him or her independent by ensuring just and favourable conditions of work. The Government should study, facilitate and encourage avoidance of mismatch of jobs. Vocational guidance and training to address shortage is essential. It would help the country in providing workers at different levels.

Buddha advised the King as:

\begin{quote}
\textit{“...ample opportunities for training should be made available to help people master the trades they choose.”}\textsuperscript{405}
\end{quote}

Payment for their labour is important for gainful employment and for the building of the nation. The Government should ensure through legislation, better and favourable conditions of work and adequate safety measures. Safety and healthy conditions are of paramount importance for greater result and output.

\textbf{Article 9}
\textbf{Section 13}

\textit{“The State shall endeavour to ensure the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.”}

The State, through legislation must ensure the right to rest and leisure, a reasonable limitation of working hours and paid holidays for health and psychological well-being. No one should exploit

\begin{flushend}
\begin{flushend}
the distressed conditions and helplessness of another person. Every human being has the duty to treat others humanely.

According to Oliver Sheldon:

“Workers should have adequate leisure and the working hours should not be unduly long. There should be adequate provision for holidays as leisure is creative and excessive working hours are harmful. They destroy interest in work. Adequate rest is essential to good health and the maintenance of physical vigour and enthusiasm. A person can develop himself as a human being only when he has adequate leisure.”

Article 9
Section 14

“The State shall endeavour to ensure the right to fair and reasonable remuneration for one’s work.”

Employment should be mutually compatible and gainful. This section protects against labor exploitation and particularly discourages taking advantage of people in distressed economic circumstances. An enlightened and humane personnel policy denotes happy employees. One is expected to do one’s job well and be treated with dignity. This provision relates to the freedom to practice the trade or profession of one’s choice and directs the government to pay justly for one’s work.

Article 9
Section 15

“The State shall endeavour to provide education for the purpose of improving and increasing knowledge, values and skills of the entire population with education being directed towards the full development of the human personality.”

This provision is a constitutive directive. It helps to create or constitute a society’s basic value like right to free public education and livelihood. Bhutan should be committed to impart knowledge, advance learning and cultivate wisdom through its education system.

Education is a powerful instrument for profound social transformation to shape the nation. The education system must empower people for self development, personal enhancement and courage, to meet the moral challenge of the age and play its part in the life of the community, besides normal purpose of enhancing literacy and imparting information. Education liberates the mind and promotes self-preservation. It is the pursuit of knowledge and virtue. Education, with strong moral principles, penetrating minds, unconstrained creative ideals and burning conscience, would aid Bhutan to advance towards Gross National Happiness. This provision

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408 Royal Decree 1995 and National Assembly Resolution 65-20(9).
409 Ibid.
carries a blazing mission to enlarge the ability of the people to contribute to the common good in the interest of the nation.

**Article 9**

**Section 16**

“The State shall provide free education to all children of school going age up to tenth standard and ensure that technical and professional education is made generally available and that higher education is equally accessible to all on the basis of merit.”

His Majesty said that the Constitution must have the right to education till certain level. In many countries free education is provided by the State only up to the primary level but Bhutan has attached the highest priority to education and made a special effort to provide free education till the tenth standard and for all those who qualify even up to the university level. Capable students are also given Government scholarships to study outside the country. The aspiration of the Bhutanese must be realistic. People must be educated to gain knowledge which is akin to power.

Education is not compulsory. If it is so, it entails legal connotations. The Government has to unnecessarily spend for unwilling students. Moreover, it would entail unreasonable burden on the parents. Education is essential to the fulfillment of the aspirations of the talented individuals and it is the most powerful weapon to change the nation.

The submission of raising the level of free education upto twelfth standard during the first Parliamentary session was not considered for the reason that education is very expensive. Despite the shortage of funds and scarcity of resources, Bhutan has provided for free education. Generally, basic education is up to tenth standard. Twelfth standard is categorized as pursuit of higher education. Also, during the public consultation meetings in twenty Dzongkhags, Their Majesties explained that by international norms, free education was provided by the state up to the primary level. Their Majesties also mentioned that if Bhutan has enough funds, the Government can continue to support students to pursue their studies upto university level. Moreover, there will be legal and economic ramifications. This right means that the Government has to provide compulsory education upto twelfth standard under any circumstances regardless of the number of students and remoteness of the area. It is a pious expression of constitutional will and hopefully, a strong economy will help achieve the aim.

Recalling the historical events, His Majesty the Fifth Druk Gyalpo said:

> The problem that our country might face in the future is uncertain. For example, in 2003 our country has faced the security threat and none of us in the 70’s and 80’s has foreseen that we would face such sovereignty and security threat in 2003. No one has known about it and similarly in future we shall not know what kind of problems we will face in our country. We will not be able to tell whether we will face security threat, political problem or any other problem However, as always said by His Majesty Jigme Singye Wangchuck,
it is important to give power and responsibility to our people. Having been thus empowered, it is the collective responsibility of all the people of Bhutan to work together for the common cause of our country and well being of our people. Our people are the ones who best know themselves, the problems they face as well as the country. Likewise in future, incase our country goes through difficult period, our people will know what to do and our people will have to take the responsibility of serving the country during those times. His Majesty Jigme Singye Wangchuck has not decentralized the power to the people with doubt in the ability of our people. So far our people have shouldered responsibilities and during these times that the country was going through difficult times, the people have come forward to solve it. With these positive experience in mind and certain that our people are ready, His Majesty Jigme Singye Wangchuck is handing over the power and responsibilities to us.414.

“What you have said is true. In our country, our people are the biggest and the most important wealth. In other countries, some have oil and petroleum wealth while some have mineral resources such as gold, pearls, gem stones etc. Since we do not have such wealth, our people are our priced and the most important wealth. In order to make the people more beneficial and helpful for the country, it is vital to provide good education to the people. If the people are firm and stable, then the country will also be firm and stable. From the day of His Majesty Jigme Singye Wangchuck has ascended on the golden throne, His Majesty has provided schools and institutions to people in our country because he considered education very important. I accompanied His Majesty on tours to all the 20 Dzongkhags from 1980-1990 and even these days when I accompany His Majesty to the 20 Dzongkhags, I notice that each year, there is an improvement in the standard of schools and the teachers. I feel proud, content and happy to see such developments. In our country, our people will become stable if we can provide good education to our young boys and girls. I feel that the country will remain firm and secure at all times as long as our people are firm and stable.415 In our Constitution, provision for free education till 12th standard is not provided because, firstly our country is not rich like other countries. If our country prosper and develop well from year to year, it will be good to provide free education till 12th standard. Taking into consideration our country’s economy, development and revenue, the government can provide free education till 10th standard only at the moment. If we can make our country develop and prosper, then it will be possible to provide more education to our youths. The census conducted in our country, about 48% of our population consists of youths below the age of 15 years. About half of our Bhutanese population comprises of school going children. Since majority of our population is comprised of very young people, besides giving them good education, it is also important to educate them in the way they think and make them responsible and teach them ways to shoulder responsibilities. If we can do that, then our youths will be able to serve the country well and the schools will be able to produce future leaders and responsible citizens. Therefore, it is crucial to provide them with good education and training. Since there are many young boys and girls here, I want to say that you all have to keep in mind that you have a big responsibility upon your shoulder.

Regarding free education, it is mentioned that the State shall provide free education up to 10th standard. Most of the our People in other Dzongkhags have expressed that it would

415 Public Consultation in Gasa, 13th May 2005.
be of immense help if the government could raise the level of free education up to 12th standard. We all know the importance of education but we should also know whether the government is in the position to provide or not. For the time being, the government could provide free education up to 10th standard only. If the government should provide free education beyond 10th standard then it must be done in accordance with the economic development of our country. If we must strengthen our country we have to strengthen our people. If we could make our people strong enough then the country will be naturally strengthened. Therefore, providing good education to our children is very important. The fact that our children are in schools will not serve the purpose. We should also see how they are studying and how the teachers are teaching the students. If the economy of our country prospers year by year and the new political system proves successful then our country will naturally become richer and richer. And when the country becomes prosperous the government may provide free education not only up to 12th standard but may be able to provide up to 13th, 14th and 15th standard. On the other hand, if our new political system proves unsuccessful and if our people and country faces great difficulties then government may not be able to provide free education up to 10th standard also. Therefore, we the people must shoulder greater responsibilities to the successful implementation of every work.\footnote{416}

Article 9
Section 17

“The State shall endeavour to take appropriate measures to eliminate all forms of discrimination and exploitation against women including trafficking, prostitution, abuse, violence, harassment and intimidation at work in both public and private spheres.”

This provision enshrines the principle of equality of rights and respect for human dignity concerning women. Bhutanese society is not afflicted by significant social inequalities. It is a society where the status of men and women is by and large not prescribed by any religion, legal or social laws but has developed naturally on the basis of human psychology and sound reason. Even so, the State is obligated to take appropriate measures to eliminate all forms of discrimination and exploitation against women, and intimidation at work, in both public and private spheres. It is the right and vindication of the important role that women have played in Bhutan in upholding values and the social fabric. Women must be free from any form of exploitation and harassment. Discrimination breeds prejudice. Exploitation incubates revenge. Therefore, the State shall endeavour to take appropriate measures to eliminate all forms of discrimination and exploitation. Initial Comments by UNDP stated:

“The draft Constitution respects and codifies Bhutan’s obligations under international law. Specifically, Bhutan’s international treaty obligations under the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) are picked up by Articles 9.17 and 9.18 respectively.”\footnote{417}

Article 9
Section 18

\footnote{416} Public Consultation in Bumthang, 21st May 2006.
\footnote{417} Supra, n.234.
“The State shall endeavour to take appropriate measures to ensure that children are protected against all forms of discrimination and exploitation including trafficking, prostitution, abuse, violence, degrading treatment and economic exploitation.”

Children must be protected against all forms of discrimination and exploitation. A challenged and unhappy childhood leads to social ills at a later stage in a person’s development. If remedial measures are taken early on to protect our children, then Bhutan will be blessed with healthy and responsible future generations. If children are neglected the progress of society is impeded.

According to a Bhutanese saying:

“Old people are fed with devotion, whereas small children are fed with affection.”

The child should be fully prepared to live as a productive individual in the society and be brought up in the spirit of the ideals proclaimed in the Charter of the United Nations.

Article 9
Section 19

“The State shall endeavour to promote those conditions that are conducive to cooperation in community life and the integrity of the extended family structure.”

A Family exercises a great influence on an individual’s attitude. Aristotle said that a family is a natural association and the State is an association of families and not of individuals. Therefore, the State should take the burden of promoting the conditions that are conducive to community life and integrity of the extended family structure. The State is committed to the well-being of the family and the individual. The importance of a family is embedded in Buddhist value particularly in the Sixteen Virtuous Acts.

US Supreme Court Justice Powell said:

“Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition [a tradition not limited to] respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition.”

John Locke regards the family, the smallest unit of society, as the first society. It was the relation between husband and wife, which led to the relationship between parents and children. Such a society is made by a voluntary contract between man and woman. It is called conjugal society. Though, it consists chiefly in a communion between each other’s bodies as necessary for procreation, yet it draws with it mutual support and assistance and communion of interest. It is necessary not only to unite them in ease and affection, but is also necessary to their common

offspring who have a right to be nourished and maintained by their parents till they are able to manage themselves.\textsuperscript{419}

The institutions of family and property appeared in their rudimentary forms.\textsuperscript{420} Rousseau said “The most ancient of all societies, and the only one that is natural, is the family”.\textsuperscript{421} Buddha laid down a set of virtues to be followed by each family member. The Buddha emphasized the good actions which the son and daughter should perform for the pleasure and satisfaction of their parents. In the same way, the Buddha described a set of virtues to be followed by good parents as leaders of the family. The parents’ duties, in short, are to give instructions of virtues and knowledge to their offspring. They should be first teachers, shaping the fundamental behavior of their children and giving knowledge to them. The parents should send them to educational institutions and encourage and motivate desires for good actions in them. The last duty of the parents is to arrange for a suitable wife and husband, then give them the family heritage. The State and civil society must foster love of a spouse and joy of family.

\textbf{Article 9  \\
Section 20}

\textit{“The State shall strive to create conditions that will enable the true and sustainable development of a good and compassionate society rooted in Buddhist ethos and universal human values.”}

The state is required to create the conditions which promote a compassionate society rooted in Buddhist ethos; inter-alia pharchhendru\textsuperscript{422} to promote a civil society based on mutual respect and tolerant values. According to Buddha “a generous heart, kind speech and a life of service and compassion are the things that renew humanity.”\textsuperscript{423}

\textbf{Article 9  \\
Section 21}

\textit{“The State shall provide free access to basic public health services in both modern and traditional medicines.”}

Being a Buddhist country upholding the principles of the Four Noble Truths, the State should provide free access to basic health service to alleviate the suffering from sickness. Buddha said:

\textit{“A healthy person shuns the flames of sense desires.”}\textsuperscript{424}

In Bhutan health care is free for everyone. Medical cost one of the most difficult things even for the affluent people these days in larger countries unless you are wealthy or you are a person holding high office by virtue of which you get free facilities. For the common man it is difficult and is also very costly. Therefore, this provision endeavours the State to provide health care,


\textsuperscript{420} Ibid.


\textsuperscript{422} Gyalwang Drukpa,\textit{Thirty Seven Practices of Bodhisattvas(Commentary)},2013,pp 65-75.Pharchhendru are (i) Jinpa-Generious giving(ii)Tshulthrim-Sworn moral behavior (iii) Zepa-Patient endurance (iv)Tshundru- Perseverance (v) Samten-full concentration of deep mediation (vi) Sherab- Wisdom.

\textsuperscript{423} Irfanalli, \textit{101Selected Sayings of Buddha}, 2013, p.22.

\textsuperscript{424} Supra, n.202.
which is free and ensures that such health care covers traditional medicine along with modern medicine uniformly for every citizen. 425

**Article 9**

**Section 22**

*“The State shall endeavour to provide security in the event of sickness and disability or lack of adequate means of livelihood for reasons beyond one’s control.”*

Bhutan as a Buddhist country upholding the Four Noble Truth must care for its citizens and provide security in the event of sickness. This shall include support to cope with birth, aging, sickness, death and the provision of an adequate means of livelihood. 426

**Article 9**

**Section 23**

*“The State shall encourage free participation in the cultural life of the community, promote arts and sciences and foster technological innovation.”*

The Government shall encourage free participation of citizens in their cultural functions and must protect the art, foster technological advancement and scientific research for invention and discovery for the betterment of the country and Bhutanese people. Resurgent Bhutan must be a visionary at the core of innovation and progress, fostering creativity and talent to face the challenge of perpetual change, alleviate suffering and emancipate the mass. The nation must consistently explore new frontiers in science and technology for the betterment of the Society. 427

**Article 9**

**Section 24**

*“The State shall endeavour to promote goodwill and cooperation with nations, foster respect for international law and treaty obligations, and encourage settlement of international disputes by peaceful means in order to promote international peace and security.”*

Bhutan must promote goodwill and cooperation with nations. Buddha said “*Goodwill towards all beings is the true religion; cherish in your hearts boundless goodwill to all that lives.*” 428

Bhutan should remain a peaceful country. Therefore, the State shall endeavour to promote goodwill and cooperation with nations, foster respect for international law and treaty obligations and to promote international peace and security. Peace is the transcendental desire of humanity.

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425 During the presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee on 9th May 2008, the Chairman explained that if we go by the international system, basic health services must be provided free of cost by the Government and hence we must provide the same. The Government may increase the level of free basic health services in accordance with time and economic strength of the country in future. That is the main reason why we kept it at the basic level at present. Regarding the definition of the word ‘basic,’ the hon’ble members with medical background and experience have explained in detail and as such no further explanation is needed from my side.

426 Royal Decree 1997.

427 Quoted from the diary of the Chairman of the Constitution Drafting Committee, 2nd July 2004.

Article 10
Parliament

Parliament is a body representing different political opinions in the country, wherein all legislative powers are vested. It is a deliberative body where policies, welfare and development of the people and the nation are discussed. Parliaments are either uni-cameral or bi-cameral. Unicameral system was advocated by Jacob \(^{429}\) and bi-cameral was supported by John Adams \(^{430}\). Bi-cameral Parliament prevents hasty or ill-considered laws, which are drafted without proper reflection. It provides scope for political debates of diverse interests. The legislature is responsible for setting law, drawing up and adopting new laws, making alterations to existing laws, as well as for addition and repealing laws. In a constitutional State based on the principle of separation of powers, the legislative function is performed by Parliament. It is the legislator that makes laws according to the basic political decisions taken by the executive, which is also responsible for implementing them. Since, the legislative body is chosen in elections by the people and is thus subject to the will of the people, it is regarded as the highest form of State power.

One of the earliest Parliaments was the House of Lords of the 11\(^{th}\) century in the winter of Saxon King in 1245. Religious leaders from the counties attended the House. However, in England during the 14\(^{th}\) century, there was a division of the House of Lords and the House of Commons resulting in the establishment of the bi-cameral Parliament.

John Stuart Mill in his book on “Representative Government” made an important statement on the importance of Parliamentary control which runs thus:

“There is a radical distinction between controlling the business of Government and actually doing it. The same person or body may be able to control everything, but cannot possibly do everything and in many cases its control over everything will be more perfect, the less it personally attempts to do ...”\(^{431}\)

It is one question, therefore, what a popular assembly should control, another, what it should itself do .... Instead of the “function of governing, for which it is radically unfit, the proper work of a representative assembly is to watch and control the government; to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which many consider questionable; to ensure them if found condemnable, and, if the men who compose the government abuse their trust, or fulfill it in a manner which conflicts with the deliberate sense of the nation, to expel them from their office and either expressly or virtually appoint their successors. The learned Author also stressed that an important function of parliament was to be a sounding board for the nation’s grievances and opinions, “an arena in which not only the general opinion of the nation, but that of every section of it ..... can produce itself in full light and challenge discussion.”

It has been well said that the government has indeed to be “responsive” to Parliamentary opinion, as well as the weight of the opinion in the electorate at large, but one must not imagine what is in any sense a delegate or agent of Parliament. Parliamentary Government is not a Government by

\(^{429}\) Walter F. Murphy, Constitutional Democracy: Creating and Maintaining a Just Political Order, 2007.
\(^{431}\) John Stuart Mill, Consideration on Representative Government, 1865, p.36.
Parliament. The government governs in and through Parliament. John Stuart Mill also stated in his book: main constitutional functions: making laws; controlling national expenditure and taxation; and a third class of function, comprising criticism of national policy, scrutiny of central administration and procuring the redress of individual grievances.

Parliament can be likened to a “grant inquest of the nation”. Since governments’ policies and its conduct of administration are subjected to open scrutiny and adverse criticism does not come only from members on the opposition side, it provides a forum for ventilation of the grievances of individuals, localities and organized groups.

Parliament in Bhutan
His Majesty the Third Druk Gyalpo established the National Assembly of Bhutan in 1953 and the Royal Advisory Council in 1965. The Members of the Royal Advisory Council were the members of the National Assembly and the Cabinet concurrently. In a certain way, the Royal Advisory Council was the second Chamber. Therefore, in principle, Bhutan has been following the bicameral form of Parliamentary system since the establishment of the Houses. The Constitution continued the bicameral system when Bhutan embarked upon constitutional parliamentary democracy.

Bhutan being a small country, many people suggested a unicameral system. While recommending a bicameral system, His Majesty did not want the prefixes “Upper” and “Lower”, as they created distinction and hierarchy. Under the Constitution, both the National Assembly and the National Council have equal powers except with regard to money and financial Bills, which can be introduced only in the former. Hence, Bhutan has adopted a bi-cameral Parliamentary system. It incorporates the doctrine of fairness, the purpose of which is that no discussion should be exposed to any single view.

Bicameral system also provides vertical checks and balances. If the whole legislative power is vested in a single body, there can be no restraint upon the exercise of that power and of any usurpation, which it may seek to excuse or justify. It provides broader scope for diverse interests in political debate. It checks the excesses and authoritativeness of the majority.

John Adams said:

“I think a people cannot be long free, nor ever happy, whose government is in one assembly. My reasons for this opinion are as follows:

(1) “A single assembly is liable to all the vices, follies, and frailties of an individual; subject to fits of humor, starts of passion, flights of enthusiasm, partialities, or prejudice, and consequently productive of hasty results and absurd judgments. And all these errors ought to be corrected and defects supplied by some controlling power.

(2) “A single assembly is apt to grow ambitious, and after a time will not hesitate to vote itself perpetual. This was one fault of the Long Parliament; but more remarkably of Holland, whose assembly first voted themselves from annual to septennial, then for life, and after a course of years, that all vacancies happening by death or otherwise, should be filled by themselves, without any application to constituents at all.

(3) “A representative assembly, although extremely well qualified, and absolutely necessary, as a branch of the legislative, is unfit to exercise the executive power, for want of two essential properties, secrecy and dispatch.
(4) “A representative assembly is still less qualified for the judicial power, because it is too numerous, too slow, and too little skilled in the laws.

(5) “Because a single assembly, possessed of all the powers of government, would make arbitrary laws for their own interest, execute all laws arbitrarily for their own interest, and adjudge all controversies in their own favor.”

The pious expression of the Constitution by conferring legislative sovereignty to Parliament and bestowing political sovereignty to the people of Bhutan imposes an imperative duty on the educated Parliamentarians to provide the nation with enlightened laws. Parliament is meant to be the citadel of justice and embodiment of crystallized wisdom and leadership. Parliament of Bhutan is the representative of the People of Bhutan. However, the representative should think of the national good.

Deliberative democracy favours hearing out every policy alternative and providing time to do research on it. It has enclave and conclave divisions. Therefore, boycotting parliamentary sessions or creating chaotic conditions negates the essence of Parliament. Making law does not solve problems. Law will be a helpless silent spectator if it is not supported by some other agencies. The most important agent of social control is not law. The agent of social control is our attitude to values.

Commenting on parliamentary democracy, Professor Benjamin Reilly said:

“Unlike many such systems the proposed second chamber comprises a combination of both elected and appointed members making the Bhutanese model distinct from both wholly-appointed second chambers such as the United Kingdom’s House of Lords or wholly-elected bodies such as the Australian Senate.”

“The overall structure of the proposed Bhutanese legislature is thus clearly bicameral and parliamentary. This model has both strengths and weaknesses which ... The drafters of Bhutan’s proposed Constitution were clearly aware of the drawback, and have gone to some lengths to try to minimize the potential for partly fragmentation... In comparative terms, the choice of a parliamentary system in Bhutan is thus eminently justifiable from the point of view of attempting to construct a sustainable democracy.”

The immunities are granted to the Members of Parliament in connection with the discharge of their duties, but immunities granted shall not cover corrupt acts committed by them for accepting money or any other valuables in consideration to speak or to vote in a particular manner.

The Constitution of Bhutan mentions “ethical standards” in section 16 of Article 15 and “ethics” under Section 4 of Article 26. Ethics is also known as moral philosophy, which addresses...
questions about morality. The word “ethics” is “commonly used interchangeably with morality. The types of ethics are realism and anti-realism under Meta-ethics (universal prescription, divine command theory and ideal observer theory), tribal and territorial morality.

Human morality\(^{436}\) evolved to restrict excessive individualism that could undermine a group's cohesion and thereby reduce the individuals' fitness. It is for ‘reciprocity’. Morality is not absolute, but relative. There are descriptive and normative moralities, political morality, legislative morality, public morality, morality and wealth, morality and politics, moral codes,\(^{437}\) neutral values, etc. Moral codes are ultimately founded on emotional instincts and leaders must provide moral leadership. Political morality was propounded by a Greek philosopher, Sophocles, who wrote “Nobody has a more sacred obligation to obey the law than those who make the Law”\(^{438}\) and John Ray, who said “They that make laws must not break them.”\(^{439}\)

This august body of national conscience is expected to show the highest moral and legal example by respecting and following the doctrine of separation of powers enshrined under section 13 of Article 1. Parliamentarians, in His Majesty’s words, must express their views freely on the floor of Parliament, but should not interfere with the executive and Judiciary through personal and official contact. It will tantamount to interference and violation of separation of powers and usurping of all the powers of the state. Chief Justice Marshall of the United States also held similar views when he said that under the Necessity and Proper Clause, the Court must give Congress sufficient space to use its enumerated powers to develop a vibrant national economy and society.\(^{440}\)

**Article 10**

**Section 1**

“There shall be a Parliament for Bhutan in which all legislative powers under this Constitution are vested and which shall consist of the Druk Gyalpo, the National Council and the National Assembly.”

Under the principle of separation of powers, all legislative powers under the Constitution are vested in Parliament. Parliament of Bhutan consists of the Druk Gyalpo, the National Council and the National Assembly. His Majesty Jigme Khesar Namgyel Wangchuck explained:

In summary, Parliament is the combination of both the Houses. The Houses consists of firstly the members of the National Council. The National Council consists of 25 members. The other House is the National Assembly. The National Assembly consists of the members of the Ruling Party and members of the Opposition Party. The two Houses together are called as Parliament. However, these two Houses will have joint sitting only if there are matters of importance to people.\(^{441}\)

\(^{436}\) Morality in the Latin is *moralitas*, which means “manner, character and proper behavior”.

\(^{437}\) One of the moral codes is the golden Rule which is “One should treat others as one would like others to treat oneself” or "ethic of reciprocity" and the Five Precepts and the Noble Eightfold Path of Buddhism.


\(^{440}\) McCulloch v. Maryland, 17 U.S316 (1819).

\(^{441}\) Public Consultation in Gasa, 13\(^{th}\) May 2005.
The inclusion of His Majesty as part of Parliament was criticized. The Constitutional Advisor, Mr. K.K Venugopal recommended His Majesty as part of Parliament. If His Majesty is excluded, the parliamentary legislative process would be incomplete as His Majesty cannot grant royal assent to any legislation. Exercising that power, His Majesty being head of state can summon the two Houses of Parliament and grant assent to legislation. Therefore, Professor Tushnet opined:

“The first component of the idea of the constitutionalism was that if you had a Constitution, constitutionalism requires that its provisions be curative. So if you have a Constitution that says the legislature has a certain domain of power and the executive can’t enter into that domain. This is the description of 1958 French Constitution. Then constitutionalism requires that when something falls within legislative domain; when the nation wants to pursue a policy about something that falls within the legislative domain, the legislature does it and not the President.”

As a legislative body, Parliament is both constitutive and abrogative. It can enact new laws and amend the laws, when necessary.

Article 10  
Section 2

“Parliament shall ensure that the Government safeguards the interests of the nation and fulfills the aspirations of the people through public review of policies and issues, Bills and other legislations, and scrutiny of State functions.”

Parliament is the conscience of the people. It is the institution through which the aspirations and interests of the people are communicated and fulfilled.

In words of Edmund Burke in 1774:

“Parliament is a deliberative assembly of one nation, with one interest, that of the whole, where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole.”

Parliament is the legislature with lawmaking powers and not simply a forum of delegates from various sectors of society. The political parties must gain enough support to win office, and they must advance the concept of public good. It must ensure that the Government safeguards the interests of the nation and fulfills the aspirations of the people. The representatives must discharge their responsibility through public review of policies and issues, Bills and other legislations, and scrutiny of State functions.

Besides national interests, the elected body must fulfill the collective dreams and common aspirations of the People.

His Majesty Jigme Singye Wangchuck said:

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442 Talk delivered to legal fraternity of Bhutan, 2010.  
443 Supra, n.433.
When the democratic form of governance and the people’s government is established in our country if you are able to elect a good government which would ensure the aspirations of the people, promote good governance, and strengthen political and economic stability in the country, then such government would guarantee you all these fundamental rights.  

Power of the Parliamentarians is through public review. Public review means that a motion must be tabled, debated and elicited public opinion elicited. Public knowledge guards the self-interests and public review promotes greater and common good. Therefore, public review must appeal to hope, to popular aspiration for economic prosperity and social peace.

Parliament creates the Government that commands majority and survives with confidence. Parliament discharges its responsibilities through public review, which imposes accountability and responsibility. They can be held accountable in three ways; (a) choice at the election stage, (b) through their continued interaction with their representatives the people of the respective constituencies can guide their representatives, what is to be done and what is not to be done, and (c) if the representatives fail to perform, their right to represent may be forfeited. It should ensure the national interest and be based on principles, values and aspiration of the people for responsible governance.

**Article 10**  
**Section 3**  

“The election of the members of Parliament shall be in accordance with the provisions of the Electoral Laws of the Kingdom.”

Electoral Laws are important to facilitate and express the will of people through free and fair elections in a democratic set up. Therefore, the founding fathers of the Constitution decided to keep certain important laws in place so that politicians cannot misuse and abuse the laws. Laws must prevent vested interest.

The Drafting Committee considered it as its responsibility to correct the historical errors and benefit from experiences of others. Acts can be amended. Amendments can be argued with experiences, to guard against personal interests and motives and to correct the wrongs.

His Majesty Jigme Singye Wangchuck said:

> From now onwards with the introduction of the new political system, as mentioned earlier, the biggest responsibility of our people at the time of election is to choose and send the best person.  

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444 Public Consultation in Paro, 9th Nov. 2005  
445 Quoted from the diary of the Chairman of the Constitution Drafting Committee, 2nd July 2004.  
446 Public Consultation in Zhemgang, 30th April 2006.
Article 10
Section 4

“A person shall not be a member of the National Council as well as the National Assembly or a Local Government at the same time.”

In the past a “Chimi”\(^{447}\) was member of the National Assembly, Dzongkhag Yargay Tshokchung as well as Gewog Yargay Tshochung. However, omnipresence of one person can create problems of conflict of interests and duty at different levels. Moreover, it is tyrannical to have one person combining power at different levels. It defeats the constitutional principle of checks and balances, separation of powers and the opportunity to ensure independent review.

Buddha said:

“Power abused is not all gain, Power is often folly’s bane.”\(^{448}\)

Article 10
Section 5

“The Druk Gyalpo shall summon the first sitting of Parliament after each general election.”

It is a parliamentary norm for the Head of State to summon the first sitting of Parliament after each general election. It provides a system to ensure that members are legitimately elected and the session is formally called to order.

Article 10
Section 6

“At the commencement of each session of Parliament, the Druk Gyalpo shall be received in a joint sitting of Parliament with Chibdrel\(^{449}\) Ceremony. Each session shall be opened with a Zhug-drel-phunsum tshog-pai ten-drel and each session shall conclude with the Tashi-mon-lam.”

His Majesty is the symbol of national unity and honour. Therefore, it is a ceremonioal pageantry for each session to be opened with a ceremonial procession namely, “Chibdrel.” Ceremonies draw people together and pageantry elates their spirit. Social gathering and ceremony generate general happiness in the society. Moreover, pageanties and ceremonies forge unity.

The session concludes with Tashi-Mon-lam\(^{450}\). This is a prayer which is specifically addressed for the health, well-being and prosperity of the persons in question and those present during the occasion. It is designed to help the persons accumulate merits so as to attain the highest qualities, which man is capable, benefiting not only himself but also those around him.

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\(^{447}\) Chimi refers to the representative of the people in the National Assembly before the adoption of the Constitution.


\(^{449}\) A ceremonial procession to receive and honour distinguished personages and personalities.

\(^{450}\) Prays for fulfillment of good wishes and aspirations.
All the ceremonies prescribed in the Constitution represent pre-eminent symbols of Bhutan’s national identity and sovereignty and are conducted to foster the well-being of the nation and its people.

**Article 10**
**Sections 7, 8 and 9**

“The Druk Gyalpo may address or sit in the proceedings of either House or a joint sitting of Parliament as and when deemed expedient.”

“The Druk Gyalpo may send messages to either or both the Houses as deemed expedient.”

“The House receiving the message shall, as early as possible, consider the matter referred to in the message and submit its opinion to the Druk Gyalpo.”

Parliamentary democracy entails the responsibility of the Head of State to address the House. In Bhutan, it is optional. The Druk Gyalpo may sit in the proceedings of either House or a joint sitting of Parliament as and when deemed expedient. Similarly, the Druk Gyalpo may send messages to either or both the Houses as deemed expedient. It is the custom established from the first session of the National Assembly since 1953.

The House receiving the message shall, as early as possible, consider the matter referred to in the message and submit its opinion to the Druk Gyalpo. It is parliamentarian courtesy to respond to the message of the Head of State. With courtesy and convention, Parliament exalts its position and commands respect.

**Article 10**
**Section 10**

“The Prime Minister shall present an Annual Report on the state of the nation, including legislative plans and the annual plans and priorities of the Government, to the Druk Gyalpo and to a joint sitting of Parliament.”

Reporting is an important administrative and legal process facilitating public scrutiny of the performance of the Government. This includes updates on implementation, budgeting and problems and obstacles encountered in the delivery of national plans. Public reporting enhances responsibility and accountability. Further, it is within the domain of public policy to review the annual plans and the state of the nation. No general program can be adopted and carried out without wide public support. It is in terms of party programs that political leaders can attempt to consolidate public attitude toward the work plans of government. Therefore, the Druk Gyalpo, Parliament and the people should be informed on the state of Bhutan by the Prime Minister. The report must be factual, and analytical and explaining whether the stated goals have been met or otherwise.

The report shall also include legislative plans for it is important to enforce certain discipline to avoid tabling undesirable private bills. Annual Report on the state of the nation, including legislative plans, annual plans and priorities of the Government must be presented for public
knowledge and to avoid ad-hoc decisions and diversionary and manipulative actions. Parliament must be the custodian of its decisions and accountable to the people.

Article 10  
Section 11  

“Both Houses shall determine their rules of procedure, and the proceedings of each House shall be conducted in accordance with its own rules. The rules of procedure in each House shall provide for the appointment of Committees to carry out the business of Parliament.”

Every deliberative body needs rules of procedure to maintain discipline of work, expedite business and avoid manipulation. Section 11 empowers each House of Parliament to make rules for regulating its procedure and the conduct of its business. Each House can exercise this rule making power subject to the guiding principles of the Constitution.

This provision also mandates that the rules of procedure should provide for the appointment of Committees for Parliamentary businesses. Parliamentary Committees acts as a link between Parliament and the people. The Committees assist Parliament in performing its duties in an effective and efficient manner. The committee system serves a very useful purpose by providing expertise for the business of the House, thereby saving time. The main argument against the system is that it has considerably reduced the importance of the House, but it should be noted that all important legislative work is done by the committees. The committee system may be of:

1) **Committees of the Whole House:** The Committee of the Whole House comprises the entire membership of the House of all denominations. The Chairman of the Committee and not the Speaker shall preside over the Committee meetings. The normal procedure of the House is simplified to enable members to have more freedom of speech. A party with a sufficient majority finds it convenient to get its governmental business expeditiously cleared by referring it to the Committee of the Whole House.

2) **Select Committees:** These Committees are concerned with investigation of special tasks assigned to them. It is a common practice to set up a number of select committees at the beginning of each session. Select Committees may also be set up on an *ad hoc* basis to investigate a bill or an established procedure.

3) **Standing Committees:** These Committees are constituted in the first session of the new Parliament by the Committee of Selection, a committee nominated by the party leaders and approved by the House. The main distinction between these committees and the select committees is that these are not specialist committees. The main task of these committees is to consider legislative measures referred to them after the second reading. The committees may consider amendments proposed by others and also on their own.
Article 10
Section 12

“The Speaker and the Chairperson shall convene an extraordinary sitting of Parliament on the command of the Druk Gyalpo if the exigencies of the situation so demand.”

There may be certain exigencies not predicted by the rules provided within the normal functioning of Parliament requiring the provision of this section. This section empowers the authorities to convene an extraordinary sitting to avert or respond to any unexpected crises upon receiving Royal Command.

Article 10
Section 13

“Each Member of Parliament shall have one vote. In case of equal votes, the Speaker or the Chairperson shall cast the deciding vote.”

Each Member of Parliament to have one vote is similar to John Cartwright’s principle, “One man shall have one vote”.\(^451\) It is necessary under the principle of equality that every person is given his or her right to one vote. Vote is the expression of a person’s desire to confirm or to reject. A vote culminates in expressing the sense of the meeting or session.

During the public meetings, it was suggested that the right of the Speaker or the Chairperson to cast the deciding vote in case of equal votes in Parliament may be replaced by re-voting since an individual’s vote can be swayed by individual interest other than national interest. However, under Parliamentary form of Government, the Speaker or the Chairperson is to impartially preside over the deliberations of the House. It is an accepted practice in other countries for the Speaker or the Chairperson to cast a deciding vote in the case of equality of votes in the respective Houses of Parliament.

Article 10
Section 14

“The presence of not less than two-thirds of the total number of members of each House respectively shall constitute a quorum for a sitting of the National Council or the National Assembly.”

This section contains an important procedural guidance. Procedure is required to safeguard against misuse by powerful and influential members. Frankfurter said, “The history of liberty has largely been the history of observance of procedural safeguards.”\(^452\) Hence, a procedure is a series of logical steps by which all repetitive actions are initiated, performed, controlled and finalized. A procedure establishes the required action. Its essence is chronological sequence and its implementation is translated into results or actions by following lawful steps to eliminate ulterior motives. Therefore, according to the provision, a minimum of not less than two-thirds of


\(^452\) McNabb v. United States, 318 U.S. 332 (1943).
the total number of members of each House respectively is required for the sitting of the respective Houses. Quorum, in simple words, means the minimum strength required to validate a meeting.

**Article 10**  
Section 15

“The proceedings of Parliament shall be conducted in public. However, the Speaker or the Chairperson may exclude the press and the public from all or any part of the proceedings if there is a compelling need to do so in the interests of public order, national security or any other situation, where publicity would seriously prejudice public interest.”

Publicity by the press would create transparency. The people have the right to know and be informed of what their representatives are doing and discussing in the respective Houses. As national and public interest are paramount, the exception is only made in the interest of public order, national security and matters that would seriously affect the public interest and security.

**Article 10**  
Section 16

“The Speaker shall preside over the proceedings of a joint sitting and the venue for the joint sitting of the Houses shall be the hall of the National Assembly.”

The provision is clear that during the joint sitting, the Speaker shall be the presiding officer and the venue shall be the National Assembly Hall. It further clarifies that during the joint sitting, the Speaker will have the casting vote.

1. The casting of vote by the Speaker in the event of a tie is not a new concept that we have introduced in our Constitution. It is a well-known practice followed everywhere in the world.
2. Secondly, to be fair it is the responsibility of the Speaker to vote without partiality.
3. Thirdly, whatever decisions we take should be in tandem with the decision of the people. For example, if we consider re-election, then it will lead to problems because this procedure is in conflict with the established system elsewhere in the world and further a voter may change his or her choice. Even if the re-election is conducted the person elected will be from the same political party. Therefore, if an election results in a tie then the Speaker has the right to a casting vote and it is his responsibility to be fair.

**Article 10**  
Section 17

“When the office of a member of Parliament becomes vacant for any reason other than the expiration of term, an election of a member to fill the vacancy shall be held within ninety days as from the date of the vacancy.”
If any vacancy is created by death or other infirmity of a Member of Parliament, during the term, then such vacancy shall be filled by election. During the public consultation process, some argued that the elected Party should retain the mandate to nominate a replacement member. This was rejected since this method does not guarantee the nominated person to have a sufficient direct relationship to the area he or she represents or that he or she would be the actual choice of the constituency. To assure representational democracy and to avoid that a Party could impose an inappropriate candidate as described above, the decision was made to assure that by-elections would be held to fill such vacancies.

**Article 10**  
**Section 18**

*The members of Parliament shall take an Oath or Affirmation of Office, as provided for in the Third Schedule of this Constitution, before assuming their responsibilities.*

It is a common parliamentary practice for the Members of Parliament to take an Oath or Affirmation of Office. The Oath or Affirmation of Office is compulsory before assuming the responsibilities. No member should be allowed to assume responsibilities without taking Oath or Affirmation of Office. Oath binds their conscience to be correct, proper, disciplined and honest.

The Oath or Affirmation of Office as provided in the third schedule of the Constitution should be made either before His Majesty the Druk Gyalpo or the Chief Justice of Bhutan.

**Article 10**  
**Section 19**

*The Prime Minister, the Ministers, the Speaker, the Deputy Speaker and the Chairperson and Deputy Chairperson of the National Council shall take an Oath or Affirmation of Secrecy, as provided for in the Fourth Schedule of this Constitution, before assuming office.*

In addition to the Oath of Affirmation, the Prime Minister, the Ministers, the Speaker, the Deputy Speaker, the Chairperson and the Deputy Chairperson of the National Council must take an Oath or Affirmation of Secrecy as provided in the Fourth Schedule of the Constitution. Secrecy of national and public interest must be maintained. The obligation of the Deputy Chairperson to take Oath or Affirmation of Secrecy upon taking up office was added in accordance with the motion of Parliament in parliamentary debate.

**Article 10**  
**Section 20**

*Every member of Parliament shall maintain the decorum and dignity of the House and shall desist from acts of defamation and use of physical force.*

Parliament of Bhutan shall be dignified and be an embodiment of moral and ethical values. Given their capacity to influence the people, unguarded speech and hearsay must be avoided. Parliament should be a role model for the people. Aristotle said that “people in positions of
The Parliamentarians must maintain decorum and dignity in their conduct. Parliament must command reverence. Members of Parliament must desist from acts of defamation and use of physical force. They must not undermine the hallowed place. Therefore, unguarded speech and hearsay are travesty of truth for public consumption. Parliamentary immunity cannot protect the members from defamation or making false statements in Parliament. Truth is supreme. Statement without any factual base should not be used, for Parliamentary immunity cannot protect the wrong and untruth. Parliamentary immunity is to promote truth and right and not to desecrate it through allegations and mudslinging. Use of physical force is totally wrong. Parliament symbolizes Rule of Law, which negates the use of physical force. Parliament is meant to be a temple of debate and not a boxing ring.

Article 10
Section 21

“The members of Parliament or any Committee thereof shall be immune from any inquiry, arrest, detention or prosecution on account of any opinion expressed in the course of the discharge of their functions or vote cast in Parliament and no person shall be liable in respect of any report, paper or proceedings made or published under the authority of Parliament.”

Parliamentarians need immunity in matters related to their public function. Fear and retribution will silence good people and make them fail in their mandated duties. Therefore, this section defines parliamentary privileges of the members of both Houses and committees thereof. Parliamentary privileges include both rights and immunities. Parliamentary privilege is essential to facilitate the tasks which the Legislature is mandated to perform. According to Erskine May, the distinctive mark of a privilege is its “ancillary character,” a necessary means to fulfillment of functions. Privileges are enjoyed by individual members because the House cannot perform its functions without unimpeded use of the services of its members; and by each House for the protection of its members and the vindication of its own authority and dignity. 454

The primary constitutionally protected privileges are the right to freedom of speech, and the right to unfettered access to Parliament by members, limited only by Parliament’s Rules of Procedure. It is within the authority and power of each of the Houses to enforce the immunities. A violation of such privileges and immunities is called a breach of privileges and is punishable. The privileges and immunities accorded to the members will afford the members the freedom to raise important and contentious issues in Parliament without fear of retribution or prosecution.

Article 10
Section 22

“The immunities herein granted shall not cover corrupt acts committed by the members in connection with the discharge of their duties or cover other acts of accepting money or any other valuables in consideration to speak or to vote in a particular manner.”

The Constitution protects a Member of Parliament from civil or criminal action for anything said or done in Parliament or the Committees. The immunity is not limited to spoken words but extends to votes as well. However, the immunity does not apply to corrupt acts committed by the members. Immunity is given so as to maintain the dignity and authority of Parliament and to ensure that Parliamentarians discharge their duties to the Nation and People. However, law does not protect corrupt acts committed by the members who shall have to subject themselves to the general law of the land. A crime is a crime and this provision is meant to ensure political morality.

Article 10  
Section 23

“The concurrence of not less than two-thirds of the total number of members of each House respectively is required to remove the right of immunity of a member.”

Parliamentarian immunity implies Parliamentary privileges. However, they cannot be lawless. Limitations to immunity are necessary not to silence the truth. Immunity may be lifted by Parliament itself by a majority of two-thirds of the members of Parliament to avoid political abuse. However, removal of immunity under sections 20 and 22 of this Article does not need such concurrence. It is considered offence ab initio.

Article 10  
Section 24

“The National Assembly and the National Council shall continue for five years from the date of the first sitting of the respective Houses. While the National Council shall complete its five-year term, premature dissolution of the National Assembly may take place on the recommendation of the Prime Minister to the Druk Gyalpo or in the event of a motion of no confidence vote against the Government being passed in the National Assembly or in accordance with section 12 of Article 15.”

The life of Parliament is five years from the date of the first sitting of the respective Houses. It cannot continue a single moment from the efflux of the term.

The National Council has to complete its five-year term. However, premature dissolution of the National Assembly may take place on the recommendation of the Prime Minister to the Druk Gyalpo. It incorporates an important tenet of the Parliamentary system.

Premature dissolution of the National Assembly may also take place in the event of a motion of no confidence vote against the Government being passed in the National Assembly. This section provides for no confidence motion against the Government. If members disagree with the performance of the Government, they can vote against the Government. It is a vital tool of democratic functioning.

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455 This section was added with the advice from the people of Trongsa during the public discussion.
A Government cannot do as it wishes and disregard the individual member. The motion of a no-confidence vote against the government would deter tyranny of a party. It fulfills the principle of democratic executive that espouses ministerial responsibilities through no-confidence motion. Of course, a member cannot defect to the other party as per section 9 of Article 15. If the majority of the Government is fragile, it imposes greater responsibility to be right, fair, and just. Thus, in extreme exigencies, the members of the National Assembly may vote against the Government regardless of the party whip or diktat or looming danger of expulsion from the party. The Constitution has to provide remedies for every eventuality, including members voting against the ruling party, when a situation becomes untenable or is against their conscience.

Article 10
Section 25

“Except for existing International Conventions, Covenants, Treaties, Protocols and Agreements entered into by Bhutan, which shall continue in force subject to section 10 of Article 1, all International Conventions, Covenants, Treaties, Protocols and Agreements duly acceded to by the Government hereafter, shall be deemed to be the law of the Kingdom only upon ratification by Parliament unless it is inconsistent with this Constitution.”

Treaties under this section are not self-executing. According to this provision, international agreements shall, upon ratification by Parliament, be deemed to be the law of the Kingdom. Either ratification of the treaties or Acts of Parliament can impose rights and obligations on the people in Bhutan. If such treaties are ratified, they become part of the laws of the land.

Acts of Parliament would be laws of Bhutan. Hence, the relationship between domestic and international law is that it could be either ratified or deemed Acts of Parliament. Simultaneously, if the international law is inconsistent with the Constitution, the Constitution takes priority over international law. Therefore, the primacy is conferred to the Constitution over either international law or national law.

In Europe and in civil law countries, the monist system is in practice where international law prevails over national law if there is any inconsistency. Conversely, the dualist view separates the legal system. Domestic law operates in its own field. Under the dualist system, the classic position is that the domestic law is supreme. International law only has legal effects in domestic law if some steps are taken by the domestic legal system to adopt or bring international law into domestic law.

Article 11
The National Council

His Majesty the Third Druk Gyalpo instituted the Royal Advisory Council in 1965. The Council comprised of one Representative of the Government, two representatives from the Monastic Body and six representatives from amongst the People. It was the highest advisory body in the Kingdom. In certain ways, the Royal Advisory Council was the second Chamber. One of the special features of the Rules and Regulations of the Royal Advisory Council, 1983 under section 4.7 was:
"Should the Royal Advisory Council find any action or activity of any person or organization including that of the King himself, to be detrimental to the interests of the Kingdom and the People, they shall, without any hesitation whatsoever, report such matters to His Majesty the King and thereafter, if necessary, to the Lhengye Zhungtshog and the National Assembly."

The old terminology, the Royal Advisory Council, was replaced by the National Council as commanded by His Majesty. The National Council, in some countries is known as the second chamber. The second chambers are often designed to encompass different types of representation than are represented in the first chamber. For instance, a common form of alternative representation is the deliberate use of the second chamber to represent particular ethnic, linguistic, religious or cultural groups. The National Council of Bhutan is consistent with international practice in the sense of giving equal Council representation to each of the 20 Dzongkhags despite their differences in demographic and geographic size.

The National Council is an apolitical body. The Council is not in pursuit of power but to render wise, and dispassionate advice to protect security and sovereignty of Bhutan. In parliamentary democracy, second chamber exists to delay but not block the opinion, to produce policy by bargaining with each other. Therefore, the National Council may delay passage of certain Bills to enable eliciting of the the opinion of the nation to but it must be done with cautious restraints.

During the drafting of the Constitution, some Committee members questioned the need for a second chamber. It was also felt that the National Council was a superfluous body. Except with respect to financial and money bills, the National Council has the same powers as the National Assembly. There are functions that the National Council as the revising chamber can fulfill fruitfully. Parliament is not only a legislative, but a deliberative body. It will be the duty of the members of the National Council to make valuable contributions to justify the bicameral system, which is now an integral part of our Constitution. It is a test to which we are submitted.

The National Council is a body of statesmen where wise reflection and deliberation take place, particularly as it relates to difficult issues. His Majesty said that the National Council’s responsibilities are different from that of the National Assembly. The main function of the National Council is to act as a watchdog to monitor and review the functions of the Ruling and the Opposition Parties of the Government. The duty of the members of the National Council is to oversee if the ruling and the opposition party are working in the interest of the country and the people.

Professor Benjamin Reilly commented:

"...Second chambers are generally less powerful than lower houses; only occasionally are the two houses equally powerful. This is because second chambers often act as houses of review, rather than as houses of government. The proposed National Council in Bhutan is specifically charged with acting “as a house of review on matters affecting the security and sovereignty of the country”, but it has equal powers to initiate legislation, apart from money bills, as the National Assembly. This makes it a “strong” upper house by comparative standards, as its powers are near-congruent with those of the lower house. The broader mandate of the Council to serve as a house of review is also broadly
consistent with international practice, although the specification that the National Council considers security and sovereignty matters is somewhat unusual in comparative terms.”

According to Professor William Maley, a bicameral system of Parliament:

“can prevent hasty or ill considered laws from being made without proper reflection. They provide scope for diverse interests to be injected into political debate. They provide more space for the politically committed to pursue their objectives in a peaceful way.”

The rationale and functions of the National Council can be summarized from the profound words of Their Majesties:

(a) *It is duty of the National Council to maintain and ensure checks and balances with the ruling party, the opposition party and the Ministers.*

(b) *At the time of electing each member from 20 Dzongkhags, it is very important for you all to be careful in selecting members who are qualified, efficient, competent and who would benefit our country. The National Council has huge responsibilities. In the future, when the Ruling party and the Opposition party get actively involved in their work, it is the duty of the National Council to see whether the parties are doing the work well or whether they are working hard for the wellbeing and interest of the people and the country. For these reasons, it is very important to elect competent and efficient members from your Dzongkhag.*

(c) *When you elect your representatives to the National Council, you must elect the best of the best person who should have no criminal records and who will take care of the welfare of the people.*

(d) *The duties and responsibilities of the National Council would be similar to what is being done by the Royal Advisory Council. They have neither prerogative nor power. Their duty is to see if the Ruling party and the Opposition in Parliament are deliberating, legislating and implementing policies in the interest of the people and the country. They are there to see, if works done by Parliament is in the national interest.*

(e) *The reason for appointing five eminent persons by the king is that we are not sure whether the right person will be elected by the people from each of the twenty Dzongkhags. If the members of the National Council from the Dzongkhags are not efficient and knowledgeable, then they would not be in a position to oversee the works done in Parliament, by the ruling party, the opposition party, Ministers of the State and State officials. Moreover, it is to have expert from the field of business, science, finance and law to be appointed in the National Council. The main responsibility and duty of the members of National Council is to see if the ruling party and the opposition party are working in the interest of the country and the people. The responsibilities of the National Council are similar to that of our Advisory Council.*

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456 **Supra**, n.435.


459 Public Consultation in Dagana, 5th Feb. 2006.

460 Public Consultation in Tshirang, 8th Feb. 2006.


If the National Council members have affiliation with political parties, then there will be some problem. Regarding this what you all have submitted is true. The duties and responsibilities of the National Council are to see how the Ruling and the Opposition party are functioning for the people and the country. If the Council is not made apolitical then having a separate body of Council is of no use. Moreover, if there is affiliation between the Council and political parties including the opposition party, then it will be difficult for the Council to carry out its duties and responsibilities.

While electing your representative to the National Council, you should keep in mind that it is important to elect good person who is knowledgeable and well learned, who can serve the Government, who cares for the country and who understands the welfare of the people. If you take individual interest into consideration and ignore general interest and the interest of our country while electing the representatives of the National Council, it will be detrimental for the country since it has a very important role to play. Since the representatives can either do good or bad things to the country, it is important to elect a good person. Hence if you, without differentiating between a good person and a bad one, elect a bad person as the representative, he might engage in detrimental acts for the country. Therefore, it is important for all the people to keep in mind to analyze between a good and a bad person and carefully elect a person who is capable and who will take care of our country’s interest. I hope you all will send such a person as representative.

Article 11
Section 1(a)

“The National Council shall consist of twenty-five members comprising:

(a) One member elected by the voters in each of the twenty Dzongkhags; and”

His Majesty Jigme Khesar Namgyel Wangchuck said:

There are 25 members in the National Council. From these 25 members, 5 members are the eminent persons in the fields of commerce, finance, science and law. They will be nominated by His Majesty the King. Other 20 members will be elected by the voters in each of the twenty Dzongkhags. These 25 members collectively constitute the National Council.

Historically, one member of the Royal Advisory Council represented six Dzongkhags. It was unfair and a few Dzongkhags never had their member in the Council. Hence, the historical error was corrected by the Constitution. Each Dzongkhag was given one representative regardless of its size. Giving one elected representative each to a Dzongkhag will protect the interest of the smaller Dzongkhags with lesser population or of bigger Dzongkhags which are sparsely populated. People submitted that equal representation and equal voice should be given regardless of the size and the population of the Dzongkhag in the governance of the country.

The Constitution Drafting Committee did not include any representative from the religious side in the National Council, the reason being that in the past we had representatives from religious

464 Public Consultation in Gasa, 13th May 2005.
side in the National Council because there were only six representatives from the entire twenty Dzongkhags. But now each Dzongkhag will have one representative in the National Council.\textsuperscript{466}

Dr. Benjamin Reilly commented that “second chamber are often designed to represent territorial units explicitly, as compared to the first chamber where equality of representation for voters is the norm. A common use of second chamber is to represent constituent geographic units of the federation. Typically, this involves a weighting in favour of the smaller states or provinces, as there tends to be an assumption of equality of representation.”\textsuperscript{467}

\textbf{Article 11}
\textbf{Section 1(b)}

\textit{(b) Five eminent persons nominated by the Druk Gyalpo.”}

In addition to twenty representatives elected from twenty Dzongkhags, the National Council shall have five eminent persons directly appointed by His Majesty the Druk Gyalpo. The second chamber should consist of persons having wisdom, experience and knowledge. The National Council should be composed of persons, with expertise in the fields of commerce, law and science, to ensure that the country is steered in the right direction by the ruling and the opposition parties. Having an unelected member in the National Council is a common practice in many democracies. Their social standing, academic eminence, reputation, non-partisan nature and professional views would provide balanced and persuasive contributions. They shall serve as a safeguard against the frustration of the popular will of elected representatives. Thus, they are perceived to inject wisdom and professional knowledge without any sectarian and political views.

The five eminent persons should not belong to the Royal family or religious groups. Appointing a member of the Royal Family or religious personality would violate section 3 of Article 3, contravening the basic principle of the Constitution.\textsuperscript{468}

Five eminent persons should supplement and complement the Council through their academic background, scholarship and bipartisanship. Neutrality is a transcending value of the eminent persons.

\textbf{Article 11}
\textbf{Section 2}

\textit{“Besides its legislative functions, the National Council shall act as the House of review on matters affecting the security and sovereignty of the country and the interests of the nation and the people that need to be brought to the notice of the Druk Gyalpo, the Prime Minister and the National Assembly.”}

This section clearly enunciates the functions of the National Council. It shall reflect upon the debates and resolutions of the National Assembly, the Government and its functions. The Prime Minister may be notified either through resolutions, question time and debates. Similarly, the House may submit a resolution to the Druk Gyalpo through its Chairperson. Therefore, there is a

\textsuperscript{466} Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Bumthang, 21st May 2006.

\textsuperscript{467} Supra, n.435.

\textsuperscript{468} Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Bumthang, 21st May 2006.
continual reminder, constant vigilance and regular action between the Druk Gyalpo, the Prime Minister and Parliament to ensure security, sovereignty and of the common interest of Bhutan. Sustained vigilance is a hope for the best and preparation for the worst.

The provision confers the reviewing power upon the National Council besides its legislative functions. However, it is not a blanket power. The House can only review the matters affecting the security and sovereignty of the country and the interest of the nation and the people.

**Article 11**  
**Section 3**

“A candidate to or a member of the National Council shall not belong to any political party.”

It is important to have the members of the National Council including appointees of the Druk Gyalpo without any affiliation to any political party discipline so as to give more confidence to the people. The members of the National Council need to debate and decide in an apolitical and non-partisan manner without any vested interest. Their views should be based on the common good and general interest of the Bhutanese people and Bhutan. They should unite in the service of the nation and its people. Being political would defeat the vision of His Majesty and the common aspiration of the People. Non-partisan and professional views would enhance the prestige of the House and be the refuge of the people. The members of the National Council should have the best intellectual integrity, legal talents and political wisdom available. They shall not belong to any political party. When a society is fractured by party politics, divided by political ideologies and frustrated by anger and revenge, the National Council must act as a guardian angel. Non-partisanship elicits confidence and fairness heals the wounds.

**Article 11**  
**Section 4**

“At the first sitting after any National Council election, or when necessary to fill a vacancy, the National Council shall elect a Chairperson and Deputy Chairperson from among its members.”

Traditionally, the Druk Gyalpo appointed a Kalyon, who was the Chairperson of the Royal Advisory Council. However, His Majesty Jigme Singye Wangchuck wanted the Chairperson to be elected from the elected Members of the Dzongkhags. Thus, the people are granted the opportunity through their chosen representatives to elect their Councilors and the Chairperson of their own choice.

**Article 11**  
**Section 5**

“The Druk Gyalpo shall, by warrant under His hand and seal, confer Dakyen to the Chairperson.”

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469 Award of rank and responsibility.
Being the fountain of Honour, His Majesty the Druk Gyalpo shall award Dakyen and scarf honours. It is an age-old Bhutanese tradition. The Constitution has perpetuated this solemn tradition.

His Majesty’s consent generates moral support and legitimacy. Simultaneously, it ensures the opportunity to review the process by His Majesty Himself. The process must be complete, democratic and legal. When there is no such system, powerful persons may bulldoze and transgress the laws without clear mandate through manipulation and splitting votes. Thus, conferring dakyen and taking precaution is an appropriate remedial measure.

Article 11
Section 6

“The National Council shall assemble at least twice a year.”

The Chairperson will take the decision to assemble the House after receiving the Royal consent. This provision is necessary to ensure that the Council does not assemble indefinitely or prematurely. Simultaneously, it also ensures that the Council meets for at least two times in a year.

Article 12
The National Assembly

In the past, the National Assembly was Parliament. His Majesty, the Third King Jigme Dorji Wangchuck was a progressive ruler and an institution builder. He initiated social, economic and political reforms in Bhutan. His Majesty’s first reform was the establishment of the Tshogdu (National Assembly) in 1953. The Assembly Members were elected directly by the people. Election of Members of Parliament assured liberal democracy in Bhutan.

At the time of its establishment, people voiced their opinion that they were not ready for such a forum. However, the Third Druk Gyalpo insisted on the establishment of the National Assembly to discuss issues of national interest, promoting public welfare and developing political consciousness among the people so that they could play a greater role in the decision making process in running the country. Through that Hall, the voice of the people echoed, aspirations of the people were expressed and Their Majesties led Bhutan as a strong, secured and sovereign nation. One of its first legislative responsibilities was the enactment of the Thrimzhung Chhenmo, the Supreme Law.

The Constitution promotes liberal democracy through a political system, which combines the right to individual freedom with the right to representative government through periodic election. It is a representative democracy with indirect rule by majority. The National Assembly represents the collective wisdom and the national conscience of the country. True to its historical genesis, the National Assembly must continue to discuss issues of national interest, promote public welfare and develop political consciousness among the people so that they can play an even greater role in the decision making process and in running the country. During the public consultations, Their Majesties explained:

$^{470}$ The House of Commons is the oldest popular legislative chamber in the world. Its origin can be traced to Parliament summoned by Simon de Montfort in 1265.
(a) Among our Dzongkhags, the small Dzongkhags shall have a minimum of 2 and in bigger Dzongkhags we shall have a maximum of 7 members. This has been incorporated in our Constitution. 471

(b) When we say that His Majesty the King has devolved the authority to people, it means that a capable person who can work for the benefit of the country should be elected by us whether to form a government or to make policy. At such a time, it is important to choose and send the best of the best person, who would benefit our country and understand the welfare of our people. If we choose and send such best persons, then there is no need for us to worry since the elected persons would work for the country and the people with full dedication. 472

(c) In some countries, only few members represent millions of people in Parliament. In our country, it is not the case of million people, but a few thousand people will get one representative. 473

(d) However, as we have already discussed the importance of the people in the democratic system, whatever laws we make in our country and whatever kind of Constitution we have, at the end it is the people who have a vital role to play. Therefore, during the election, as we know that the people are given full right to vote, it is very important for our people to know that they have to think well and select the best out of the best. 474

Article 12
Section 1

“The National Assembly shall have a maximum of fifty-five members elected from each Dzongkhag in proportion to its population, provided that no Dzongkhag shall have less than two members or more than seven members, for which purpose Parliament shall, by law, provide for each Dzongkhag to be divided into constituencies through appropriate delimitation, and for the voters in each constituency directly electing one member to the National Assembly.”

The Constitution enshrines that the National Assembly shall have a maximum of fifty-five members. The rationale for fixing the upper limit as fifty-five members for the National Assembly as well as minimum of two and maximum of seven from each Dzongkhag is as follows:

(a) The rationale for fixing the upper limit of fifty five members is based on the population in the country. A maximum of fifty-five members were proposed in proportion to the population to be re-apportioned to reflect the changing registered population after every ten years. Roughly one Member of Parliament was allocated for a population of ten thousand. Presently forty-seven members were allocated according to the population of approximately 5,53,000 and 3,18,465 registered voters.

(b) Given it’s population, Bhutan has a higher number of representatives in the National Assembly compared to Parliaments of many other countries. However, fewer the number

of members, the greater is the chance of destabilization of the Government. For example, the resignation of five to ten members could have major impact on the Government. Moreover, if the number of members is small it will be easier to manipulate and influence the members.

(c) The Constitution Drafting Committee had a thorough discussion and deliberation on this issue and provided it under Article 12(1) as “no Dzongkhag shall have less than two members and more than seven members…” According to the principles of the Constitution and party democracy, each Dzongkhag shall have any number of representatives as per the size of its population. This would be unfair for the smaller Dzongkhags. Therefore, the size of Dzongkhags was taken into consideration and the minimum and maximum numbers of members from each Dzongkhag to be elected to the National Assembly were decided.  

(d) The minimum and maximum members for each Dzongkhag is in line with the principle of democracy, the Constitution and equality.

(e) Dividing each Dzongkhag into constituencies through appropriate delimitation, and directly electing one member to the National Assembly from that constituency shall promote a direct link between the constituencies and their representatives, as it produces a legislature made up of representatives of separate territorial areas. It also promotes “geographic accountability.”

Article 12
Section 2

“The number of elected members from each Dzongkhag shall be reapportioned to reflect the changing registered voter population after every ten years, subject to the limitation of a minimum of two and a maximum of seven members from each Dzongkhag.”

There should be a concrete criteria or basis like population or area on which the maximum and minimum number of members in the National Assembly can be determined.

In a democracy, population is one of the main bases in determining the number of seats in the National Assembly. People will be proportionately represented by the members in Parliament. The Constitution addresses mitigation of inequalities in representation and balanced distribution of constituencies.

The National Assembly of Bhutan has a maximum number of representatives compared to its population size. There shall be one member each for a constituency composing of 5,642.82 people. It was a very high level of representation for the reason stated in the prior section.

Prima facie, this reapportionment scheme may appear to favour rural or less populated parts of the country over urban or more populated parts. In future if this scheme does not work and if votes in rural or less populated areas count for two or more times as many votes as votes in urban

475 Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Bumthang and Trongsa.
476 Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Trashiyantse, 28th Dec. 2005.
or more populated areas, Parliament may amend this section. The provision should be fair and equal without any bias in favour of rural or urban areas.

Considering the present small population, the National Assembly may not have a full fifty-five members. It would be better to increase the number of members through reapportionment after every ten years with the increase in population. Even after the complete fifty-five members’ seats are occupied in the National Assembly, reapportionment of the seats based on the change in population size will occur every ten years based on census data.

**Article 12**
**Section 3**

“At the first sitting after any general election, or when necessary to fill a vacancy, the National Assembly shall elect a Speaker and a Deputy Speaker from among its members.”

After the general election, the National Assembly shall elect a Speaker. The Speaker, as the head of the legislative arm of the State has manifold responsibilities that embrace constitutional, statutory, procedural and administrative powers and functions. Although affiliated to a political party, the Speaker is required to perform the functions of that office fairly and impartially in the interests of the Assembly and the Nation. The Speaker must be politically neutral. From the day the Speaker is elected and while he remains in office, he has to be relinquished from the party registry. He can return to the political party whereto he had belonged at the time of leaving the party registry, once his term of office as speaker expires.

The Speaker is elected by the House and shall:

(a) Preside over the meetings of the House and conduct the proceedings;
(b) Regulate the debate by deciding who shall have the floor and when;
(c) Interpret and apply all rules and also announce results when voting takes place;
(d) Have the power to suspend a member for a specific period for disorderly conduct in the House;
(e) Be the guardian of minority interests in the House and as such take special care of new members and back-benchers;
(f) Ensure that the Government business is not unnecessarily obstructed; and
(g) Decide on motions of closure on debates and thus balance the feelings of the Opposition with the urgency of the government business.

Along with the Speaker, the provision mandates that a Deputy Speaker should also be elected from amongst the members of the National Assembly. Unlike in the past, he should not be different from other members.

**Article 12**
**Section 4**

“The Druk Gyalpo shall, by warrant under His hand and seal, confer Dakyen to the Speaker.”
Awarding dakyen and scarf honours the preservation of Bhutan’s culture, protection of identity and imposition of dignity. It is legally, socially and politically necessary. It must be conferred by warrant under His Majesty’s hand and seal. Awarding dakyen and scarf honours an age-old Bhutanese tradition. His Majesty’s consent generates moral support and legitimacy, which carry great weight in Bhutanese society.

Article 12
Section 5

“The National Assembly shall assemble at least twice a year.”

This provision is necessary to ensure that the National Assembly does not assemble indefinitely but meets at least two times in a year. This provision enshrines the principle that an active National Assembly is a critical element of the Government, and the democratic process.

Article 13
Passing of Bills

This Article establishes the basic procedures for passing of legislations. The detailed procedure relating to the passing of a Bill will be laid down in the Rules of Procedure, which will be framed and adopted by the respective Houses of Parliament in accordance with section 11 of Article 10.

The Rules of Procedure must specify the process of passing of Bills. The process should stipulate, amongst other things, the number of readings and stages in Committees. Similarly, the process of promulgation of the laws and the process of making it public before its enforcement are clarified in the Rules of Procedure. Professors Walter Kalin and Jorg Kunzli wrote that:

“This article creates a well-balanced distribution of power between the two chambers of Parliament and the King, the latter having a veto that can be overruled by Parliament with a majority of two-thirds of the total number of its members (paras. 10 and 4). In addition, if the King judges a bill, which is not passed by Parliament, as being of national importance, he may command a national referendum (Article 32, para 2, lit. a). Parliament may call for a referendum only with respect to a constitutional amendment, which is not granted assent by the King or the Queen (Article 34, para. 3)”

The legislative process is a series of logical steps by which all repetitive action is initiated, performed, controlled and finalized. It establishes timely required action. Its essence is chronological sequence and methodical implementation.

This Article also distributes legislative powers between the two chambers of Parliament and the King. Legislation becomes effective on the day His Majesty grants Assent by signing it. Distribution of power is a creation of divergent power centers to avoid errors and edify truth and accuracy. It is not a delaying tactic, but provides different avenues for reflection.

477 Professor Walter Kälin, a Swiss national, is a distinguished legal scholar, human rights expert and professor of constitutional and international law at the Faculty of Law of the University of Bern.

478 Professor Jorg Kunzli is an Associate Professor of Law at the University of Bern.
Article 13
Section 1

“A Bill passed by Parliament shall come into force upon Assent of the Druk Gyalpo.”

Parliament cannot legislate without the concurrence of all the parts of the legislative process. Therefore, the Assent of His Majesty the King is required for the Bill to become law. It guarantees legal process and prevents manipulation.

This provision is in consonance with the provisions of section 1 of Article 10 which postulates that the Druk Gyalpo is a Constituent of Parliament. Hence the Druk Gyalpo’s concurrence is of critical importance.

There are two reasons for the requirement of His Majesty’s Assent to the legislation passed by the Houses. Firstly, if the Bill passed is in contradiction or opposed to the national interest, His Majesty has the power to return the Bills for reconsideration in a joint sitting of the Houses. Secondly, it gives adequate time for correction before the Bill becomes effective as a law.

Such provisions exist in almost all the constitutions of the world. Further, the provision to grant assent is another vertical check against the tyranny of the majority and the voice of few powerful people in deliberative democracy. Therefore, Parliament must promote deliberating enclaves in which members of multiple groups may speak with one another and develop their views; a point that bears on the Constitution of multicultural societies. Enclave deliberation is not free from dangers. In an extreme case, enclave deliberation might even jeopardize social stability. Therefore, this provision not only provides checks and balances required for strengthening democracy but also rebalances the relationship between Parliament and the Druk Gyalpo by enabling the Druk Gyalpo to prevent members of Parliament from larding appropriation Bills with special favours to their own constituency or in the interest of the parties which is not in the interest of the people of Bhutan.

Article 13
Section 2

“Money Bills and financial Bills shall originate only in the National Assembly whereas any other legislative Bill may originate in either House.”

This section enshrines the rule as to the initiation of legislation in Parliament. It enacts that Money Bills and financial Bills shall originate only in the National Assembly. Money or financial Bills pertain to fiscal matters such as Bills authorizing expenditure of money out of the Consolidated Fund or levying taxes.

A Bill is considered to be a money Bill if it contains only provisions dealing with all or any of the following matters:

(a) The imposition, abolition, remission, alteration or regulation of any tax;
(b) The regulation of money borrowed or any guarantee given by the Government; and
(c) The custody and the payment of moneys into or the appropriation of moneys from Consolidated Fund.

Financial Bills are those Bills relating to revenue or expenditure of the government. All financial Bills are not money Bills but a financial Bill is considered to be a money Bill when it contains matters specified for a money Bill. The question whether it is a money Bill or a financial Bill shall be the decision of the Speaker of the National Assembly. The section also provides that all other bills may emanate from either House.

**Article 13**

**Section 3**

“A Bill pending in either House shall not lapse by reason of the prorogation of either House.”

Prorogation brings to an end to the session of Parliament. This section confirms that no pending legislative business lapses as a result of prorogation of the Houses. Prorogation has no effect on bills pending in Parliament. They do not lapse and may be continued in the next session.

**Article 13**

**Section 4**

“A Bill shall be passed by a simple majority of the total number of members of the respective Houses or by not less than two-thirds of the total number of members of both Houses present and voting, in the case of a joint sitting.”

A simple majority of the total number of members of the respective Houses of Parliament can pass a Bill or by not less than two-thirds of the total number of members of both the Houses in case of a joint sitting. The two-thirds of the total number of its members are required to assure legitimacy and the balancing of representation in both houses. Passing of Bills does not require a joint sitting all the time as motioned in Parliament by the members. The Bill can be passed by simple majority of total number of members of respective Houses. However, if the Bill is passed in one House, it should be presented to the other House in accordance with section 5 of this Article.

**Article 13**

**Section 5**

“Where a Bill has been introduced and passed by one House, it shall present the Bill to the other House within thirty days from the date of passing and that Bill may be passed during the next session of Parliament. In the case of Budget and Urgent Bills, they shall be passed in the same session of Parliament.”

Laws are important and they affect the life of the people. His Majesty commanded that adequate time should be given for deliberation on Bills. This section reflects the vision of His Majesty to assure responsible deliberation. It gives adequate time for deliberation by requiring an additional legislative process to pass a Bill in the next session of Parliament, which is required to prevent subjectivity, lack of deliberation and to receive well-considered views and public comments.
Bills must not be pushed without application of mind in a mechanical way. Sufficient time is required for laws, which could have long-term effect to be sensibly and thoughtfully considered by committees and interest groups. Bhutan had suffered from the self interested Bills that were rushed in the National Assembly for enactments in the past.

The members must get adequate time to discuss and debate on provisions of the Bills at various stages of the legislative procedure. However, the government can resort to some measures to close the debate if it feels that the members are adopting dilatory tactics and/or the other business of the House is held up. In such cases a closure motion can be moved with the approval of one-third of the total members. The Speaker may, however, disallow such a motion, if he feels that the voice of the minority is being curbed.

In case of Budget and Urgent Bills, they cannot wait. Delay in passing of such important Bills would bring negative impact on the nation. Therefore, the section mandates the passing of the Budget and Urgent bills in the same session of Parliament.

**Article 13**

**Section 6**

“Where the other House also passes the Bill, that House shall submit the Bill to the Druk Gyalpo for Assent within fifteen days from the date of passing of such Bill.”

The presentment of the Bill to the Druk Gyalpo is required to protect the people from improvident and politically engineered. The requirement of assent of His Majesty on Bills before becoming the law is a sine qua non in maintaining check on legislature in passing iniquitous laws. A period of fifteen days is adequate and reasonable for the reason that the country would be informed about the debates during its legislative process through the two chambers and two sessions as stipulated under section 5 of this Article. A longer period of incubation is unhealthy.

**Article 13**

**Section 7**

“Where the other House does not pass the Bill, that House shall return it to the House in which the Bill originated with amendments or objections for re-deliberation. If the Bill is then passed, it shall be presented to the Druk Gyalpo for Assent within fifteen days from the date of passing of such Bill.”

Sections 7, 8 and 9 of this Article lay down the procedure for resolving deadlocks between the two Houses of Parliament. According to this section, if one House does not pass a Bill, that House has to return the Bill to the House from where the Bill originated for re-deliberation. The returning Bill shall consist of the required amendments or objections. If there is further disagreement between the two Houses, the Bill will not be deemed to have been passed, unless it is passed at a joint sitting of the two Houses in accordance with section 11 of this Article.

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479 According to the guillotine closure, a time limit is fixed for discussion on the various parts of the bill. This type of closure also requires approval of the House. A slightly different form of closure is the kangaroo closure which limits discussion to a selected number of amendments. The idea is to limit the areas of discussion and to avoid unnecessary amendments being put forth for consideration. The kangaroo closure is adopted under the Standing Orders of the House.
Article 13  
Section 8

“Where the House in which the Bill originated refuses to incorporate such amendments or objections of the other House, it shall submit the Bill to the Druk Gyalpo, who shall then command the Houses to deliberate and vote on the Bill in a joint sitting.”

To resolve legislative deadlock between the two Houses, His Majesty the Druk Gyalpo is empowered to notify the Houses to meet in a joint sitting for the purpose of deliberating and voting on the Bill. This provision is to ensure cooperation and to settle the differences between the two Houses. In the interest of public welfare, the Houses should resolve their differences by sitting together in a joint session. The Nation will then be able to better perceive how their representatives are functioning.

Article 13  
Section 9

“Where the other House neither passes nor returns the Bill by the end of the next session, the Bill shall be deemed to have been passed by that House and the House in which the Bill originated shall present the Bill within fifteen days to the Druk Gyalpo for Assent.”

This provision is a remedy for inaction and silence. Silence is not an option in Parliament. Parliament has the duty and responsibility to respond and maintain the dialogue and exert time pressure qualitatively, effectively and efficiently within the period stipulated under section 5 of this Article.

Article 13  
Section 10

“Where the Druk Gyalpo does not grant Assent to the Bill, He shall return the Bill with amendments or objections to deliberate and vote on the Bill in a joint sitting.”

This provision is the ultimate check against ill-prepared legislations which do not serve the national interest. This system reflects the pluralist nature of the legislative process. His Majesty, as one of the pillars of the Parliamentary system will be able to review the entirety of the process and assess them against His own assessment of public opinion and national interest.

Article 13  
Section 11

“Upon deliberation and passing of the Bill in a joint sitting, it shall be resubmitted to the Druk Gyalpo for Assent thereto, whereupon Assent shall be granted to the Bill.”

Parliament cannot legislate without the concurrence of all three wings namely the Druk Gyalpo, the National Council and the National Assembly. Therefore, the Assent of His Majesty the Druk
Gyalpo is required. Upon deliberation and passing of the Bill in a joint sitting, the Bill will be sent to the Druk Gyalpo to grant Assent to the Bill. According to this provision sovereignty took the form of public opinion. It enshrines the king’s responsibility towards the people and His respect for the public opinion, which remains an important virtue.

**Article 14**

**Finance, Trade and Commerce**

The Constitution provides broad guidance for legislators to manage state finances for short-term, mid-term and long-term benefit of the people and in pursuit of social justice and economic progress with due deference to political economy. Creating effective regulatory mechanism over finance, trade and commerce is one of the major objectives of this Article.

The control over finance and expenditure is another important parliamentary function. The Government cannot raise financial resources without the authority of Parliament. However, the House does not levy taxes on its own. Its power lies in either accepting or rejecting the proposals for taxation presented by the Finance Minister.

Initial comments on Bhutan’s Draft Constitution by UNDP in Thimphu were:

“Financial management to support social ends - The draft Constitution provides guidance for future legislators on how best to manage state finances for the long-term benefit of the people and in pursuit of the social ends discussed above. Notable provisions include:

- “Article 14.5 – provides that servicing of public debt shall not place undue burden on future generations;
- “Article 14.6 – encourages recurrent expenditures to be met from internal resources;
- “Article 14.7 – requires a minimum foreign currency reserve to be maintained;
- “Article 14.12 – provides for a relief fund to be used by the Druk Gyalpo for urgent and unforeseen humanitarian relief”

The financial year in Bhutan is from 1st July to 30th June. The Budget is presented by the Finance Minister, which contains the government’s statements of accounts with proposal for taxation and spending. Along with the Budget, a review of the economy is also presented.

Economic prosperity and social stability must promote domestic tranquility and strengthen sovereignty without exploiting nature. The concepts under Articles 13 and 14 are a reiteration of His Majesty Jigme Singye Wangchuck’s concept of Gross National Product as under:

“That narrow focus on consumerism has now proven to be disastrous, on the earth and on human development. Bhutan wanted to raise the level of human contentment and well being with a holistic approach to development and change. Sustainable economic development is necessary to free the people from poverty. Culture is necessary to strengthen national identity and preserve traditional values. Spiritual development

480 Supra, n. 234.
strengthens moral and ethical values that laws cannot substitute. The environment is the natural legacy that is our responsibility to preserve for future generations. Bhutan has always preserved this holistic balance and the interdependent existence of all life forms. A disturbance of any of them will destroy the natural balance and cause discontentment and unhappiness.”

**Article 14**

**Section 1**

“*Taxes, fees and other forms of levies shall not be imposed or altered except by law.*”

This section embodies an important constitutional principle that no tax shall be levied or collected except under the authority of law. It is important that taxes, fees and other forms of levies are empowered or authorized by law. Taxes, fees and any form of levies should not be discriminatory or levied on ad-hoc basis. They should be based for lawful reasons and should be legitimate. No Government or organization should act without deference to law and burden the people.

Taxes are never popular. Hence, it is legally wrong to send the proposal of raising taxes to the referendum for execution. As it is the responsibility of the Government to raise and impose taxes but in accordance with laws, it is constitutionally excluded from the ambit of the referendum under Article 34. The Bhutanese people must not be subject to taxes, fees and other forms of levies except those arrived at by normal legislative means in Parliament.

**Article 14**

**Section 2**

“*There shall be a Consolidated Fund into which shall be deposited all public monies not allocated to specific purposes by law and from which expenditure of the State shall be met.*”

This section provides for the Consolidated Fund of Bhutan. No Government or public organization is allowed to maintain any separate account which would escape the scrutiny of the Royal Audit Authority and public. Similarly, public money shall be spent only through proper appropriations in accordance with the law.

Parliament motioned that the term Consolidated Fund is assumed to be the same as the fund formerly maintained in the Revenue Account by the Ministry of Finance, and therefore, it needs to be explained clearly. The Chairman of the Drafting Committee explained that it is not for the Constitution to define or explain the terms. The terms relating to finance and budget is explained and defined in the Public Finance Act of 2007.

**Article 14**

**Section 3**

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481 Royal audience by His Majesty Jigme Singye Wangchuck, 30th Nov. 2009.
482 The presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee, 9th May 2008.
“Public money shall not be drawn from the Consolidated Fund except through appropriation in accordance with the law.”

No public money shall be drawn or spent from the common state fund except in accordance with the law. This section is to ensure that there is no misuse or diversion of the public funds.

**Article 14**

**Section 4**

“The Government, in public interest, may raise loans, make grants or guarantee loans in accordance with the law.”

We changed the terminology from State to Government as the word State is different from Government. It is the function of the Government to raise loans and manage national financial issues. This provision provides discretion to the government to raise loans and make grants. All such activities, however, have to be in the public interest and in accordance with the law.

**Article 14**

**Section 5**

“The Government shall exercise proper management of the monetary system and public finance. It shall ensure that the servicing of public debt will not place an undue burden on future generations.”

The Government must exercise proper management of the monetary system and craft optimal monetary policy. Many countries in the world get into debt traps, which make them reel under an undue burden. His Majesty Jigme Singye Wangchuck expressed His concern about the same and, while He was in-charge of the Government, always commanded that loans should be minimized. Many countries and organizations were appreciative of this policy. Therefore, this section has been incorporated to liberate the future generations from undue burden of loan repayment by way of generating taxes.

Many people opposed this section quoting economic theories but the Drafting Committee has retained the provision bearing in mind the interest of future generation. The government should not do anything that would create liability upon the future generation. Our sons and daughters should not be made responsible for our mismanagement.

A few people argued that this section may be a vague aspirational standard. These are questions of political judgment. It shall ensure that the servicing of the public debt will not place an undue burden on future generations. There is no legal standard for management and it is a political judgment for Parliament to think about the future generations. However, excessive debt is verifiable. Unproductive debt is deplorable.

**Article 14**

**Section 6**

“The Government shall ensure that the cost of recurrent expenditures is met from internal resources of the country.”
The objective of this provision is to ensure that the cost of recurrent expenditure is met from internal resources of the country through enacting and maintaining prudent and responsible revenue policies. This provision has been incorporated under the vision of His Majesty Jigme Singye Wangchuck to impose constitutional responsibility on the Government to make the country self-sufficient. The phrase “recurrent expenditure” in the provision includes periodical budgetary yardsticks required budget for the functioning of the government activities. This section mandates that the government should be self-sufficient.

Sections 6 and 7 of Article 14 are justiciable. The Government shall ensure that the current expenditure is made from the internal resources of the country. It is a very clear legal standard.

Article 14
Section 7

“A minimum foreign currency reserve that is adequate to meet the cost of not less than one year's essential import must be maintained.”

Maintaining a minimum foreign currency reserve is necessary for the security and independence of the nation. His Majesty Jigme Singye Wangchuck wished to ensure that Bhutan should be protected from the evils of dire necessity. Hence, the provision was incorporated to ensure that the government maintains adequate foreign reserves to meet the cost of not less than one year’s essential import in addition to any other foreign exchange requirements.

The members of Parliament motioned that a minimum foreign currency reserve that is adequate to meet the costs of not less than six month’s import, instead of one year’s import should be maintained. However, minimum foreign currency reserve is necessary for security and independence of the nation. Bhutan cannot afford to be bankrupt for it will endanger its sovereignty.

Article 14
Section 8

“The annual budget, with a report on the budget of the previous fiscal year, shall be presented to the National Assembly by the Finance Minister.”

This section relates to the requirement that the Finance Minister present the annual budget to the National Assembly for review and approval. The Finance Minister also has to report on the budget of the previous fiscal year. The budget is the Government’s most important economic policy tool and provides a comprehensive statement of how the Government intends to pursue the nation’s priorities. As the representative body of the people, Parliament is the appropriate forum to ensure that the budget best matches the nation’s needs and the available resources.

The term fiscal year, current expenses and budget are defined under the Public Finance Act. This section implies fiscal policy at macroeconomic level. Fiscal policy is described as either being neutral, expansionary or contractionary.

An expansionary fiscal policy occurs, when the government lowers taxes and/ or increases spending, thereby, expanding output (national income). An increase in government spending or a
cut in taxes shifts the aggregate demand curve to the right. An expansionary fiscal policy will expand the economy’s growth.

A contractionary fiscal policy occurs when the government raises taxes and/or lowers spending; thus lowering output (national income). A decrease in government purchases or an increase in taxes shifts the aggregate demand curve to the left. A contractionary fiscal policy will constrict the economy’s overall growth.

A report on the budget of the previous fiscal year is required for comparison. The goal of comparison involves collection, classification, co-relation and analysis for public understanding.

**Article 14**

**Section 9**

*“Where the budget has not been approved by the National Assembly before the beginning of the fiscal year, the preceding budget on current expenses shall be applied until the new one is sanctioned. Revenues shall be collected and disbursements made in accordance with the law in force at the end of the preceding year. However, if one or more parts of the new budget have been approved, they shall be put into effect.”*

This is an important provision addressing the budgetary approval process. The nation must not suffer from any stalemate in Parliament that affects the normal business of governance or negatively impacts socio-economic development. All revenues should be collected and disbursed according to the law in force with an exception that if one or more parts of the new budget have been approved, they shall be put into effect.

Parliament should not totally reject the budget for policy coherence. If Parliament is conferred with the power to deny budget in *toto*, it would cause ceaseless demands of special favours for members or their supporters. Therefore, if the budget has not been approved by the National Assembly before the beginning of the fiscal year, the preceding budget on current expenses should be applied until the new budget is sanctioned.

**Article 14**

**Section 10**

*“Any expenditure not included in the budget, or in excess of the budget appropriation, as well as the transfer of any fund from one part of the budget to another, shall be made in accordance with the law.”*

Law is mandatory, no person or organization shall flout the law, and everyone shall function within the ambit of the law. This provision is to ensure that there is no misuse or diversion of government budget except in accordance with the law meaning thereby that Parliament will have to approve by additional bills such appropriations which were not in the Budget. Moreover, it is to protect against any extra expenses not included in the approved budget.
Article 14
Section 11

“Funds for more than one fiscal year may be appropriated in accordance with the law if the nature of the expenditure so requires. In such a case, each annual successive budget shall include the funds allocated for that year.”

As a general rule, the funds for each year should be appropriated through an annual budget exercise by Parliament. This provision makes an exception to the general rule. According to this section, funds for more than one fiscal year may be appropriated if the nature of the expenditure so requires. However, such appropriation has to be in accordance with the law and each annual successive budget should include the funds allocated for that year. It provides an opportunity to the Government to save and spend for positive results.

This provision enables the principle of a rolling budget within legal parameters. In absence of this provision, a government might rush to spend the budget towards the end of financial year to prevent against an automatic lapse of the budget at the end of the fiscal year. The rolling budget principle, appropriately managed supports prudent financial management. Annual budget with automatic surrender and not getting allocation for the next fiscal or financial year is a hindrance to prudent financial management and encouragement of in fructuous expenditure.

Article 14
Section 12

“Parliament shall establish a relief fund and the Druk Gyalpo shall have the prerogative to use this fund for urgent and unforeseen humanitarian relief.”

This is necessary for any unforeseen exigency and to respond positively to the suffering and affected victims. Parliament is mandated under this provision to establish a relief fund but nobody, other than the Druk Gyalpo, shall have the prerogative to use the fund for urgent and unforeseen humanitarian relief in times of calamities.

Article 14
Section 13

“The State shall make adequate financial provisions for the independent administration of constitutional bodies.”

This provision assures the effective functioning of the Constitutional offices provided for in the Constitution. Without finance and manpower, the Constitutional Offices cannot fulfill their constitutional mandates. Financial independence is a pre-requisite of organizational independence. In many countries, politicians have occasionally provided insufficient budget and manpower for the effective functioning of the Constitutional offices. This situation negates the very purpose of the Constitutional Offices. Bhutan has guarded against such a possibility.

Article 14
Section 14
“Unless otherwise provided for under the provisions of this Constitution or any other laws, there shall be free movement of goods and services among all the Dzongkhags.”

The purpose of this section is to ensure free movement of goods and services among the Dzongkhags. It makes octroi tax unconstitutional and strips the power of any local government to ban or stop the free movement of goods and services from another area of Bhutan. During the time of Drafting of the Constitution, Mr. K.K Venugopal commented that free movement of goods and services among all the Dzongkhags is not necessary because Bhutan is a unitary country. Further, the Dzongkhags have no legislative power. However, the Drafting Committee members felt, it was necessary to retain the provision in order to ensure and maintain the best policies of our government.

**Article 14**

**Section 15**

“Trade and Commerce with foreign nations shall be regulated by law.”

Trade and commerce with foreign nations cannot be conducted unless authorized by law. This section clearly mentions that “trade and commerce with foreign nations shall be regulated by law”. Although it would be the decision of the Government to decide about commerce and foreign investment in our country, such commerce and investment should be in keeping with the laws and the provisions of the Constitution and in the interest of the country. For example, section 16 of this Article states that “Parliament shall not enact laws that allow monopoly except to safeguard national security”. Therefore, the Government should function in line with the provisions stated in the Constitution.

**Article 14**

**Section 16**

“Parliament shall not enact laws that allow monopoly except to safeguard national security.”

The concept of monopolies is an anathema to any society and more so the Bhutanese society and the Buddhist philosophy. Monopolies encourage the enrichment of the rich to the detriment of the poor as a result of which the gulf between the rich and the poor widens and there is no hope of any reconciliation between the two. Monopolies stifle competition. The effort of the state to eradicate poverty takes a back seat as monopolies, instead of eradicating poverty, aim at eradicating the poor themselves! The constitution of Bhutan, therefore, has rightly enshrined a provision prohibiting parliament from enacting laws encouraging monopolistic practices except to safeguard national security.

Historically most industries and corporations were run by State and in the absence of competition, the goods and services provided were not prompt and of uniform quality. However, in recent years, the Government started privatization with the sole objective of improving the economy of the country. The Drafting Committee members opined that economic security is an important facet of sovereignty. Therefore, this section provides that Parliament should not enact any law that would allow the establishment of any monopoly except in the pursuit of national
security. In this regard, Parliament may have to enact legislations such as Anti-trust laws and unfair trade practices laws in the future.

**Article 15**

**Political Parties**

Introduction of a party system in Bhutan was an emotional issue among the members of the Drafting Committee as well as the concern of the Bhutanese people. People argued that party system would not be compatible and suitable in Bhutan because of its small size.\(^\text{483}\) Party system would divide families and the country.\(^\text{484}\)

His Majesty disagreed with the popular opinion and said that democracy without party system would be meaningless and would lack an organized, effective and responsible body to represent the will of the people by electing their representatives to Parliament and maintained that political parties are indispensable to democracy. Huntington stated that strong parties are “the prerequisites for political stability in modernizing countries”.\(^\text{485}\) Further, it may tantamount to a Neo-Liberal Constitution, military or one party system. His Majesty said that Bhutan does not want to associate with party-less or one party democracy, but the party system must provide choice to the people and assure legitimacy. Moreover, single party state will lead to political authoritarianism complemented by economic authoritarianism.

Bhutan has chosen a pluralist reality over a monistic democracy. An effective party system provides choices to the people and assures legitimacy.

According to John Kenneth & Jerome M. Mileur:

“An effective party system requires, first, that the parties are able to bring forth programs to which they commit themselves and, second, that the parties possess sufficient internal cohesion to carry out these programs. Such a degree of unity within the parties cannot be brought about without party procedures that give a large body of people an opportunity to share in the development of the party program.”\(^\text{486}\)

An effective party system may be able to bring forth programs to which they commit themselves, gain wider public support and the parties may possess sufficient internal cohesion to carry out these programs. As a party, the members confront powerful and influential individuals and groups. Political parties\(^\text{487}\) play an important role in societies. It was important for Bhutan to incorporate a party system but one which reflected its own national circumstances and requirements.

Their Majesties explained:

\(^{483}\) Public Consultation in Punakha, 27\(^{\text{th}}\) Nov. 2005.

\(^{484}\) Ibid.


\(^{487}\) In the farewell address, President George Washington urged his countrymen to “discourage and restrain” the “common and continual mischiefs of the spirit of party.” Madison mentioned about “the evil of parties” and in *The Federalist* No. 10, he stated that faction is, in some sense, an inescapable part of politics and the human condition.
It is not that our country will encounter problems that the new system is introduced but because our people can take up the system well. If we aspire for a good political system in the country, the people should carefully elect their representatives. While electing we must not look for self interest but think of the general and the national interest. There may be many commitments in the manifestos but we must elect the members who are well qualified with good attitude and who can serve for the cause of the people and the nation. For that matter we must be able to judge the best of the manifestos and accordingly elect the party befitting to the nation and the people. If we fail to elect a good and efficient government there will be corruption thereby leading to malpractices or a government engrossed in cherishing bribes, then we the people are solely to be blamed. If we fail to elect a good government it is our own fault and proves our own incapability. Therefore, it is very important that people must be careful while differentiating good from bad. If we have a good government who caters to the welfare of the people and the nation and where we have no corrupt practices in the country then I am sure that there will be no political unrest in the country.

If we look at our Constitution, it guarantees a unique political system under Article 15. When we drafted the Constitution, we considered all those aspects which are befitting and conducive to our nation and the people. Moreover we have carefully studied the system of other countries and incorporated the principles that is useful to us in our Constitution. There is nothing to be ashamed of when we copy the useful principles. And it is indeed important we refer the Constitution of other countries.

Mahatma Gandhi had great faith in the masses and believed that given the right leadership the masses were capable of self discipline and self restraint. It is expected that the Political Parties of Bhutan shall provide such leadership to lead the people in the right direction.

John Dewey observed that “while saints are engaged in introspection, burly sinners run the world”. It is necessary for the parties in Bhutan to prove John Dewey wrong.

Thomas Jefferson in his first inaugural address made a strong plea for a society in which the full play of deferring ideas could take place. He argued that only by allowing people the freedom to defer, could democratic society thrive. Political parties, no matter how bitter the electoral fight, must accept the results and they are expected to co-operate in furthering the good of the nation.

True Leadership is the opposite of the concentration of power and authority in one individual. To be a true leader is to unleash the power of the party and to release the potential and energy in the rank and file by means of personal impact. Parties have to motivate people so that they hold national interest above sectional interest.

At the same time Bhutan could not allow multi-party in the National Assembly to avoid the dangers as pointed out by Professor Benjamin Reilly, who commented:

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488 Public Consultation in Samdrup Jongkhar, 22nd April 2006.
489 Public Consultation in Chukha, 25th March 2006.
491 Thomar Jefferson and Noble E. Cunningham, The Inaugural Address of President Thoma Jafferson 1801&1805, 2001, pp.4-6.
“...Ethnically-based parties, for example, typically claim to represent the interests of one group alone. By making ethnically-specific appeals to mobilize voters, the emergence of such parties often has a centrifugal effect on politics, heightening ethnic tensions. By contrast, multi-ethnic parties need to appeal to a broader support base, and thus tend to have a more centrist impact, aggregating diverse interests and de-emphasizing mono-ethnic demands...”

Moreover, in multi-party systems, it is quite rare for one party to have a majority in the legislature. Coalition governments have an advantage of bringing other people into decision-making process. However, they have the disadvantage of making it often difficult to reach consensus for what you want to do by not having a single party in charge in any given moment. Therefore, governments formed on coalitions are more fragile. The coalition is often weak and less stable. Often, small parties in the coalition triumphs like the Nazi under the Weimer Republic (1919-1933).

For this reason under the Constitution, two rounds of elections, primary and general are held. In the first round, all registered political parties may participate so as to inject new parties with new ideas. However, at the general election only those two parties having the highest and the second highest number of votes in the primary round of election will participate. The party who receives the highest number of seats is declared the ruling party and the other as the opposition party. This system provides opportunity to the fresh parties.

The choice of multiparty system during the primary and duopoly at the general election will intensify political competition. With this, the political movements of extremists and fundamentalists may be marginalized and the moderates may be encouraged to join a united party. An advantage of bipolarization or of the two-party system is that the moderates of both sides must collaborate with those who are more extreme in their views, and the extremists must be willing to work with those who are more moderate. The pressure from the extremists prevents the moderates from getting bogged down, while collaboration with the moderates lends a touch of realism to the policies of the extremists. In a two-party system, the nation has an assurance of a majority in the legislature, deriving from the predominance of one party. Therefore, it has a guarantee of continuance and effectiveness. Such a system is often referred to as majority parliamentarianism. The criticism that the system Bhutan opted for would not cater to the interests of the minority and would bring about unbalanced composition in Parliament is unfounded. The two parties have to accommodate and balance their interests through their members to ensure protection of national interest in accordance with section 4(a) of this Article.

The two-party system was introduced to secure national cohesion and stability and to avoid a split in Parliament. This provision barricades independence fueled by artificial zeal and alienation fed by distrust and separation exerted by fundamental differences. It is a conscious effort of Bhutan, which in Professor Andrew Mac-Intyre’s words:

“...to devise a Constitution which will prevent power from being so concentrated that it facilitates dictatorial government, but also prevent power from being so fragmented that it leads to ineffectual and unworkable government.”
Professor Benjamin Reilly commented:

“The most unusual aspect of Bhutan’s draft Constitution is its attempt to mandate aspects of the country’s party system in the Constitution. An overriding aim appears to be the development of a nationally-based party system that limits the possibilities of political fragmentation or conflict based upon identity lines such as region, religion or ethnicity….it seeks to control the form, number and behaviour of political parties in Bhutan. While this is unusual, it is not unique … An even more unusual aspect of the Bhutanese draft Constitution is the attempt to mandate a two-party system. Unlike other areas such as the overall design of Parliament or the use of single-member electorates, where the draft Constitution tends to be broadly in line with international practice, this aspect of the Constitution is extremely unusual by international standards.”  

Similarly, the former Chief Justice of India, J.S Verma mentioned:

“The general scheme of democratic polity is unique and it is a progressive provision. Confining the final election to the National Assembly to only two political parties would prevent post-election horse-trading otherwise with small parties or independents for power in the absence of a clear electoral verdict that is usual elsewhere.”

Nothing is more important in the political culture and history of a nation than a Constitution by which citizens are ruled. A crucial feature of democracy is political representation through periodic or regular elections to sustain governance by the people. Rightly, one of the slogans during the first general election was the choice of a right party and selection of capable candidates.

His Majesty Jigme Singye Wangchuck advised that:

I desire for an altruistic government, which will strive towards achieving the welfare of the nation and the people rather than a government that is driven by ulterior motives. Therefore, it is very important that our people are mindful in electing a good democratic government who will dedicate itself for the cause of the people’s welfare. I feel that if we go about by the mandate of the Constitution, like in other countries, we will not face internal unrest and political upheaval amongst the ruling and opposition party.

Firstly, party system is required as per the principle of democracy. Secondly, once democracy is introduced we cannot prevent the advent of political parties. It is better to have it now because it is impossible to prevent it in the future.

During the public Consultation in Haa, one representative suggested that the whole nation should vote for the candidates. This may sound good to have the popular vote from the whole country but this will not ensure the right candidate to represent a constituency, and a few constituencies may not have representatives if the nation can vote any candidate from any constituency and the

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495 Supra, n.435.
496 Supra, n.134.
498 Chairman of the Drafting Committee’s explanation during the public consultation in Bumthang.
representatives may not be accountable and responsible to the constituency. Thus, duopoly or two party system for the general election and multi-party system for the primary election are truly a political innovation of His Majesty Jigme Singye Wangchuck. Nations around the world were plagued by either instability due to hostage by political defection or horse-trading with different parties contrary to the original mandate by the people. Political morality and ethical conscience are public virtues. Consequently, His Majesty Jigme Singye Wangchuck clarified that:

> Owing to bi-party system, we will not face internal unrest and political upheaval amongst the ruling and opposition party as in other countries. That’s why, I feel and hope that if we adhere to Article 15 and work in accordance with the provision enshrined in the Constitution, our political system will function smoothly.499

### Article 15

#### Section 1

> “Political parties shall ensure that national interests prevail over all other interests and, for this purpose, shall provide choices based on the values and aspirations of the people for responsible and good governance.”

Political parties should not sacrifice the national interests for self-interest or political interest. Time, resources and energies are wasted seeking vengeance over the opposition and many innocent people have become victims of that cross fire. Denial and betrayal of the trust and aspiration of people will be the negation and violation of this section. This section should ensure that the politicians focus on the higher aims of national security, territorial sovereignty, peace and progress of the people and uphold national interest above sectional interest.

The responsibility of the party in power centers on the conduct of the government in terms of policies. The party in power has the responsibility, which is broadly defined for the general management of the government. The Government works for results and bears the burden for consequences of inaction.

Party responsibility also includes the responsibility of the opposition party, broadly defined, for the conduct of its opposition, for the management of public discussion, for the development of alternative policies and programs, for the bipartisan policies which it supports, for its failures and successes in developing the issues of public policy, and for its leadership of public opinion.

The Constitution envisions the political parties to be democratic, responsible and effective. The parties must ensure that the national interests prevail over all other interests. The parties must be responsible to the public. Parties must justify the public confidence and ensure the future mandate. Our actions of today have an irretrievable impact on future. His Majesty Jigme Singye Wangchuck said that good governance cannot be scarified. Pursuit of private power and profit would be wholly unjustifiable, irresponsible defiance of the public interest and denial of the sense of public responsibility.

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Political party is important. In our country, if party system functions well, we can fulfil the national aspirations. And if party system fails, there is every risk that our country may encounter political crisis as in any other countries ... when we first commence the election, many parties may participate in the primary round of election. Owing to two-tier electoral system, our country will not encounter any political upheaval that other countries are enduring. Our electoral system is better off than the electoral process of other countries. By then our people can avail opportunity to select their government based on informed choices.500

Political Parties must remember that in the ultimate analysis the immortal words coined by Abraham Lincoln in his Gettysburg Address namely, “that Government of the people, by the people and for the people shall not perish from the earth” hold good for all times. This will happen when political parties harness their energies for the good of the nation and the people.

Article 15
Section 2

“Political parties shall promote national unity and progressive economic development and strive to ensure the well-being of the nation.”

Politicians should aim to promote the national interest and strengthen the nation, rather than weaken it through the promotion of fundamentalism, or sectarian and divisive policies. The aims and objectives of political parties should be to serve Bhutan and its people. His Majesty Jigme Singye Wangchuck said that Bhutan must try to ensure that the political parties place party interest as subordinate to national interest. Bhutan should have a dynamic and popular political system which involves all the people in the governance of the nation.

Regarding the political parties and their leaders, it is the Bhutanese people, who should choose the right leader to serve in the best interest of the country and work to fulfill the aspirations of the people. His Majesty said that it is the duty of the people to differentiate good from bad candidates because no politician will say that they will do wrong.

Political Parties must keep in mind what William Makepeace Thackeray observed in his book Pendennis “men serve women on their knees, when they rise they go away”. It is the same with the electorate. They love and worship their leaders but when the spell is broken, they unfailingly transfer their allegiance elsewhere. Political Parties must keep this in mind.

Political parties must promote national unity. Unity is the strength for the survival of a nation. The parties must introduce progressive economic development. Buddha said,

“The political, economic and military problems that beset any kingdom had their roots in the selfish ambitions of those involved in politics... Crime and violence were the natural results of hunger and poverty. The best way to assist the people and provide for their security was to concentrate on building a healthy economy.”501

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Progressive economic development is the source of happiness and liberation from pain. This will contribute to progress and preservation of order and ensure the well-being of the nation

Article 15
Section 3

“Candidates and political parties shall not resort to regionalism, ethnicity and religion to incite voters for electoral gain”.

Myopic political gains to incite voters by resorting to regionalism, ethnicity and religion are divisive, degeneration of human ethos and destruction of the Bhutanese society. This section specifically deters and seeks punitive action against the recalcitrant. Vested interests, vaulting ambitions and corrupt principles should be deterred to prevent the country from being destroyed. Manipulation and distortion through improper means will be the causes of deliberate acts of injustice and self-annihilation.

His Majesty Jigme Khesar Namgyel Wangchuck said:

Therefore, at the time of elections, you all have to carefully bear the responsibility to see that the best party among other parties that are contesting gets elected. Even if you are a member of a party, it is important to consider about the competency and efficiencies of the members. So, all these choices are in the hands of the people at the time of election. For these reasons, it is very important that you all do your very best in carrying out your responsibilities with extra care and vigilance.502

According to section 3, candidates cannot resort to regionalism, ethnicity and religion to induce votes. If they resort to such means, it is the duty of the Election Commissioner under section 3 and 4 of Article 23 to ensure compliance of clauses (a), (c) and (d) of section 4. In addition, under section 11 of Article 15, the Supreme Court and High Court can take appropriate action in that behalf.503

Article 15
Section 4

“A political party shall be registered by the Election Commission on its satisfying the qualifications and requirements set out hereinafter, that:”

This section is the operational aspect of the principles enunciated in sections 1, 2 and 3 of this Article. It provides that, for a political party to be registered by the Election Commission it should satisfy the eight qualifications and requirements set out in the section. His Majesty was conscious of the fact that the future Government of Bhutan must be represented by the popular will or consent, and it should be the choice of the people. However, the choice should not be a mere expression of pious thought but it has to be regulated and the choice must emanate from a sound foundation.

502 Public Consultation in Dagana.
503 Chairman of the Drafting Committee’s explanation during the public Consultation in Gasa, 13th May 2005.
Freedom of choice will produce rational and good choices. Therefore, the Bhutanese political system allows for all qualified parties to contest in the primary round of election under section 6 of this Article and the two highest voted parties to contest in the general election for representation in the National Assembly to provide a stable government.

His Majesty Jigme Singye Wangchuck explained:

*The two parties obtaining the first and the second highest number of votes in the primary election will be declared as the two political parties to contest in the general election. After the general election, a party who wins the majority of the people’s confidence will form the ruling government and the losing party will obviously stand as the opposition party in the National Assembly. The opposition party is not an observer; its function is to see if the ruling party does the work beneficial to the nation and must protest against any activity not designed for the well-being of the nation. Unlike in other countries, we have excellent system with two-tier electoral process.*

His Majesty emphasized:

*The responsibility of our people is to elect the most capable party. If there are eight political parties contesting for the seats, we must not elect the incapable party but must elect the capable one. If we have about twenty parties, all of them during their campaign in the dzongkhangs, will commit many promises to the people. By then, we will get confused and would not know who would be the best and capable party to vote for. That's why, we have adopted two levels of elections where, in the primary level, as many parties can join the fray and of the two parties obtaining the first and the second highest number of votes will be declared as the two political parties to contest in the general election. When the parties get filtered to two, it is much easier for us to make the choice.*

Further, the Constitution does not provide for collecting signatures as the qualification for registration. Collecting signatures for the registration of a party may add to the qualification of the party but may divide the population prior to the election. Signature campaigns may make a person feel obligated to vote for the one to whom he or she has given the signature. Therefore, our Constitution has taken into account other essential requirements for the registration of the party in order to uphold the principles and values of Bhutanese democracy.

With the liberal multiparty democracy during the primary election and two party democracy at the general election, Bhutan will have total political participation with many parties contesting for votes cast on individual basis (one-person, one-vote).

Justice Jackson wrote:

*“The democratic principles in the Constitution protect the right of the people freely to form our political will and make un-manipulated choices in elections.”*

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504 Public Consultation in Paro, 9th Nov 2005.
505 Ibid
Authority will be controlled by public opinion as John F. Kennedy said, “the basis of effective government is public confidence.”

The constitutionalism of Bhutan is woven right through the Constitution. Article 15 is the Article dealing with political parties is woven right through the Constitution. Article 15.4 (f) says, a political party shall be registered by the Election Commission on its satisfying the qualification and requirements set out hereinafter, that if its members shall bear true faith and allegiance to this Constitution and uphold the sovereignty, territory, integrity, security and unity of the kingdom. The obligation of true faith and allegiance to the Constitution is cast upon the political parties.

Article 15
Section 4 (a)

“Its members shall be Bhutanese citizens and not otherwise disqualified under this Constitution;”

This section bars any person to be a party member, if he or she is not a Bhutanese citizen or is disqualified under the Constitution and requires that any political party to be registered by the Election Commission should be composed of members, who are Bhutanese citizens and not otherwise disqualified under the Constitution. Even if the member is a Bhutanese citizen, the party may not be registered if that member is otherwise disqualified by the Constitution.

Article 15
Section 4 (b)

“Its membership is not based on region, sex, language, religion or social origin;”

Under section 4(b), membership of a political party should not be based on one region, sex, language, religion or social origin. The party should have diversity in its membership. It should be composed of members representing east, west, north and south without differentiation between male or female, languages, religions, and different social origins. This provision constitutionally avoids regionalism, gender bias, language agitation, fundamentalism, communalism, sectarian politics and social bias. This subsection ensures that a party espousing parochial tendencies would not be eligible for registration.

This sub-section encompasses inclusive democracy. In a small country, a political party should not be regional and gender based. A party should be inclusive. A party is for the benefit of citizens and the country as a whole. This provision purports to develop a nationally-based party system that limits the possibilities of political fragmentation or conflict, based upon identity lines such as region, sex, religion or ethnicity. Discrimination, favouritism and selfishness are the evils that Bhutan must avoid through this section. Regardless of size, Bhutan was united from times immemorial. Therefore, a party must have members from most of the Dzongkhags if not all. Article 15(4) (a) was an innovative idea of His Majesty and was well

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508 Chairman of the Drafting Committee’s explanation during the public Consultation in Punakha, 27th Nov. 2005.
509 Ibid.
received by all. Any division of a society fuelled by artificial zeal, alienation fed by distrust, separation exaggerated by fundamental differences leads to destruction of a society, is regressive for a progressive nation and a curse to the humanity. Patriotism and nationalism must unite and bury their differences under sub-sections (a) and (b). A political party should not be based on region, caste or religion because it will violate section 3 of Article 15, and sub-section (b) of section 4 of Article 15. Further, it must prevent the smaller Dzongkhags from being dominated by the bigger Dzongkhags. Therefore, the number of members from each Dzongkhag has been limited to a minimum of two and a maximum of seven.

**Article 15**
**Section 4(c)**

*“It is broad-based with cross-national membership and support and is committed to national cohesion and stability;”*

As witness to the wisdom and chaos in other countries, Bhutan must have a wise Political engineering of Parties and Party Systems. Therefore, it is necessary that the country encourages the development of centrist, aggregative and multiethnic political parties which will persuade and promote cross-regional and broad based membership. It will allow flexibility for developing a dynamic voting system without the requirement of amending this section. It may also eliminate unscrupulous political leaders and parties, and prevent non-serious candidates.

Benjamin Reilly observed:

“In his classic work on political change, Huntington argued that strong parties are “the prerequisite for political stability in modernizing countries” (1967:412). Comparative research across a range of contemporary democracies supports this: broad-based parties with strong ties to the electorate are associated with higher overall levels of development than other party systems (Powell 1982: 101), with party system fragmentation presenting a particular barrier to achieving substantive economic reform (Haggard and Webb 1992). Ideally, a small number of aggregative, programmatic parties capable of translating public preferences into coherent government policy is probably the optimum party system model. Several comparative studies have emphasized the benefits of such ‘moderate multipartism’ for the survival of new democracies... Haggard and Kaufman (1994) found that a two-party system or stable coalition organized on a left-right basis is the most propitious arrangement for democratic durability. Diamond, Linz and Lipset’s 26-nation study of democracy in developing countries concluded that “a system of two or a few parties, with broad social and ideological bases, may be conducive to stable democracy” (1995, 35). In the same vein, Weiner and Ozbudun (1987) found that the standout common factor amongst the small number of continuous third-world democracies was the presence of an aggregative party system featuring a small number of broad-based political parties.”

The share of voting percentage in Bhutan indicated the emergence of dominance by a few populated Dzongkhags in the national sphere of governance. The concern is the fate of many smaller and remote Dzongkhags in the Kingdom. While rule by minority is not encouraged it is

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510 Ibid.
511 Chairman of the Drafting Committee’s explanation during the public Consultation in Lhuentse, 24th Dec. 2005..
important that the minority is not marginalized and put the security and sovereignty of the country in danger. The parties must be broad-based with cross-national membership and support. Section 4(c) provides further details for a broad organizational base. Broad based means that a party must have memberships from certain minimum number of Dzongkhags prescribed by the Election Commission. Its objective must be aggregative. Therefore, its membership should neither be a group of a few bigger Dzongkhags nor a group of small Dzongkhags. A party should be representative of acceptable numbers of big and small Dzongkhags. Similarly, a cross-national membership is from as many regions and Dzongkhags as it can take. A party must be “committed to national cohesion and stability” to disqualify and discourage secession and disunity. His Majesty Jigme Khesar Namgyel Wangchuck said;

*Politics should not be the cause of disunity amongst our people. Our people should not be divided based on ethnicity (race, caste or creed), religion, region, politics, rich and poor (on the basis of economic development).*

The Drafting Committee had once considered high threshold of the electorate to be represented in Parliament but it was not feasible. Furthermore, considering threshold at the first election has no base and there is an inherent problem of perpetuating a few political parties, indirectly stopping other political parties from participating in the election. It would encourage tyranny of parties. New parties should be able to replace any non-performing party. It will send clear message about the power that the people have to reject a party. This is a more democratic way of expressing the will of the people. Similarly, out of 20 Dzongkhags, almost 11 or 12 may have to have their representatives in one political party. This provision has been inserted to prevent few Dzongkhags, about 5 to 6 or 3 to 4 from joining together. As per section 4(a) of Article 15, all types of people from most of the Dzongkhags should be members of a political party and only such parties can be accepted upon clearly stating as to how they will serve the government, country and the people.

**Article 15**

**Section 4(d)**

*“It does not accept money or any assistance other than those contributions made by its registered members, and the amount or value shall be fixed by the Election Commission;”*

This section prohibits a party or its candidates from accepting money or any assistance other than those contributions made by its registered members within the amount fixed by the Election Commission. His Majesty Jigme Singye Wangchuck said that there is every possibility that the political parties could be tempted to accept bribes from the business people and also bribe the public in order to win the election. This constitutional provision is a protection to ensure that the country will not be governed by corrupt persons by eliminating this possibility during the electoral phase. Moreover, if such party is elected, the Prime Minister will also be elected from such corrupted political party, which accepts bribe and cannot fight corruption. Such fraudulent party should never be allowed to form the government. Therefore, Political Parties must remain away from the scourge of corruption.

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513 Royal address by His Majesty to the Judges and Lawyers during the 21st Annual Judicial Conference at the Supreme Court, 3rd July 2014.

514 Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Trongsa, 24th May 2006.
Article 15
Section 4(e)

“It does not receive money or any assistance from foreign sources, be it governmental, non-governmental, private organizations or from private parties or individuals;”

This section stipulates one of the main requirements or qualifications that need to be fulfilled for a political party to be eligible for registration. The political party must demonstrate that it does not receive money or any assistance from foreign sources. Receiving money or assistance would make the politicians indebted and subjected to political push, pressure and blackmail. It would jeopardize the national interests, national security and sovereignty. An indebted party will sacrifice national interest and jeopardise the well-being of the public.

The fear of people as regards foreign funding was allayed by section 4 (e) which provides that no money or any assistance shall be received from the foreign sources. Consequently, even no internal assistance or money shall be accepted except when it is an individual’s money. Moreover, the ceiling for the total expenditure that may be incurred has to be determined by the government. If any money or assistance is received from outside, there will be no level playing field amongst the parties. Therefore, any contribution or assistance from the foreign sources or other individuals in the country will be illegal. ⁵¹５

Article 15
Section 4(f)

“Its members shall bear true faith and allegiance to this Constitution and uphold the sovereignty, territorial integrity, security and unity of the Kingdom;”

This section requires the members of a party to bear true faith and allegiance to the Constitution and uphold the sovereignty, territorial integrity, security and unity of the Nation. A member being a citizen cannot violate the Constitution that bestows freedom, rights, liberty and protection. Social order and sovereignty would be jeopardized unless these principles are generally respected. The political parties must be bound by true faith and allegiance to the Constitution and work for national security, territorial sovereignty, integrity, unity, peace, and progress of the people.

Article 15
Section 4 (g)

“It is established for the advancement of democracy and for the social, economic and political growth of Bhutan; and”

This section enunciates that the purpose of political parties is for the advancement of democracy and for the social, economic and political growth of Bhutan.

The political party must be dedicated to the task of building a democratic state as envisioned by Their Majesties and the Constitution. Democracy advances social progress and creativity. In

⁵¹５ Chairman of the Drafting Committee’s explanation during the public Consultation in Trongsa, 24th May 2006.
Stuart Mill’s words, “democracy could be permeated by creative ideas”\textsuperscript{516} and not by scuttle of politicians. Therefore, this provision makes the political party duty bound to advance democracy, and the social, economic and political growth. Any regressive act by a political party will violate this sub-section.

**Article 15**  
**Section 4(h)**

“*It has not been dissolved earlier under the provisions of section 11 of this Article.*”

This section does not elevate the parties that were dissolved earlier under the Constitution. Lawbreakers cannot be the custodian of people’s choice and aspirations and should be prevented from being able to perpetrate silent crime against the society. Therefore, a party that has been dissolved earlier should not be allowed to register itself under a changed name with the same person as a leader and the members. It is the duty of a party and a candidate to inform the public under section 6 of Article 23 about its or his or her antecedents. Moreover, spirit of law is that by just changing the name, it will not legalize the previous wrongdoings.

**Article 15**  
**Section 5**

“*Election to the National Assembly shall be by two political parties established through a primary round of election in which all registered political parties may participate.*”

Election to the National Assembly entails representative democracy. It is facilitated by freedom of choice that will produce rational and good choices. Therefore, the Bhutanese political system allows for all qualified parties to contest in the primary round of election in which all registered political parties may participate. At this stage, it is a multi-party contest. The Constitution of Bhutan has allowed multi-party system during the primary round of election only. The party model adopted under the Constitution is not restricted to a few parties but provides opportunity for many who are desirous of participating and offering wider choice to the people. Thus, primary round of election is an interplay used for electing two parties whilst general round of election is to select one of them for the formation of the Government. This provision enshrines a double round election system with a view to preserve stability. Two qualified parties will contest in the general election for the representation in the National Assembly. The representation in the National Assembly by two political parties will ensure a stable and a durable government. His Majesty Jigme Singye Wangchuck mentioned that the Constitution must have freedom of electing and changing the government but not at the cost of causing instability.\textsuperscript{517}

His Majesty clarified:

> There is a high risk that the Dzongkhags would be tormented and politicised by the parties. That is why we have only two parties contesting in the general election. Rest of the parties who fail to secure the first and the second highest votes will be disqualified from further contest. When these two parties launch their campaign in all the twenty Dzongkhags, people would know the right party who would serve our country and

\textsuperscript{516} Britannica Educational Publishing, *The Science and Philosophy of Politics*, 2012, p.94.  
\textsuperscript{517} Royal audience by His Majesty Jigme Singye Wangchuck, 19\textsuperscript{th} Nov. 2001.
people. For this reason, of the two parties contesting in the general election, a party who wins the majority of the people’s confidence will form the ruling government and the other as the opposition party in the National Assembly.518

This section mandates only two parties with the highest number of votes to contest in the general election according to section 6 of this Article. The party, which wins the majority of seats in the National Assembly in the general election, shall be declared as the ruling party and the other as the opposition party according to section 8 of this Article. Hence, competitive politics culminate in majoritarian rule according to sections 7 and 8 under this Article. This system is meant to foster stability and progress. This freedom of choice will produce rational and good political leaders. The political parties must conform to this democratic dictum.

The people would know the different issues and ideologies with participation of more parties during the primary round. All these would be crystallized in the second round of election namely, the general election. Many issues and ideologies expressed by representatives of different regions and political groups would unite at pre-poll alliance under this system. With two rounds of elections, the people of Bhutan from different regions and political groups will be represented in the National Assembly either through the ruling or the opposition party. The National Assembly would be broad based and it would have more legitimacy through united voice. In other forms of political systems, it would be the representation of a few independent parties while the smaller parties would be insignificant.

His Majesty Jigme Singye Wangchuck said that having two rounds of elections would be the best system for Bhutan. It would help prevent the political instability and problems experienced by many multi-party systems. Moreover, it will be easier on the part of the people to elect the right party from the two parties that stand for the interest of the people and the country. The two parties winning the highest number of votes in the primary elections would both seek support nationwide and for Bhutanese voters it would be easier to decide which of the two parties would best serve the interests of the country and the people. It is important for the people to carefully choose the political party that would be best able to provide good governance to fulfill the national interest of the country. Therefore, only two parties with the highest number of votes can contest in the general election.

Two party system of Bhutan may be similar to ‘centripetalism’ that makes the political competition centripetal rather than centrifugal. If a political party floating different political ideologies does not receive either the first or second highest, it should join one of the parties. If they find the ideologies irreconcilable or the political principle prevents them, they should continue to maintain separate identities outside Parliament to signal the two winning parties that they are waiting, in case these parties fail to deliver the services and fulfill the election political manifesto. This would nourish floating hope for alternative and healthy political system. Hence, general programme and policies of a party must be adopted and implemented with wider public support. Public is their witness.

Multi-party systems in Parliament have proliferation and inducement of small minority parties divided by issues, which are based on ethnicity, dogmas, ideologies, religion or region of a country. Multi-party systems tend to create coalition politics which may not have the majority

mandate of the voters. Multi-party systems have a disproportionate influence on the formation and stability of governments. This has, in some cases, frustrated the broad popular will, and has been destabilizing as opposed to a moderating force in the stability of a government that is formed as result of a multi-party coalition. Bhutan must avoid a party-system which is “polarized pluralism”519 featuring competition between “extremist movements.” Therefore, Bhutan has made deliberate and conscious choice of limiting Parliament to a two party system.

The Constitution does not favour independent candidates. It is to avoid the presence of frivolous candidacy, which betrays the mandate of the people by joining other parties and also to avoid political corruption. Independent candidates divide the vote and violate the principle of independence by supporting the party that the People wish to reject.

In many countries, numerous parties negotiate alliances in forming a weak and unstable government. These systems cannot be borrowed into Bhutan. Therefore, His Majesty the King has been conscious of the fact that the future Government of Bhutan must be represented by the popular will, consent and choice of the people, and it should not be weak and unstable.

Election provides responsibility of one’s choice. Primary election prevents power from being concentrated to facilitate dictatorial government. Section 5 of Article 15 empowers the people with choice to elect their representatives through an organized party system during the primary election. Party system brings organizational and institutional responsibility and accountability. Article 15 is unique and it is a gift from His Majesty Jigme Singye Wangchuck to his people.

**Article 15**

**Section 6**

*A primary round of election shall be held to select the two political parties for the general election on the expiry of the term of the National Assembly or in the event of dissolution under section 12 of this Article."

His Majesty Jigme Singye Wangchuck explicated:

*In the primary election, any number of parties, say 5 or 10 or 15 can contest the election at the same time. The two parties obtaining the first and the second highest number of votes in the primary election will be declared as the two political parties to contest in the general election. I feel that our system is better than other countries because if there is an emergence of 5 or 6 or 15 or 16 parties in every Dzongkhag, our people can avail opportunity to select their government based on informed choices.*520

A primary round election shall be held to select the two political parties, which will ultimately participate in the general election on the expiry of the term of the National Assembly or in the event of its dissolution to ensure that two parties do not have a permanent monopoly and new parties can emerge. It would provide informed choice and the most valuable opportunity to influence the course of public affairs with the choice they are able to make between the parties in the elections. With this system, any viable party has an opportunity to replace either of the parties and provide hope of alternative party to the people.

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A primary round is to counterbalance the tyranny of two party systems and not to stifle smaller parties. They can join one of the two parties during general election. Further, new parties can replace the tyrant party and win the election.

A primary round of election provides the regularity of party competition, goal of all hopes and vision of the best for Bhutan. Two surviving parties will not be a monopoly. People have choice to choose two parties at every primary round of election. There is no restriction on the number of parties to participate at the primary level.

Article 15
Section 7

“The two political parties obtaining the first and the second highest number of votes in the primary election shall be declared as the two political parties for the purpose of section 5 of this Article to contest in the general election.”

His Majesty Jigme Singye Wangchuck’s political party engineering through the draft Constitution of Bhutan has allowed multi-party system in the primary round of election according to sections 5 and 7 of this Article. A multiparty democracy to function requires, according to Robert Dahl:

“(a) extensive competition by contestants or parties for government; b) political participation that provides the choice for the electorate to select candidates in free and fair elections; and, c) civil and political liberties that enable citizens to express themselves without fear of punishment”.

The Bhutanese political system allows all qualified parties to contest in the primary round of election under section 6 of this Article. The qualifications and requirements are enshrined under section 4 of this Article. This freedom of choice will produce rational and good selection of political leaders, as there will be a direct input by the voters in the selection of the political parties. Hence, under the Bhutanese political system, the government will have legitimacy, broad base and stability. Moreover, the representation in the National Assembly by two political parties under sections 7 and 5 of this Article will ensure formation of a stable government.

The two political parties obtaining the first and the second highest number of votes in the primary election cannot be complacent. Edmund Burke mentioned that all governments, indeed every human benefit and enjoyment, every virtue, and every prudent act is founded on compromise and barter.

This system may force parties to aggregate the diverse and like-minded to represent diverse views within the party and inadvertently follow centripetalism by accommodating moderate and compromising policies.

Dr. Benjamin Reilly noted:

I use the term centripetalism as a shorthand for three related but distinct phenomena: 1) the provision of electoral incentives for campaigning politicians to reach out to and attract votes from ethnic groups other than their own, thus encouraging candidates to moderate their political rhetoric on potentially divisive issues and forcing them to broaden their policy position; 2) the presence of an arena of bargaining, in which political actors from different groups have an incentive to come together and cut deals on reciprocal elected support, and hence perhaps on other more substantial issues as well; and 3) the development of centrist, aggregative, and multiethnic political parties or coalitions of parties that are capable of making cross-ethnic appeals and presenting a complex and diverse range of policy options to the electorate.”

Thus, the parties will be compelled to adjust and provide alternative programme and enter into pre-poll alliance if need be. Consequently, extreme political ideas and fundamentalist’s ideologies would be softened to seek greater mandate in the general election.

With the liberal multiparty democracy during the primary election and the two parties at the general election, Bhutan will have total political participation with many parties contesting for votes cast on individual basis (one-person, one-vote). Moreover, the ruling and the opposition party would not be at the dictate of deviant, independent and smaller parties. Parliament should not be held to ransom by the members, who are willing to change from the mandate that the people have given.

Dr. Benjamin Reilly observed:

“The provisions under Article 15 Sections 6 and 7 are innovative, different and new model. Scholars would study it and if it works in Bhutan, it would be a new political engineering to be emulated.”

Expressing hopes for the future, His Majesty Jigme Khesar Namgyel Wangchuck exhorted:

In other countries we witness the change of government once or twice in at least every one or two years. Moreover, in some countries there are more than 30 political parties contesting the election. Like in any other countries, even in our country no political party will say that it will harm the interest of the nation and its people. All the political parties will say that it will serve the nation in the best possible manner and that it will strive to promote people’s welfare and bring tangible changes in the development. We have good systems and principles in our country. Our Constitution was drafted by the government and the people under the wise leadership of His Majesty Jigme Singye Wangchuck. The members have drafted this Constitution by keeping in mind the priorities of our country and people. I can guarantee you that there will be no problem in future if we strictly function in accordance with the provisions of this Constitution and other systems. Wherever it may be the problems crop up when the government and people function in contravention of the laws and systems. The most important is that it depends upon how our people shoulder the responsibility.

524 Supra, n.435.
525 Public Consultation in Bumthang, 22nd May 2006.
526 Public Consultation in Dagana, 5th Feb. 2006.
Article 15
Section 8

“The party which wins the majority of seats in the National Assembly in the general election shall be declared as the ruling party and the other as the opposition party. However, in the case of casual vacancy, if the opposition party gains majority of seats in the National Assembly after the bye-election, such party shall be declared as the ruling party.”

The ruling party is the one which wins the maximum seats in the general election and the opposition is the one which wins the remaining seats. However, in case of a casual vacancy, such as resignation or termination of a member from the party, any new member or the candidates have to seek mandate of the people through bye-elections.

If the opposition party gains majority of seats in the National Assembly after a bye-election, such party shall be declared as the ruling party.

Article 15
Section 9

“No election shall be held where the remainder of the term of the National Assembly is less than one hundred and eighty days.”

This provision is to avoid unnecessary expenditures and public harassment. Considering the remaining term will thus justify the expense.

Article 15
Section 10

“The members of the National Assembly belonging to one party shall not defect to the other party either individually or en bloc.”

The prohibition of members of the majority or the opposition party to defect either en bloc or individually to the other party is intended to contribute to the stability of the Government and not to betray the electoral will of the people. If a party member wishes to change parties, he may only do so in a proximate electoral process. The party member as a Member of Parliament may choose to exercise a conscience vote and to the party line without betraying public trust or violating the Constitution. The intention of this section is to increase party discipline, stabilize party politics and provide for a more structured party system overall.

Justice J.S Verma noted:

“Defection either individually or en bloc of its member is prohibited to prevent horse trading etc. Article 15 ensures that such a thing can’t happen in addition to providing
that the last round of election is to be only between the two parties so that there is no hung parliament. That’s a very big thing to ensure political morality.”

Defection is an evil disease plaguing the party system borne out of mercenary tendencies.

**Article 15**

**Section 11**

“A political party shall be dissolved only by declaration of the Supreme Court:

A political party shall be dissolved by declaration of the Supreme Court. This is the most extreme sanction a party and its members can face as it also may have implications on individual’s capacity to lead or participate in other parties or to hold public office.

**Article 15**

**Section 11(a)**

“If the objectives or activities of the party are in contravention of the provisions of this Constitution.”

The Constitution establishes the ideologies and values necessary to form a Democratic Constitutional Monarchy. Therefore, the objectives and activities of all parties must not contravene the provisions of the Constitution, instead parties should provide and fulfill the values and aspirations of the people in accordance with the Constitution.

The political parties of Bhutan must pursue the spirit and principles of the Constitution. The objectives or activities of the political parties should not be in contravention to the provisions of the Constitution or the Electoral Laws. They should promote national unity and progressive economic development, and strive to ensure the well-being of the nation.

**Article 15**

**Section 11(b)**

“If it has received money or assistance from foreign sources;”

Under section 4(e) of this Article, Political parties cannot receive money or any assistance from foreign sources be it governmental, non-governmental, private organization or from private parties or individual. Hence, if a political party receives money or assistance from foreign sources, it has to be dissolved.

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527 Surpa.n.71.
Article 15
Sections 11 (c) and (d)

(c)  *On such other grounds as may be prescribed by Parliament or under a law in force; or*
(d)  *On violation of the Electoral Laws."

The citizens of Bhutan have every right to move the Supreme Court of Bhutan to initiate a process for the dissolution of a political party, if the party violates any law in force or on such other ground as may be prescribed by Parliament, or the provisions of Electoral Laws.

Article 15
Section 12

*“Where the ruling party in the National Assembly stands dissolved under section 11 of this Article or the Government is dismissed under section 24 of Article 10 or under section 7 of Article 17, the National Assembly shall also stand dissolved and, accordingly, sections 1 to 8 of this Article shall apply.”*

If the ruling party or the Government is dissolved, the National Assembly will be automatically dissolved. Thereafter, a fresh election should be held. However, dissolving a popularly elected ruling party would require the commission of a serious offence, irreparable loss of public confidence and/or loss of legitimacy to govern. John F. Kennedy stated that the basis of effective government is public confidence. Constitutional cases follow the legal dictum “Law does not deal with trivial matters”. Therefore, the crime of the party must be serious enough to warrant its dissolution as defined by the Constitution or the electoral law.

Article 15
Section 13

*“During the election of the opposition party under section 14 of this Article, the National Assembly shall be suspended animation and the ruling party and their candidates shall not contest in the elections.”*

The failure of the opposition party should not result in dissolving the popularly elected Government. It will tantamount to punishing the legitimate government. It would create instability. Therefore, during the dissolution of the opposition party, the popularly elected government can continue its term. The opposition party should not pull down a legitimate government. However, the National Assembly should be in suspended animation until a new opposition party is elected. During the suspended animation, the Government cannot enact any new laws or policies. Democracy requires an opposition party. His Majesty said:

> *In many countries, all the parties which lost the elections remained in opposition to the ruling party with the main aim of pulling down the government. If they could not topple*

528 Supra, n.507, p.357.
the government they would try to make sure that it was not able to govern successfully. Such negative traits of parliamentary democracy must never be allowed to take root in Bhutan. It should be the responsibility of the Opposition Party to oppose the Government when it is going wrong but it is also the responsibility to support and cooperate with the government in the development of the nation.\textsuperscript{529}

Article 15
Section 14(a)

“Where the original opposition party stands dissolved under this Constitution, an opposition party shall be elected:

(a) Within sixty days from the date of the dissolution of the original opposition party;”

This provision provides a time limit for the election of the new opposition party. The Government shall not function without opposition indefinitely. Opposition is an indispensable corollary to the functioning of an effective democracy. No government should be allowed to misuse the system by dissolving the opposition and continuing without opposition indefinitely. The provision is clear that the opposition party should be elected within sixty days from the dissolution of the original opposition party.

During the Parliamentary debate, Parliament motioned, whether the term of the Government can be extended by two months, if a new opposition party is elected in sixty days. Extension of term of the government would be unconstitutional because the National Assembly has to continue for five years from the date of the first sitting of the House in accordance with section 24 of Article 10. The demand for extension will also be a subject of manipulation and political abuse that will result in instability.\textsuperscript{530}

Article 15
Section 14(b)

“From the parties registered with the Election Commission in accordance with Section 4 of this Article; and”

Where the original opposition party is dissolved, an opposition party shall be elected from the parties registered with the Election Commission.

During the public consultation process, some people opined that the terms “elected” and “registered” needs to be clarified. It was pointed out that although the Constitution prohibited defection either individually or en bloc, it did not prohibit resignation by the members. The members of the Opposition Party may resign en-bloc with a view to frustrate or bring down the Government, in which case a new Opposition Party has to be elected.

These apprehensions and doubts are already addressed by the Constitution and the Election laws. Under the Constitution, when the original opposition party stands dissolved, a new opposition party will be elected from the parties registered with the Election Commission. An election

\textsuperscript{529} Kuensel dated 29th October 2005 and 10th December 2005.

\textsuperscript{530} Surpu, n.373.
(primary round) will be held in accordance with section 147 (c) of the Election Act to elect a party. The party obtaining the highest number of votes can nominate its members to fill the seats of those constituencies which stood vacant on the dissolution of the original party. Hence, the term “registered” would mean the parties already registered, as well as new parties to be registered in accordance with section 4 of this Article. Therefore, even if there are only two parties registered with the Election Commission, there will be no problem because new parties can also register for the purpose of electing the opposition party. Besides, since only one round of election is to be held, the financial cost will be minimal.

**Article 15**

**Section 14(c)**

“Through an election held under the Electoral Laws to fill the seats of those constituencies which stood vacant on the dissolution of the original opposition party.”

After dissolving the original opposition party, a new opposition party shall be elected to fill the seats of those constituencies which stood vacant on the dissolution of the original opposition party. No party system can take advantage of contesting from every constituency under the Constitution, neither is there a reason for the party to go and contest in the constituencies which is already represented by the ruling party.

**Article 15**

**Section 15**

“Upon such election of the opposition party and the seats having been filled up, the National Assembly shall resume thereafter in accordance with the provisions of this Constitution.”

This provision mandates the resumption of the National Assembly after filling the vacant seats. Nothing should prevent the resumption of the National Assembly. The Assembly should function in the interest of the nation.

**Article 15**

**Section 16**

“Parliament shall, by law, regulate the formation, functions, ethical standards, and intra-party organization of political parties and shall ensure the transparency of party funds through regular auditing of their accounts.”

This provision of the Constitution mandates Parliament to enact laws to regulate the formation, functions, ethical standards, and intra-party organization of political parties and to ensure the transparency of party funds through regular auditing of their accounts. Parliament cannot abdicate this responsibility, as often members are very strict with others whilst they are liberal to themselves. Responsibility here means the responsibility of both parties to the general public, as enforced in elections. Party responsibility to the public, enforced in elections, implies that there is more than one party, for the public can hold a party responsible only if it has a choice. As a means of achieving responsibility, the clarification of party policy also tends to keep public debate on a more realistic level, restraining the inclination of party spokesmen to make
unsubstantiated statements and charges. Parliament can do anything and nothing can be done to Parliamentarians are fallacies of democracy. The constitutions should not create Frankenstein.

All actions of the parties which may impact on their performance and credibility of the party are subject to review. This includes all elements related to the collection, administration and use of party funds which should be subject to regular public audit and public reporting practices.

**Article 16**

**Public Campaign Financing**

His Majesty Jigme Singye Wangchuck incorporated this Article personally though many people opposed it as they felt it would be too expensive. Explaining to the people, His Majesty said that it would be advisable not to allow any party or candidate to accept or receive funds from any company, corporation, government agencies and external sources. If the parties or candidates were allowed to receive funds for the election campaign, corruption and the influence of donors would infiltrate the system and affect fair governance.

His Majesty said:

_I think Public Campaign Financing under Article 16 is important and you all are not raising any queries on this Article. It is important for the main reason that in all countries in the world, the problems arise because of funds. Our Constitution provides that during election the parties will be paid election fund by the Election Commission. When the government provides funds to the parties the government would run at a great loss._

_If the Government does not provide funds to the political parties, there is a possibility that the political parties may receive financial assistance from private organizations. The political parties seek funds from the private organizations and receive exorbitant money for their campaign. If the political parties commit illegal activities by accepting bribe or contribution from private organization, our leaders including Prime Minister and Ministers would be indebted to them. Therefore, the government has resolved to allot any amount of fund to the political parties through Election Commission._  

There is a danger in Bhutan that political parties may be influenced by funding or may accept bribes from private individuals and business establishments. They would in turn bribe the public to win elections and this will have serious implications, as Governments will be formed by unlawful means. George Chapman has said “men’s judgment sways on that side where fortune leans”. Therefore, public funding of elections is a healthy step in the direction of electoral reforms.

If the Prime Minister, Ministers and all the important elective post holders are elected by corrupt means, the results of their actions are expected to be corrupt as well.

His Majesty Jigme Singye Wangchuck cautioned:

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531 Public Consultation in Thimphu, 26th Oct 2005.
It is important for all of us to remember that if the bad political parties who does unlawful acts are elected, then eventually it would amount to electing the Prime Minister, Ministers and all other leaders from such winning parties. The party who wins the vote should form the government and the candidates must be capable and good and all the bad practices should never take root in our country... In other countries there are problems where political parties accept bribes firstly from the business communities and secondly, the parties offer bribes in consideration to votes.  

However, in case of the government funding the election campaigns, the only disadvantage would be that some of the parties or candidates would only focus in receiving the fund or be principally motivated only to receive funds. Funding in elections to curb malpractices is an important provision to promote political morality. Prof Casper remarked:

Prof Casper remarked:

“Bhutanese Constitution has done something that other constitutions have not done. The Bhutanese Constitution recognizes political parties as an integral organ of the State through the formulations of the relevant provisions.”

His Majesty Jigme Singye Wangchuck explained:

We have resolved to finance the campaign of the parties by the government in a non-discriminatory basis under the supervision of the Election Commission and the Election Commissioner. This we have clearly stipulated in our Sections. If the government does not provide the funds, the problem here is, political parties would be very happy, because firstly, government will give funds only to the extent necessary for the purpose... Secondly, once the fund is handed over to the Election Commission it becomes audit able. Similarly, if the campaign fund is not provided by the government, there is a possible risk that the parties may accept financial assistance from the private organizations. We have to look at other countries since we are just starting democracy for the first time. In other countries, democracy has started and some have existed for hundreds of years. But we should not start corrupt practices from its inception. If we voluntarily start such practices as is done in some countries then we will start heading in the wrong direction. The biggest mistake in democracy is accepting bribes. What is most important is that, during election we should elect the best government. Do not elect the party who is corrupt because after general election all the leaders like Prime Minister, Ministers and other leaders will be elected from the winning party. It is very important that we have capable persons who can strengthen foreign relations, maintain sovereignty and security of the nation and who stress importance on good governance. In contrary, if we elect a government who is not capable then there is a risk that the nation’s aspiration may not be fulfilled. Therefore, involvement of expenditure is inevitable and we have decided to fund the campaign through Election Commission. This is a very good system and we should retain it rather than copying the bad system of other countries.
The main reason for incorporation of this financing system in our Constitution is because most of the problems in other countries arise during the time of election. In our country the political parties will be funded by the government. In other countries the political parties collect money from the private companies and business men. In our case, all the expenditure for the election campaign shall be provided by the Election Commission. Actually it is a huge loss to our government. We can’t say how many millions it will involve right now. But no matter how much it will cost, the Election Commission is going to provide enough fund. As I have said earlier, it is not one or two parties who will be funded. In later years we never know how many will come. The political parties may collect funds from the individuals and the private parties and there is a risk that they may seek financial help from outside countries. In order to prevent such problems in our country, we will fund the political parties through Election Commission.536

Expensive campaign funds and prolonged campaign period negate democratic values of free and fair elections. Wealth could usurp power through extravagant campaign funds and a prolonged campaign period could confuse the public. Hence, Bhutan has Public Campaign Financing and limited campaign period of three months.

This Article has been incorporated on the Royal Command. Democratic principle of representation and participation cannot demean and detract from the economic necessity of prudence and other provisions of the Constitution. Therefore, certain threshold may be determined to institute Public Campaign Financing.537

Justice J.S Verma appreciated:

“Better provision is made for funding in elections to curb malpractices. Such provisions tend to promote political morality. Mahatma Gandhi named politics without morality as one of the seven deadly sins.”538

Article 16
Section 1

“Parliament shall, by law, establish a Public Election Fund into which shall be paid every year such amounts as the Election Commission may consider appropriate to fund registered political parties and their candidates during elections to the National Assembly and candidates to the National Council.”

Parliament is mandated to enact law establishing a Public Election Fund to fund registered political parties and their candidates during elections to the National Assembly and candidates to the National Council. The section requires that the fund shall be given only to the registered political parties and their candidates. The amount of fund shall be the appropriate sum as determined by the Election Commission. This provision provides for transparency and accountability thereof. Further, it is incorporated to negate the plutocracy or rule of wealth or the wealthy. It is also to address the issue of political corruption. Votes are not to be bought but are to be earned.

537 Chairman of the Drafting Committee’s explanation during the public Consultation in Samtse, 27th March 2006.
538 Supra, n.134.
His Majesty Jigme Khesar Namgyel Wangchuck said:

*If our political parties are not allowed to receive money or any assistance from outside country then there shall not be any instances whereby the foreign countries will give or take bribe. When we consider carefully, the constitutions, the laws, the issues like how the internal strife and problems in a country arises or what kind of problems are observed during the elections or what problems and drawbacks are experienced in a political system, our laws in Bhutan is well enacted to ensure that such problems will not happen in our country.*

Further, His Majesty mentioned that:

*If you look at other countries, the parties collect funds either from the public or from the business communities. However, it is very important to stop corruption during the campaign. If the practice of offering and accepting bribes prevails in Bhutan, the introduction of democracy will not serve the purpose for the people. That is why, the practice of giving and taking of bribes either by civil servants or the private individuals or whoever must be stopped from the very inception. Other countries have never thought of it and have not introduced it. In our country as said earlier during election we will fund the campaign to all the parties any required amount of money through the Election Commission though it is a great loss to the government.*

Accordingly, the Public Election Fund Act of the Kingdom of Bhutan 2008 was enacted to establish a public election fund to ensure equal and wide participation of registered political parties and candidates, curb undue influence of money power and prevent unregulated flow of funds in the political arena with a view to ensuring clean, free and fair elections and national referenda.

**Article 16**

**Section 2**

“The payment out of the Public Election Fund shall be made by the Election Commission in a non-discriminatory manner to registered political parties and candidates in accordance with laws made by Parliament.”

The Election Commission must disperse the fund in a non-discriminatory and fair manner to all registered political parties and candidates in accordance with laws made by Parliament. It provides a fair level playing field to deal amongst the political parties. Uniform action is warranted to gain public confidence.

**Article 16**

**Section 3**

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“The Election Commission shall fix a ceiling for the total expenditure that may be incurred by political parties and their candidates taking part in elections to the National Assembly.”

Fixing a ceiling for electoral spending is important to maintain basic equity between the parties. Conversely, the parties and candidates must not be engulfed by spending frenzy with the irrational objective to win at any cost.

Bhutanese voters should exercise their choice wisely to grant powers to their representatives, who must have the integrity, principle and decency to use them honorably. They must reflect the pious hope and vision of the Constitution. The responsibility of the fixation of election fund is given to Election Commission to provide fairness to fund distribution.

**Article 16**  
**Section 4**

“**The Election Commission shall fix a ceiling for contribution offered voluntarily by any of its registered members to a political party subject to the provisions of the Election Fund Act.**”

This provision is relevant because in addition to receiving public funding, the members of the parties can also contribute to the electoral campaign process. Under this section, the Constitution recognizes the voluntary contribution made by the party’s registered members. However, these are required to remain within the limit fixed by the Election Commission. The Public Election Fund Act of the Kingdom of Bhutan, 2008 has made provision in that provision in that behalf.

Concerning membership, a Bhutanese is free either to register or not to register as a party member. Section 12 of Article 7 states that, a Bhutanese citizen shall “have the right not to be compelled to belong to any association.” Therefore, excessive drive of recruiting membership may negate the principle of the Constitution. The network of *tshogpas* cannot be large and penetrative. The electorate can be divided without any real political basis. By this practice, the people will be deprived of the freedom of choice as voters. The voters must be faceless. They cannot be divided and the parties cannot violate the principle of “the right to vote by direct adult suffrage through secret ballot at an election.”

**Article 16**  
**Section 5**

“The funding received by political parties and their candidates shall be subjected to scrutiny and auditing as called for by the Election Commission in accordance with laws made by Parliament or law in force.”

The funding received by political parties and their candidates shall be audited for transparency and to protect the spirit, image and actual practice of Bhutanese democracy. Auditing is necessary to ensure compliance of law and timely correction. Bankrupt moral standard and

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541 An association or committee.  
542 Section 2 of Article 23.
depravity of ethical values and flaunting laws must not find their path to Parliament, which is the
custodian of public conscience and laws.

Public funding and scrutiny of audit on funding of political parties curbs the misuse of money
power, which is only an incentive or impetus to corruption.

His Majesty Jigme Singye Wangchuck said:

> When we introduce democracy in Bhutan there are many things to accomplish. One of the
> main things is to stop from coming in the corrupt practices and avoid electing parties
> who resort to collecting funds from private organization. Public finance was opposed by
> many people. If funds are not provided by the Government, political parties would be
> happy because the Government will give only necessary amount. Moreover, public funds
> will be audited.\(^{543}\)

### Article 17

**Formation of Government**

Article 17 is on the decentralization of the powers of governance to the people of Bhutan. The
people through their representatives have power to form a government by appointing a Prime
Minister and the Ministers.\(^{544}\)

The history of Bhutan enunciates the change of Government. Before 1960, the Palace was the
centre of governance. His Majesty the Third Druk Gyalpo Jigme Dorji Wangchuck transferred
that power to a system of governance by devolving executive power to the executive branch of
the Government. Thereafter, the executive branch became too powerful.

His Majesty Jigme Singye Wangchuck therefore, commanded:

> “I have been working hard to prepare the people to give full participation with alertness
> and commitment, in the system of deciding matters of our country. For this matter, the
> policy of decentralization of power was introduced in the year 1981 and Dzongkhag
> Yargay Tshogchung (DYT) was established in all the Dzongkhags. Further, in 1991 the
> system of Gewog Yargay Tshogchung (GYT) was introduced in all the 202 gewogs and
> the policy has flourished well. Today our country follows the path of economic
> development of the community and is developing steadily. Our people have been
> shouldering their responsibility with commitment and have progressed well in preparing
> and executing development programmes through DYT and GYT. Further there is a
> system of submitting matters of national interest to the National Assembly for
discussion... It is important to promote participation of people in the system of decision
making. There is a need for a permanent system of administration and the system should
be able to provide a fair and effective management as per the responsibilities of our
people. There is also a need for a method of checks and balances, and limitation, to
safeguard the national interest and security in the system... In order to achieve this
objective, the idea is to amend the old system of the Cabinet Ministers as an important
step of procedure, and elect the ministers through voting and establish an independent

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\(^{543}\) Public Consultation in Thimphu, 26\(^{th}\) Oct. 2005.

\(^{544}\) Chairman of the Drafting Committee’s explanation during the public Consultation in Bumthang, 21\(^{st}\) May 2006.
council of ministers with full executive powers for an effective administration... The National Assembly should elect the ministers of Lhengye Zhungtshog through secret ballot. In order to lay the foundation of an effective executive, the candidates for Cabinet Ministers should be selected from among the persons holding the post equivalent to secretary. A candidate should get the majority of the votes cast by the voters in order to be considered as elected... If the members of the National Assembly unanimously amend the old system of Cabinet Ministers and decide upon gradually giving the full powers of executive to an elected Cabinet of Ministers, it will enhance our development and perpetuate our happiness and peace.  

His Majesty said:

“…the highest importance was attached to the establishment of parliamentary democracy and a system of Government that will provide good governance and fulfill the aspirations of our people.”

Accordingly, Bhutan adopted the parliamentary form of government. Parliamentary Government is a form of representative government, which has the following features:

(a) Close ties between the government, executive and parliament;
(b) Compatibility between the government and members of the parliament, meaning that the Prime Minister and the Ministers of the State are usually from the party making up the parliamentary majority;
(c) Political responsibility of government to parliament, which can be revoked in a vote of no-confidence;
(d) The right of government to dissolve the parliament and call new elections; and
(e) Parliamentary accountability. A vote of no-confidence may be tabled against the government, the head of the government or an individual Minister either as a motion of censure, as a rejection of a law to which the government has attached a vote of confidence or to reject a vote of confidence. If there is no confidence against the government, it must step down. In such a case, the government continues to serve as an acting government until a new government supported by a parliamentary majority is elected.

Subsequently, during public consultation in Trashiyangtse, His Majesty Jigme Singye Wangchuck further stated:

“...Once we start the democratic form of Government in future, it will be the responsibility of the people to elect our ruling party who are capable, sincere and who could best serve the country. If we do not take this responsibility of electing a very good Government to power, thinking that anybody will do, and place those people who cannot serve the people and the country to power, there is a danger that we might face the same problem that some of the countries are facing now.”

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545 Royal Decree to the Speaker of the National Assembly, 10th June 1998.
Under the parliamentary form of democracy, the representative Government should neither be autocratic nor too feeble for fragmentation and instability. Its roles are evolved and it should continue to do so. Being a representative and democratic Government, the citizens must play a proactive role in the formation of the government.

In order to fulfill the aspirations of her people and for the success of democracy in the country, Bhutan would need a sound party system focused in providing good governance. Role of a government from Mercantilism to Commercial Capitalism, according to Adam Smith, is of national defense, protection of the members of the society from injustices or oppression, erection and maintenance of public work and public institutions in the society as a whole and to have utilitarian supported representative democracy to make the interest of the government coincide with the general interest.548

Article 17
Section 1

“The Druk Gyalpo shall confer Dakyen to the leader or nominee of the party, which wins the majority of seats in the National Assembly, as the Prime Minister.”

Dakyen is a traditional Bhutanese custom. The process of selecting the Prime Minister starts within the party. It is to ensure intra-party democracy. The final selection takes place when the members of Parliament choose him as their leader. The crown has a limited role. He has to invite the leader of the majority party to form the government, who can command majority support in the House. It is an essential prerequisite of the parliamentary government that the Prime Minister is an accepted leader of the majority party.

The Prime Minister will be elected from the ruling party in the National Assembly.549 It is not necessary that he has to be the president of the party; the party can have its own choice of person. His Majesty declined to incorporate the one person and one post rule. According to him, it was too prescriptive thereby undermining democracy. However, the Prime Minister should be an accepted leader or nominee of the party, which has won the majority seats. A Prime Minister supported by a party having majority seats able to provide a stable government.

With the two party system, the selection of the Prime Minister is known to the electorate at large.

Justice Michael Kirby said:

“Article 17 which deals with the Formation of the Government and provides in 17.1 that the Druk Gyalpo shall confer Dakyen to the leader or nominee of the party, which wins the majority of seats in the National Assembly, as the Prime Minister. So, that is exactly the same as in Australia that the King sees which party has won the greatest number of seats and then ask that party for its nominee to be the leader and that person becomes the Prime Minister.”550

This section ensures a democratic process of selecting a leader and confirming a nominee of the

549 Explanation of the Chairman of the Constitution Drafting Committee during the public consultation in Trashigang, 24th Dec. 2005.
550 Supra, n. 69.
party to be the Prime Minister.

Article 17
Section 2

“No person shall hold office as Prime Minister for more than two terms.”

The provision of section 2 is indeed unique. Many opposed this provision. Their views were that this provision will deprive the Nation from retaining a capable and experienced Prime Minister. However, monopoly of power and perpetuating one's rule by the same person has greater negative political repercussion. A Particular Prime Minister may find avenues to survive and entrench his post. Monopoly destroys competition and scuttles emergence of alternative leaders. His Majesty Jigme Singye Wangchuck has shown his personal commitment to this principle by abdicating the Throne in favor of His heir.

Prolonged continuance often sterilizes fresh mind and obliterates innovative ideas. The system should flourish but personalities must give way. Personality cult is dangerous.

His Majesty Jigme Singye Wangchuck reminded “trust the people rather than one person”. Culturally, a Bhutanese proverb states:

If exposed to heat for a long time, even iron will melt. If exposed to cold for a long time, even water will solidify.

The people have a right to look forward to a better change. Aristotle said that no individual or group should be allowed to become extra powerful. Thomas Jefferson said:

“An elective despotism was not the government we fought for.”

Thus, this provision ensures that a dictatorship and despotism is kept at bay. Similarly, we neither wish nor want an elective despotism in our country. We want a leader of the government with legitimacy and not through proxy.

Two terms of Parliament ideally means ten years. However, if the National Assembly is dissolved earlier, it would still amount to the incumbent serving that term and it would be considered as one life term of that National Assembly. In other words, it means holding office on two occasions irrespective of whether the incumbent serves the full term or not.

Justice J.S. Verma observed:

“Article 17 prescribes membership of the National Assembly as the essential qualification for the office of Prime Minister to ensure true representation of the people in that office; and that no person shall hold office as Prime Minister for more than two terms. These are worth emulation in all democracies.”

553 Walter F. Murphy, Constitutional Democracy: Creating and Maintaining a Just Political Order, 2007, p.471.
554 Supra, n.134.
This section ensures a limited tenure for a Prime Minister in order to create opportunity, to inject fresh ideas of changes, to ensure change of leadership for new hope and to avoid entrenched biases and prejudices. It is a political morality. As Euripides said, “New faces have more authority than the accustomed ones.”

**Article 17**

**Section 3**

“The Druk Gyalpo shall appoint Ministers from among the members of the National Assembly, on the recommendation of the Prime Minister, or shall remove a Minister on the advice of the Prime Minister.”

In the parliamentary form of government, the Ministers are appointed on the recommendation of the Prime Minister and removed on the advice of the Prime Minister. Thus, this section assures to the people a Government of the people, for the well-being of the people to promote and protect their rights and welfare and strengthen political and economic stability in the country. The Government must have macro policies with adequate power to ensure progress, prosperity and strengthened sovereignty.

The Prime Minister has the role of *primus inter pares* (first among equals). The most important function of the Prime Minister after he is invited by the sovereign to form a government is to choose his team. He is expected to provide policy direction and supervise the working of any ministry or department.

The Prime Minister leads the ministerial team and speaks on behalf of the whole government. He answers questions on matters of general policy and replies to critical points made by the Opposition in Parliament. The Prime Minister as the leader of the majority party plays a crucial role in the party affairs and is the link between the party and the government. He is also an important figure in international affairs.

In the Parliamentary system, the Prime Minister and Ministers are members of the National Assembly. They must be responsible to their constituencies. The Prime Minister should not be selected from the National Council as it is an apolitical body. Further, the Prime Minister should not appoint a member of opposition as a Minister, in order to silence any potential criticism and unhealthy atmosphere within the ruling party.

His Majesty the Druk Gyalpo, as the Head of State will appoint Ministers on the recommendation of the Prime Minister. A few people within and outside the Committee suggested that Ministers should be recommended by the National Assembly.

A member of the National Assembly being appointed as one of the Ministers or given other portfolios will continue to be the elected representative from his constituency under Parliamentary Democracy. If he relinquishes and the vacancy is not filled, there will be a change in the number of the Parliamentarians which would violate the principle of popular support of the people. In addition, it may result in endless elections.

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556 Chairman of the Drafting Committee’s explanation during the public Consultation in Tsirang, 8th Feb. 2006.
Further, an appointed minister will continue to represent his or her constituency. This is in accordance with the Parliamentary governmental system. He continues to represent his constituency and the country with greater responsibility. Moreover, retiring from his constituency may create problem through gaining or loosing majority in Parliament.\textsuperscript{557}

In the conduct of the national affairs, Prime Minister must have a team of his choice. The Prime Minister makes the Cabinet. The Cabinet survives as long as the Prime Minister is there. He can dismiss Ministers whenever he wants to. A Minister can resign, if he differs from the Prime Minister but if he continues in the government, he is equally responsible and accountable. Legally, the Prime Minister can appoint any member as a Minister and dismiss any Minister in a given situation. Therefore, His Majesty shall appoint or remove a Minister on the recommendation or advice of the Prime Minister.

\textbf{Article 17}
\textbf{Section 4}

\textit{“A candidate for the post of Prime Minister or Minister shall be an elected member of the National Assembly and a natural born citizen of Bhutan.”}

A candidate for the post of the Prime Minister or Minister shall be an elected member of the National Assembly and a natural born citizen of Bhutan. As an elected member, he is accountable and responsible to his own constituency and the nation. Hence, he is neither a stooge of another person nor the one who seeks private gains from public resources. The Prime Minister owes to the Nation and not to any individual or group for a political favour.

The Prime Minister, who is also a member of the National Assembly, heads Bhutan’s parliamentary form of government. The Prime Minister being the member of the National Assembly would ensure representation and fulfill the mandate of the people. Election of a weak party to form a Government would not deliver the fruits of the rights enshrined under the Constitution. Therefore, the majority party from the two parties forms the Government without compromising the plans and policies presented to the people during the election. A few countries in the world could not form a Government for many months and they often compromised the plans and policies that were voted for.

It is in the interest of the nation that the Constitution enjoins that the Prime Minister and his Cabinet members must be natural born citizens of Bhutan. In addition, no Dzongkhag will have more than two Ministers to ensure the national interests, equality of opportunities and equitable treatment. The dominance by a few Dzongkhags would victimize the others.

Citizenship by birth as a pre-condition to hold elected and ministerial posts is a standard which exists in many countries. Bhutan has followed the best global practices in incorporating this approach within its own Constitution. A natural born citizen of Bhutan is necessary to ensure the safety of the nation.

\textbf{Article 17}

\textsuperscript{557} Ibid.
Section 5

“Not more than two members elected from the electoral constituencies of the same Dzongkhag shall be entitled to be appointed as Ministers.”

A few people opposed this provision reasoning that a capable person should get the opportunity to be a Minister regardless of the size of the Dzongkhag. Merit and not the size should be the criterion. However, it is imperative that as far as possible, Dzongkhags must be represented fairly. A few Dzongkhags must not monopolize cabinet berths. Regional grouping builds unwarranted coteries which are nurtured through bias, regionalism and nepotism. It breeds favouritism that will plague the nation. Fair representation in appointment would benefit the respective constituencies. Imbalance in the representation will cause unequal development and negligence in the governance, consequently affecting the development and welfare of the whole country. Therefore, this provision prevents the dominance and misuse by few Dzongkhags.

This provision is a preventive constitutional measure and a pursuit of equity to develop and execute policies to minimize inequalities of income, concentration of wealth, and promote equitable distribution of public facilities among individuals and people living in different parts of the Kingdom. It would also provide a checks and balances system in governance so that future Prime Ministers do not or do not appear to select people from one particular Dzongkhag based on favoritism, nepotism and regionalism, which may create problems in the country. It would also ensure regional and ethnic balance, establish a more broad-based government, and avoid having too many Ministers from one single Dzongkhag. Appointment of Ministers through regionalism, favoritism, ethnic and social origin will violate the principles enshrined under sections 4(a) and 4(b) of Article 15. Not appointing two members from the same electoral constituency will ensure participation in the governance by the representatives of more Dzongkhags and would avoid concentration of power in the hands of a few.

The reason for not having more than two Ministers from one Dzongkhag is that if a bigger Dzongkhag has about 7 to 8 Ministers, then there is a grave danger of not getting equal benefits. In absence of this provision, the Prime Minister may select people based on favouritism, nepotism and regionalism, which will negate justice and equality in the country. This is a remedial and a proactive provision to bring equal development, benefits to all the Dzongkhags and to protect the interests of the smaller Dzongkhags.

Section 5 provides equality and justice. Although there will be more representatives from bigger Dzongkhags, they cannot dominate the smaller Dzongkhags. The second reason for incorporating this provision in the Constitution is that a Minister will be appointed based on merit and not the size of the constituency. Thirdly, it is essential for all the Dzongkhags to get equal representation. Size and power are regressive. Lastly, it is possible that the dischanted and smaller Dzongkhags may withdraw their support to a political party.

Article 17
Section 6

558 Chairman of the Drafting Committee’s explanation during public Consultation in Gasa, 13th May 2005.
559 Section 7 of Article 9, the Constitution of Bhutan.
560 Chairman of the Drafting Committee’s explanation during public Consultation in Lhuentse, 24th Dec. 2005 and Gasa, 13th May 2005.
“A motion of no confidence against the Government may be moved by not less than one-third of the total number of members of the National Assembly.”

It was argued that a motion of no confidence was not possible since there will be only two parties in the National Assembly and defection between parties is constitutionally prohibited. Under certain extenuating circumstances, there would be conscience voting by its own members or through resignation of the ruling party. There may also be circumstances where the ruling party has a narrow majority according to section 8 of Article 15.

Under this section, a motion of no-confidence against the government may be moved by not less than one-third of the total number of members of the National Assembly. The following elements support the possibility of a successful enactment of a motion of no confidence:

(a) If a government becomes authoritative and/or unpopular, it is possible that the members of the ruling party may join the opposition to invoke a no confidence motion against their own Government and support a motion to dismiss it. The Constitution enables this possibility. The Constitution must address exceptional cases of great magnitude to enshrine a message that a government of absolute majority cannot have absolute monopoly of power.

(b) A motion of no confidence against the Government is possible without party defection. Defection is not allowed according to section 10 of Article 15 but conscience voting is possible. A vote against the Government by its party members will not breach section 10 of Article 15.

(c) This possibility is supported by the fact that Members of Parliament have the duty to serve the interest of the nation and fulfill the aspirations of the people. This gives to the members a higher duty of conscience in accordance with section 2 of Article 10 and sections 1 and 2 of Article 15.

(d) There may be some members who are not happy with the ruling party or its policies. Differences are the ingredients and facets of human nature, particularly in politics.

(e) It remains a possibility that members may stand against their party or their government to increase their future opportunities of re-election with the same or a different party. Politics is strategic and tactical. Politicians will not want to be associated with a failing government because a government that fails to perform forfeits people’s support.

(f) Unjustified or ulterior motive of a Prime Minister to advise the Druk Gyalpo to prematurely dissolve the National Assembly under section 24 of Article 10 requires testing its validity or proving it on the floor of the House under this section.

This section checks the democratic drawbacks of the looming vote of no confidence and tyranny of the ruling party and provides intra-party democracy with checks and balances. It is the responsibility of the members to look after their party discipline and overall performance of the Government. In certain cases for a party member to vote, one’s conscience is necessary if policy actions by the government reflect party members’ position and conviction. This provision enables this possibility albeit, within constraints. As critics acknowledge, it is one of those things
in life, which is better to have and not need it, than need it and not have it. Bhutan must balance the stability of the government and prevent the possibility of dictatorship.

Article 17
Section 7

“A vote of no confidence against the Government, if passed by not less than two-thirds of the total number of members of the National Assembly, shall require the Government to be dismissed by the Druk Gyalpo.”

A Government in most parliamentary systems can change on the floor of the legislature without recourse to a general election. A discredited government can be dismissed from the office by Parliament itself. Similarly, in Bhutan the government can be dismissed, if not less than two-thirds of the total number of members of the National Assembly passes a vote of no confidence against that government. The government is required to be dismissed by the Druk Gyalpo. A government without the confidence of Parliament is unfit to govern and no-confidence motion is a reminder of a restraint for a dictator. Unbridle power is antithesis to democracy. Conversely, the Prime Minister must not be fearful of it.

Article 18
The Opposition Party

Historically, Britain was probably the first nation to establish a distinct constitutional concept of parliamentary Opposition. As early as 1826, Sir John Cam Hobhouse noted in the House of Commons that in addition to the Government, one might also find “His Majesty’s Opposition”. Similarly, Jefferson, assisted and advised by Madison established the rudiments of the first opposition party under the Republican banner. However, this Article is one of the most striking features of the Bhutanese Constitution.

His Majesty Jigme Singye Wangchuck explained:

The Opposition Party in Bhutanese politics would be unique. Our Constitution envisages only one opposition party in Parliament. The opposition parties in other countries always attempt to bring down the ruling government at the earliest. Similarly, the opposition tries to oppose what the ruling party does in the developmental works. In other countries, all the losing parties join together to form opposition party. The opposition party becomes very strong and there are frequent elections. Therefore, we should make sure that this kind of democratic system never comes in our country. Our Constitution mandates the opposition party to support the ruling party and work for the interest of the people. Hence, the Opposition party in our country will not create disharmony and disturb peace and tranquillity.

561 John Cam Hobhouse’s Speech in the House of Commons, 1826.
563 The presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee, 9th May 2008.
Democracy needs a ruling and an opposition party. The need for two parties is justified on the ground that the Opposition party is necessary to provide checks and balances as there are chances that the ruling party may become autocratic. A Bhutanese proverb states:

“When one shoots an arrow alone, one always wins. When one talks, one is always right.”

Parliamentary government is a government by party system. According to Bagehot “Party government is a vital principle of representative government.”

Criticism and control of the cabinet, the two most important functions of the cabinet, can be effectively discharged when one party is in power and another in the opposition. The opposition performs essential functions in Parliament and is organized on parallel lines to the government. Criticising the government in power and continuously offering an alternative administration to the electorate are its most important functions. Although it is its duty to criticize and oppose the government it is also to cooperate with the government. It can be said that whilst an opposition party believes in an alternative creed, it however does not and should not believe in chaos or disorder. When it has to bring about the downfall of the government it has to do so only by constitutional methods. It is therefore submitted that the Opposition has to play a constructive and not a destructive role.

Stability of a government is necessary for sovereignty, security, peace and progress of a small nation like Bhutan. Political party system and a responsible and constructive role of an opposition party were important constitutional remedies for stability and security of Bhutan. In many countries, party interest and race for power stifled progress and prosperity of a nation. Opposition parties are generally responsible for instability.

Therefore, His Majesty Jigme Singye Wangchuck explained:

There are many opposition parties in other countries. The parties, which are normally elected for 4 to 5 years, do not even last in power for a year. All this is because of the weaknesses of the opposition party. In other countries, the winning parties form the government whereas all the losing parties become the opposition party. But in Bhutan, the winning party is the government and we have only one opposition party. We hope that there will be no enmities between the ruling and the opposition party.

Further, His Majesty reminded:

It is very important for Bhutan to form and maintain a strong and good Government. If you see in other countries, the aim of the Opposition party is to remove the Government from power irrespective of whether they benefit or harm the country. If we read about the functions of the Opposition party in the Constitution, it is to support the Government in its effort to serve the nation and the people.

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565 Chairman of the Drafting Committee’s explanation during the public Consultation in Lhuentse, 24th Dec. 2005.
566 Sudhir Kumar, “Political and Administrative Setup of Union Territories in India”, 1991, p.140
568 Public Consultation in Sarpang, 11th Feb 2006.
It is a unique provision. With this provision, the Opposition has responsibilities and duties to the Nation in the harmonious functioning of the Parliament and the executive.

**Article 18**

Section 1

“The Opposition Party shall play a constructive role to ensure that the Government and the ruling party function in accordance with the provisions of this Constitution, provide good governance and strive to promote the national interest and fulfill the aspirations of the people.”

The Drafting Committee had extensive deliberation over this section. Playing a timely constructive role is an important function in Parliamentary democracy as mistakes can be avoided and right policies can be made within the provisions of the Constitution. The role of the Opposition Party in the political system requires a careful scrutiny of Governmental power. It is the presence of the opposition in Parliament that makes democracy meaningful. As Government generally wins at the polls, constructive criticism by the Opposition can play an important role in changing the complexion of the public opinion. The Opposition should guard the interests of the nation along with the interests of various groups whether small or large. It should not oppose for the sake of opposition and obstruct the working of the Government, but should be constructive. It should mainly aim at building an image of a responsible alternative Government. His Majesty Jigme Singye Wangchuck said:

*If the ruling party does not carry on their responsibility in the manner they should and works in deference to the national interest and the people’s welfare, the opposition must protest against such move and initiate a motion of no confidence against the government.*

The Opposition party has the responsibility for the conduct of its opposition, management of public discussion, development of alternative policies and programs. Indeed, as quoted in the Presidential Republic: Executive Representation and Deliberative Democracy:

“The Opposition party acts as the critic of the party in power, developing, defining and presenting the policy alternatives, which are necessary for a true choice in reaching public decisions.”

Opposition is not an opponent and enemy of the government and through the Opposition and deliberative assembly, the Nation will not be exposed to any single view. As was eloquently articulated by Roscoe Pound in his ‘sporting theory of justice’, the truth will prevail in the clash of zealous adversaries. The national interest is indeed supreme and the greatest good is sublime.

Thus, His Majesty Jigme Singye Wangchuck said:

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571 Deborah L. Rhode, In the Interest of Justice: Reforming the Legal Profession, 2000, p.81.
In other countries since there are many Opposition parties, the Government is not always stable. In our country we would have only one Opposition party and unlike in other countries we hope that our Government can do better. The weaknesses in other countries are that the Opposition parties try to obstruct the Government on their developmental works. The actual motives of the Opposition in other countries are to device means to destabilize and topple the Government as early as possible. In our country, if we work by the provisions of the Constitution, such bad system as in other countries will not arise. Our Opposition is not allowed to obstruct the ruling Government as in other countries....

The Constitution imposes duties upon the Opposition to be responsible to strive and promote the national interest and fulfill the aspirations of the people. The opposition is a democratic institution with obligation to fulfill democratic principles and objectives.

His Majesty said:

They would not be permitted to stall the workings of Government or Parliament. They would behave as watchdogs on the ruling party’s performance.

An opposition is indeed the watchdog of public interest. Its constructive criticism can improve governmental performance and enhance accountability. Contrarily, a role of continuous agitation and confrontation would violate the rules defining parliamentary opposition and the principle of deliberative democracy. Parliamentarians must deliberate and reverse the observation of H.L. Mencken that:

“Under democracy one party always devotes its chief energies to trying to prove that the other party is unfit to rule – and both commonly succeed.”

The opposition party is constitutionally mandated to play a constructive role to provide good governance and not to allow narrow party interests to prevail over the national interest. It may sound too idealistic but human beings must aspire for greater and better national goals. The unique system and the original intent of the Constitution is that the Opposition will play a constructive role in nation building.

His Majesty Jigme Khesar Namgyel Wangchuck said:

According to our Constitution, it is provided that the Opposition Party has to work in the best interest of the nation and the people. Thus, it is very important that this system should not be kept only on the paper, but it is very important to work according to the system.

It is submitted that no opposition would like chaos and anarchy and hence it is expected to play a role of an ideal and meaningful opposition.

573 Chairman of the Drafting Committee’s explanation during public Consultation in Sarang, 11th Feb. 2006.
574 Kuensel dated 31 December 2005.
Article 18
Section 2

“The Opposition Party shall promote national integrity, unity and harmony, and co-operation among all sections of society.”

The Opposition Party has the Constitutional obligation to be responsible towards national integrity, unity, harmony and cooperation among all sections of society. National integrity, unity, harmony and co-operation among all sections of society are important for progress and national security. Self-interest of a party should not jeopardize public safety and undermine the sovereignty of Bhutan. National integrity is a paramount political virtue. The Constitution aspires to integrate and not divide.

Article 18
Section 3

“The Opposition Party shall endeavour to promote and engage in constructive and responsible debate in Parliament while providing healthy and dignified opposition to the Government.”

Effective communication is the beginning of understanding and constructive debate is the exploration of diverse views for a united idea. Great minds discuss ideas and eliminate errors to promote and engage in constructive and responsible debate in Parliament.

Roosevelt said:

“Great minds discuss ideas, average minds discuss events, small minds discuss people.”

This is what all responsible parliamentarians have to believe and practice. Parliament cannot magnify its successes and gloss its failures. Parliamentarians must be dignified and honorable. Hallowed Parliament cannot be built on the debris of fallen morality and unruly and chaotic behavior. Healthy debate and dignified Parliamentarians is the fountain of honour and civility. Therefore, the opposition party must be vigilant and alive to its role. Constructive criticism is the adventure of souls.

Article 18
Section 4

“The Opposition Party shall not allow party interests to prevail over the national interest. Its aim must be to make the Government responsible, accountable and transparent.”

Thomas Hobbes contended that the individual predated society and had formed and joined it for his own benefit. Locke reasoned that God had not bestowed on Adam, ‘private domain’ over

577 Michhoe Tsang-ma Chudrug.
579 Supra, n. 288.
the earth; rather, he had given the world ‘to mankind in common’ for the enjoyment of all.580 The government must justify its existence only by promoting possibilities for prosperity and happiness among all those they rule over. Therefore, governance is the function of Parliament to protect the state from the wicked and nourish the good. Good governance is the prime blessing given by the Constitution to the People of Bhutan.

Promotion of national interest is good governance. Duc de la Rochefoucauld said, ‘“Virtues are lost in self-interest as rivers are lost in the sea.”’581 Private and individual interests promote vaulting ambition, plunder national resources and impoverish the common citizens of a country. Therefore, personal interest, individual greed and selfish desire must be constrained by national interest, common and greater good. It is a principle of action and energy of character and conscience operating beyond the narrow circle of self-interest.

Parliament must fulfill the aspirations of the people and not ingratiate selfish interest. Collective dreams and common aspirations for economic prosperity, social peace, public justice and private right must be guided and promoted by Parliament comprising of His Majesty the Druk Gyalpo, National Council and National Assembly including the Opposition Party. People should reward the Parliamentarians by electing them for good governance and promoting national interest.

National interest should not be a mere sentiment but a principle of action and nobility of character. It is a burning conscience, which operates beyond the narrow self-interest. Hence, the Opposition Party should not allow party interests to prevail over the national interest. A Party cannot exist without a nation.

His Majesty Jigme Khesar Namgyel Wangchuck commanded:

\[\text{We must sacrifice our self interest and devote ourselves for the larger interest.}^\text{582}\]

The aim of the Opposition Party is to make the Government responsible through continuing responsibility of questioning and public debate. Public knowledge is an important remedy and a self-restraint. Dissemination of public activities make the Government responsible and transparent.

His Majesty said:

\[\text{Accountability can be enhanced by public opinion to keep a society pure and healthy.}\]

Similarly, Jeremy Bentham also wrote:

\[\text{“Without publicity, no good is permanent; under the auspices of publicity, no evil can continue.”}^\text{583}\]

National interest promotes public good and vested interest incurs public displeasure. Self-serving interest is a public enemy.

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580 Supra, n.107.
Article 18  
Section 5

“The Opposition Party shall have the right to oppose the elected Government, to articulate alternative policy positions and to question the Government’s conduct of public business.”

One of the basic characteristics of a modern pluralistic democracy is the existence of political parties and an organized opposition. However, dwelling into the constitutional concept of opposition reveals a more complex and perhaps a self-contradicting picture. There is no denying that there should be an organized political alternative. Indeed, it is a necessity, the Opposition Party is supposed to oppose the majority party whose policy and plans are against the general interest of the people. The Opposition Party shall have the right to oppose policies and question the elected Government, if the conduct of public business is against the public and national interest. It must act as a responsible critic of the party in power. Through the Opposition’s questions, the Government may be alerted and errors redressed. Thus, the Opposition Party may contribute to developing, defining and presenting the policy alternatives, which are necessary for a public and rational choice in reaching public decisions and developing the issues of public policy. It is important that the Opposition Party be effective but it is equally important that the Opposition party is responsible, for an irresponsible opposition is dangerous to the whole political system. It is totally wrong to undo what is done by the elected government in the interest of public and the nation.

His Majesty Jigme Khesar Namgyel Wangchuck explained:

_The task of the opposition party is to oppose the ruling party when it deviates from the interest of the country._

584

The opposition party has the responsibility of overseeing the works done by the ruling party. His majesty mentioned that in His opinion, Bhutan’s election system is strong compared to the electoral systems in other countries.

His Majesty Jigme Khesar Namgyel Wangchuck explained:

_In Bhutan if we have a bad government which affects the people and the nation, then the opposition party has the role to oppose and remove the government from power. Therefore, the opposition party has equal and paramount responsibility with that of the government._

585

If the ruling party fails to abide by the Constitution and if it fails to keep the promises made during its election campaign, it is the duty of the opposition party to raise the issue before Parliament and to remind it of its promises. Further, it is the duty of the Opposition Party to ensure compliance of the Rule of Law and enact just laws. His Majesty commanded that the Opposition Party in Bhutan should be a constructive opposition. Sections 5 and 6 of Article 18 enjoins the opposition party to aid and support the government in any work beneficial to the

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country and the people. It is not their negative role to topple the Government. It is the duty of the Opposition Party to contest against the ruling party with alternative policies and programmes and act as the conscience of the Nation.\textsuperscript{586}

Allaying the doubts raised by the public, the ruling party and the opposition party generally should not collude because they are separated by different political ideologies and platforms.\textsuperscript{587} This apprehension may be the concept of efficient political markets which holds that the way a representative votes are not a legal issue. If the opposition or minority party decides to cooperate with the majority party, there is no legal dilemma. It is simply a political behavior, motivated by political aspirations for the efficacious working of the Parliament. If the leaders of the opposition and the ruling parties collude, the opposition party would lose public credibility and support in subsequent elections. If the public do not endorse such unethical behaviour, it can show their disapproval in the next elections. Therefore, the people must be vigilant and should not allow political parties to deceive them.\textsuperscript{588} However restrictive and difficult the goals may be, ideals and aspirations fuel the freedom for higher and greater national goals. Difficulties must be encountered for the freedom of achievement.

Professor Tushnet said:

\begin{quote}
"To say that, Constitution requires the opposition to engage in constructive criticism doesn’t tell you whether a particular action taken by the opposition is constructive criticism or not. To determine whether it is constructive criticism, you have to go somewhere else than the text of the Constitution. You have to have some overall account of how Bhutanese Democracy can function well in order for you to be able to identify whether a criticism is constructive or not. And the legal materials won’t tell you what that vision of Bhutanese Democracy is?"\textsuperscript{589}
\end{quote}

\textbf{Article 18}  
\textbf{Section 6}

\begin{quote}
\textit{“The Opposition Party shall aid and support the Government in times of external threat, natural calamities and such other national crises when the security and national interest of the country is at stake.”}
\end{quote}

This section mandates the Opposition Party to support the Government in times of external threat, natural calamities and other national crises. Opposing the government \textit{per se} cannot be the one and only role assigned to the Opposition. The Opposition should be loyal and responsible to the nation and the Constitution. Simultaneously, the Ruling Party or the Government should not use excessive power by misusing this section. Even during national crisis, the Opposition should oppose, if the majority seeks to violate the Constitution. The opposition must act within the constitutional bounds and be loyal to the Constitution.

His Majesty Jigme Khesar Namgyel Wangchuck said:

\begin{flushright}
\textsuperscript{586} Chairman of the Drafting Committee’s explanation during the public Consultation in Gasa, 13\textsuperscript{th} May 2005.  
\textsuperscript{587} Kuensel dated 28 December 2005.  
\textsuperscript{588} Chairman of the Drafting Committee’s explanation during the public Consultation in Punakha, 27\textsuperscript{th} Nov. 2005.  
\textsuperscript{589} Supra, n.442.
\end{flushright}
The Opposition Party is also equally responsible to serve our country and people as the Ruling Party. According to our Constitution, it is provided that the Opposition Party has to work in the best interest of the nation and the people.590

Sovereignty of Bhutan exceeds all the differences and common defense is a collective duty of every citizen against any crises. Public security is supreme and national interest is inviolable. Therefore, the Opposition Party must aid and support the Government against external threat and uphold domestic tranquility and public justice. His Majesty said:

...the Opposition party must support the ruling party while working in the interest of the nation and the people. Our Opposition Party must not think that they are not responsible.591

Article 19
Interim Government

Provisions of the Interim Government were incorporated by His Majesty to ensure free and fair elections.

His Majesty Jigme Khesar Namgyel Wangchuck said:

We have incorporated a provision on the Interim Government. This kind of Interim Government is not found in other countries. The reason for having this provision is that during the election time, the Government will not be left in a vacuum for 3 months.592

His Majesty Jigme Khesar Namgyel Wangchuck explained:

When we say people’s government, it is essential to have a government ruled by the people through election process. For that reason, Article 19 states about the interim government, which shall rule for 3 months during the time of election process.593

Generally, there are two types of temporary governments, a Caretaker Government and an Interim Government. Bhutan has made the conscious decision of having an Interim Government after giving careful consideration to all the positive and negative aspects of Caretaker Government. His Majesty Jigme Singye Wangchuck enlightened:

In other countries, the ruling parties misuse the Government wealth and even civil servants are made to work for their party. But in our country, at the time of election, the ruling party will have to resign and go for the elections. Even the Opposition party will have to resign and go for elections. For these reasons, the Interim Government is an important feature of our Constitution. It is important that we have to elect a political party who will work in the interest of the people and the country. Otherwise, there is no reason for democracy being introduced. That is why the ruling party should not misuse...
the public wealth and the civil servants for their benefit. This system is good and exemplary for other countries.\footnote{Public consultation in Thimphu, 26th Oct. 2005, Haa on 2nd Nov. 2005 and in Wangdue Phodrang, 7th Dec. 2005.}

An Analytical study of Caretaker Governments shows that if the Government in power is asked to continue as a Caretaker Government on the dissolution of Parliament, it has the following negative aspects:

(a) The Caretaker Government has no legitimacy. Therefore, it does not have general support from the people.
(b) The Caretaker Government may misuse the Government machinery and human resources under its governance for their own benefit.
(c) In certain cases, a Caretaker Government may prolong the holding of elections until the time is conducive for their own party.
(d) Not holding expeditious free and fair elections during the Caretaker Government can create civil unrest and instability after the declaration of results.

Therefore, Bhutan has chosen to have an Interim Government to enable the Election Commission to hold free and fair elections. Interim Government is a level playing field. In many countries, the party in power enjoyed an unfair advantage because it used Government resources and even civil servants to help in winning elections.\footnote{Kuensel dated 29th October 2005.}

His Majesty Jigme Khesar Namgyel Wangchuck said:

\[ The \text{ rationale behind such Interim Government is to provide equal opportunity to every political party and to prevent one party from taking undue advantage during election. For that reason, it is important to hand over the Government to the Interim Government and I personally feel that this is really very important.} \]

Equal opportunities and fair competition has been emphasized by His Majesty Jigme Singye Wangchuck as follows:

\[ \text{Since all the powers, privilege and funds are in the hands of the government, it would not be fair to hold elections when a party is still in power. The odds shall naturally be in favour of the party still running the government. Therefore, it is important to strip away the powers of the party running the government and give equal standing to all the contestants.} \]

The advantages of an Interim Government are as follows:

(a) The Interim Government will carry out only the routine functioning of the Government and cannot take any policy decisions or enter into agreement with any foreign country according to section 4 of this Article.
(b) It cannot exceed a period of ninety days in power according to sections 5 and 6 of this Article.

\footnote{Public consultation in Samtse, 27th March 2006.}
\footnote{Public Consultation in Samdrup Jongkhar, 22 April 2006.}
It would be an independent organization. Thus, the losing parties cannot accuse the Election Commission of conducting unfair and biased elections.

It is important to gain the confidence of the people through legitimate and lawful means of free and fair elections. Consequently, the Government elected during the term of Interim Government will have legitimacy, clear mandate and obedience from the public.

During the public consultations, the provision on the Interim Government provoked debates. Many of the people thought that Caretaker Government would be better. However, the Caretaker Government is often criticized for unfair practices. Moreover, there are a few countries, which did not hand over the governance to the legitimately elected Governments. Subsequently, there were civil disobedience and internal revolts. Bhutan desires a credible and smooth transition of power. Peace is the people’s privilege.\textsuperscript{598}

Their Majesties said:

\begin{quote}
In most of the countries, such system is absent. During the election, both the Ruling and the Opposition Parties should retire and go for polls. During such time the Ruling Party will not hold the government and both the Opposition and the Ruling Parties will have to go for the election.\textsuperscript{599}
\end{quote}

Article 19
Section 1

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Whenever the National Assembly is dissolved, the Druk Gyalpo shall appoint an Interim Government to function for a period, which shall not exceed ninety days, to enable the Election Commission to hold free and fair elections.```

Interim Government would be appointed by the Druk Gyalpo in place of the Lhengye Zhungtsog for a maximum period of ninety days to take over and keep the government functions going during the election period and to fill the vacuum in the government.

Their Majesties explained:

The Interim Government shall be formed for a period of three months when the political parties are being elected. Actually, they will not be given the authority and the power by the Government. The main aim to have such Government is to fill up the gap of the council of ministers during those three months. Such provision is not there in any other countries. This is an exemplary provision in our Constitution.\textsuperscript{600}

Period of the interim Government is stipulated for ninety days only. Without this provision, the Interim Government may misuse its authority and continue for many months and years as the basis of the government is popular election.

Election is a passive translation of individual wishes into a collective choice. Therefore, election is the personal choice, political right and collective decision of the parties. Public choice is the

\textsuperscript{598} The presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee, 9\textsuperscript{th} May 2008.

\textsuperscript{599} Public Consultation in Pema Gatshel, 31\textsuperscript{st} Dec. 2005, in Punakha, 27\textsuperscript{th} Nov. 2005 and in Haa 2\textsuperscript{nd} Nov. 2005.

\textsuperscript{600} Public Consultation in Punakha, 27\textsuperscript{th} Nov. 2005, in Paro, 9\textsuperscript{th} Nov. 2005 and in Lhuentse, 24\textsuperscript{th} Dec. 2005.
basic tenet of democracy. Election is the personal responsibility and accountability of the Government to discharge their responsibilities. Therefore, election requires being free and fair for legitimacy. An Illegal election and unlawful means destroys public confidence. Hence, a non-partisan body helps to provide free and fair election.

Article 19
Section 2

“The Interim Government shall consist of a Chief Advisor and other Advisors appointed by the Druk Gyalpo within fifteen days after the dissolution of the National Assembly. The Chief Justice of Bhutan shall be appointed as the Chief Advisor.”

There were wide ranging debates concerning the choice of the Chief Advisor to the Interim Government. It was most imperative to identify a person, who is experienced, acknowledged authority of law and of high integrity, impartial and apolitical person to occupy such an important position. After long deliberations, it was decided that the Chief Justice of Bhutan should be the Chief Advisor for the following reasons:601

(a) The Chief Justice of Bhutan will be a person of commanding intellect, great legal attainments, and the highest order of judicial ability.
(b) He is appointed after scrutinizing his proven track record of being a judge in different courts. His judgments could be scrutinized to ensure his professionalism, legal acumen and impartiality. John Rawls said, "Impartiality prevents distortions of bias and self-interest; knowledge and the capacity for identification guarantee that the aspirations of others will be accurately appreciated."602
(c) He will be a person without any political affiliation and someone, who has been tested and verified during the long tenure of his legal career.
(d) He has tenure of either 5 years or until attaining 65 years whichever is earlier, which will ensure that he has no prospect of future appointment or extensions. Fixed tenure under section 6(a) of Article 21 and by being constitutionally protected under Section 2(a) of Article 31, he will ensure impartiality and professionalism.
(e) There was discussion to appoint a retired Chief Justice as the Chief Advisor but it was not considered, as the incumbent government would have a multiple choice of Chief Advisor from the list of retired Chief Justices. Conversely, if the Chief Advisor is the sitting Chief Justice, then the ruling party will have no opportunity to make selection of its own choice.
(f) Finally, the sitting Chief Justice of Bhutan will not enter into politics and seek political favours as provided for under section 3 of Article 31. Thus, it was decided that the incumbent Chief Justice of Bhutan would be the best possible choice to be appointed as the Chief Advisor.

The Interim Government comprising a Chief Advisor and other Advisors will be appointed by the Druk Gyalpo within fifteen days after the dissolution of the National Assembly.

601 The presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee, 9th May 2008.
602 Supra, n. 245, p.187.
Article 19
Section 3

“Upon the appointment of the Interim Government, the Prime Minister and the Ministers who were in office immediately before the National Assembly was dissolved shall resign from office.”

This provision requires that the Prime Minister, Ministers and the members of the National Assembly to resign immediately upon the appointment of an Interim Government. It is to ensure free and fair election without any dictate or interference from the Prime Minister and his Government. This section provides mandatory legal obligation to resign and makes disobedience a violation of law.

Article 19
Section 4

“The Interim Government shall carry out the routine functions of the Government but shall not be entitled to take any policy decisions or enter into any agreement with foreign governments or organizations.”

The Interim Government shall carry out the routine functions of the Government. It will neither take policy decisions nor executive actions.

His Majesty Jigme Khesar Namgyel Wangchuck said:

When both the parties go for polls, our governmental work will be taken up by the Interim Government. But the Interim Government does not have any power and authority nor do they have authority to change and modify the policy of the country.\textsuperscript{603}

Any policy decision taken by the Interim Government or any agreement entered into will not have any binding force or legitimacy. An Unelected government does not have legislative and executive authority.

Their Majesties said:

The interim government does not have any power especially regarding policy matter, relating to foreign countries, etc. This way, it will really help and benefit during the election process.\textsuperscript{604}

Article 19
Section 5

“The Government shall be formed within ninety days from the date of dissolution of the National Assembly.”

\textsuperscript{603} Public Consultation in Pema Gatshel, 31\textsuperscript{st} Dec. 2005.

\textsuperscript{604} Public Consultation in Samste, 27\textsuperscript{th} March 2006, in Samdrupjongkhar, 22\textsuperscript{nd} April 2006 and in Lhuentse, 24\textsuperscript{th} Dec. 2005.
A country cannot be left without a proper government for an extended period. Many unwanted predicaments could creep into the functioning of the government. This section is necessary to stipulate the time frame for the formation of Government and to avoid an extended vacuum between the Interim Government and the new Government and also to prevent delays in the formation of the Government.

**Article 19**

**Section 6**

“The Interim Government shall cease to exist from the date on which the new Prime Minister enters office when the new National Assembly is constituted.”

This is an additional provision to reinforce section 5 of this Article. The Interim Government will have to cease functioning after the new Prime Minister enters the office when the new National Assembly is constituted. This provision enshrines the second fetter for the Interim Government to abide by the Constitution and not continue in the Office from the date on which the new Prime Minister enters office when the new National Assembly is constituted. Travesty of this provision is totally illegal and unconstitutional.

**Article 20**

**The Executive**

The Constitution establishes the overriding supremacy of critical fundamental values. It establishes a framework for the formation of government and enshrines the conduct of administration of the State.

The term executive is derived from the Latin word *execution*, which means to carry out or execute. The government and administration is a part of State power based on the principle of separation of powers. Its job is to initiate and execute fundamental political decisions taken by the legislature. It is also responsible for providing State leadership within the scope of the Constitution based on law to translate its policies into action.

In a parliamentary democracy, besides its law making power parliament exercises control over the government and supervises the general conduct of the executive. The key to responsible Parliamentary government lies in the cabinet system. Executive Power means the power which is concerned with the execution of the will of the state. Executive power is essentially a constitutional concept. As has been held in many judicial pronouncement in India and the U.S, the legislature makes, the executive executes and the judiciary construes the law.\(^{605}\)

Bhutan has a representative Government based on the principle articulated by K. Loewenstein that political action is only possible for the people when Members of Parliament:

“...are instructed and given the power to take action together for their clients while at the same time obligating their clients through their collective decisions.”\(^{606}\)

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\(^{605}\)Wayman vs. Southhard, 10 US 46 1825, 6LED 263 and AIR 1955 S.C 549.

\(^{606}\)Available at [http://www.dadalos.org/int/demokratie/demokratie/glossar/glossar.htm](http://www.dadalos.org/int/demokratie/demokratie/glossar/glossar.htm)
A representative Government is supported by bodies that make political decisions in the name of the people without a binding contract from the people. A distinction is made between those representative forms of Government in which politically active citizens take part in the decision-making process purely through the election of representatives to the different state bodies, and those forms of representative Government that encompass a certain plebiscite element, in which those entitled to vote can influence law making through referenda like in Switzerland. The art of Government simply consists in making things right, or putting things in their right places. When the ruler himself is right, then the people naturally follow him in his right course.

According Wynes in his book “legislative and executive powers in Australia”, the executive may be defined as the authority within the state which administers the law, carries on the business of the government and maintains order within and security from without the state. The Executive is a branch of Government charged with administering and carrying out the implementation of policies and laws. Executive power is vested in the Lhengye Zhungtshog, which consists of the Ministers headed by the Prime Minister. It may be mentioned that at the time of the Zhabdrung, the Governors had to assemble in Punakha, once in three years, to take decisions regarding the affairs of the State.

Late Majesty Jigme Dorji Wangchuck, the Third Druk Gyalpo, formally initiated the institution of the Cabinet or Lhengye Zhungtshog in 1969. When His Majesty Jigme Singye Wangchuck ascended the throne, the Lhengye Zhungtshog was changed to Co-ordination Committee. Later, it was again changed back to Lhengye Zhungtshog. In 1998, His Majesty devolved all executive powers to the Lhengye Zhungtshog headed by a chairman, who is the Prime Minister.

A Government must pursue public policies to provide employment, good and steady income and a way of life that they cherish. It must pursue a constant aim of policy in every generation to find the best way of advancing these goods. In addition, public policies must include public goods such as access to a park, policing, scientific research, mass transportation and a clean environment, etc.

According to Bagehot’s theory:

“the Government must have ministerial responsibilities through questions, resolutions and no-confidence, and adjournment motions in Parliament including periodic assessment by the electorates. Any Government, which violates the profound principle of democracy, shall be null and void. A democratic Government is a bastion against autocracy and dictatorship. Human choice promotes intellectual growth and responsibility...”

Bhutan envisaged a Democratic Executive Government that satisfies a stable and responsible executive. The Constitution created it’s own self-determination to live its life in the manner it thought was the best. The Constitution gave the State certain powers and authority such as:

608 Walter Bagehot was a 19th century British businessman, Essayist, Social Darwinist and a Journalist who wrote extensively about literature, government and economic affairs.
The power to use force in certain situations for the defence of the country or to prevent outbreaks of crime and violence. Consequently, the State has an army and police; Power to collect taxes from the people to provide public facilities like roads, electricity, education and health for development of individuals and country; and The power to implement laws, rules and regulations so that the country can realize the goals for which it was set up.609

At the core of pluralistic theory, it is the assumption that the competitive fight for influence should not be pursued in an unruly manner, but through a constructive process based on compromise with the aim of reaching a satisfactory outcome for all. Nevertheless, it is not assumed that this is a natural process completely capable of controlling itself, which will ultimately lead to an ideal form of harmony, but rather the State is responsible for identifying weaknesses in the process and intervening in a regulatory way.

Despite the fact that it is widely claimed that the executive carries the law into effect, it must be borne in mind that the executive power must be derived either from the Constitution or from the law. Nonetheless, executive power cannot be exclusive, as discretionary decisions are subject to the discipline of a judicial review. In the case of Bhutan, the Government has limited power. The different power structures such as absolute power, nominal power, derivative power, executive power, prerogative power, discretionary power, limited power, etc. are balanced in the provisions of the Constitution. A Government must be responsive, and should neither be personal nor have a propensity for praise and intolerance to criticism. It should be singing the eternal songs of gratitude. Public service is the duty of an elected person.

The Supreme Court of India (AIR 1955 S.C 549) has held that ordinarily the executive power connotes the residue of governmental functions that remain after legislature and judicial functions are taken away subject to the provisions of the Constitution or any law. The executive function comprises the determination of policy as well as carrying it into execution, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy; in fact the carrying on of supervision of the general administration of the state.

Article 20
Section 1

“This Government shall protect and strengthen the sovereignty of the Kingdom, provide good governance, and ensure peace, security, well-being and happiness of the people.”

This provision enjoins the overall responsibility and duty of the Government. It envisages a dynamic Government, to protect and strengthen the sovereignty, provide good governance and ensure peace, security, well-being and happiness of the people. It mandates the Government to protect and strengthen the sovereignty of the Kingdom.

The Constitution includes many provisions designed to ensure a system of governance serving the best interests of the people.610 It is a constitutional duty to provide a system of good governance,611 promote efficiency and the betterment of the nation. In Buddhism:

609 Study Materials compiled by Prof. (Dr.) Ranbir Singh, Prof. (Dr.) Srikrishna Rao and Prof. Jagbir Singh Dahiya from the National Law University Delhi.
610 Supra, n.234.
“Buddha encouraged the king to reform the system of justice and economics in the country. He said corporal punishment, torture, imprisonment, and execution were not the effective means for stopping crime. Crime and violence were the natural result of hunger and poverty. The best way to assist the people and provide for their security was to concentrate on building a healthy economy. It was essential to provide food, seeds, and fertilizer to poor farmers until they could become self-sufficient and productive. Loans should be provided to small merchants, retirement funds should be set up for those no longer able to work, and the poor should be exempted from taxes. All manner of coercion and oppression against manual laborers must cease. People should be free to select their own jobs. Ample opportunities for training should be made available to help people master the trades they chose. The Buddha said that a correct economic policy should be based on voluntary participation. Venerable Ananda was sitting close to the Buddha during this conversation with the king. He was thus able to preserve the Buddha’s ideas on politics and economics in the Kutadanta Sutra”.

His Majesty Jigme Khesar Namgyel Wangchuck said:

*His Majesty Jigme Singye Wangchuck, after ascending the Golden Throne till date, has worked persistently to further strengthen our country by focusing mainly on the policy of Gross National Happiness. His Majesty the Druk Gyalpo, the government and the people by having had the same thought, joined their hands together and unanimously served the nation relentlessly working towards the achievement of economic development, good governance, independence, sovereignty and security of the country and for the welfare of the people. It is because of such joint effort that excellent results are evident in the policies and objectives of the country.*

His Majesty Jigme Singye Wangchuck further mentioned:

*I hope and pray that the new system of government will be successful in achieving the objective of the government, strengthening security and sovereignty of the nation and fulfilling aspiration of the people.*

Hence, the Government must ensure peace, pursue individual and national security, and work for the well-being and happiness of the Bhutanese. A weak Government cannot control law and order, and terrorism. His Majesty said:

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611 The phrase “good governance” is colonial in nature. The concept of good governance existed long before in our country. In the social contract of 1907, the provision for the appointment of “gyelzin” connotes good governance. “The traditions and institutions by which authority in a country is exercised” – Kaufman et al. The way “… power is exercised through a country’s economic, political, and social institutions.” – the World Bank’s PRSP Handbook. “The exercise of economic, political, and administrative authority to manage a country’s affairs at all levels. It comprises mechanisms, processes, and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations, and mediate their differences.” – UNDP. “Fundamental aspects of governance” are: graft, rule of law, and government effectiveness. Other dimensions are: voice and accountability, political instability and violence, and regulatory burden. Kaufmann. Available at http://web.worldbank.org/WEBSITE/EXTERNAL/COUNTRIES/MENAEXT/EXTM NAREGTOPGOVERNANCE/0,,contentMDK:20513159~pagePK:34004173~piPK:34003707~theSitePK:497024,00.html

612 Supra, n.202, p.312.

613 Public Consultation in Bumthang, 21st May 2006.

What is important is that the Government is the Government of the people. If the so called Government works only towards their own benefits, the purpose of having a democratic Government is failed. What we need is a stable Government which is strong and who will work in the interest of the country and meet the aspirations of the people.\textsuperscript{615}

Well-being is incorporated in the preamble of the Constitution. Popular use of it usually relates to health. It is a kind of value, sometimes called ‘prudential value.’ John Rawls argues from this ‘original position’:

“that we would choose exactly the same political liberties for everyone, like freedom of speech, the right to vote and so on. Also, we would choose a system where there is only inequality because that produces incentives enough for the economic well-being of all society, especially the poorest.”\textsuperscript{616}

According to Harvard Professor Tushnet, second generation of constitutionalism generate social welfare and well-being.\textsuperscript{617}

Happiness is an integrated pursuit of the past, present and the future. Dr Tennant-Wood, a political scientist at the University of Canberra’s Faculty of Business Government and Law wrote:

“The small Himalayan kingdom of Bhutan and its pursuit of Gross National Happiness (GNH) fascinated Narooma Rotarians... In 1729, Bhutan developed a legal code which includes the statement: “If the Government cannot create happiness for its people; there is no purpose for the Government to exist”.\textsuperscript{618}

Pursuit of happiness is universal. Adam Smith said “What can be added to the happiness of a man who is in health, out of debt, and has a clear conscience?”\textsuperscript{619} Denis Waitley explained that “Happiness cannot be traveled to, owned, earned, worn or consumed. Happiness is the spiritual experience of living every minute with love, grace and gratitude.”\textsuperscript{620} Jeremy Bentham added that “the universal human condition boiled down to the avoidance of pain and the optimizing of pleasure”.\textsuperscript{621}

Buddha said, “Happiness is made to be shared.” Therefore, Happiness is Gross National Product. According to Nitivakyamrita:

“Governance is the function of the ruler in order to protect the state from the wicked and nourish the good.”\textsuperscript{622}

Governance has duty to foster happiness. Elucidating this concept, His Majesty Jigme Khesar Namgyel Wangchuck said:

\textsuperscript{615} Public Consultation in Thimphu, 26\textsuperscript{th} Oct. 2005.
\textsuperscript{616} Supra, n.245.
\textsuperscript{617} Supra, n.442.
In order to strengthen the country’s foundation, first and foremost, His Majesty Jigme Singye Wangchuck introduced the concept of Gross National Happiness focusing on the socio-economic development and good governance. Moreover, during these thirty years of His Majesty’s reign, the country’s foundation had been fully strengthened and achieved taking the sovereignty of the country and the interest of the people into consideration. Likewise, when we have such an opportunity, we should not squander away the opportunity but should seize it and work with dedication to further enhance and strengthen our country.  

Article 20
Section 2

“The Executive Power shall be vested in the Lhengye Zhungtshog which shall consist of the Ministers headed by the Prime Minister. The number of Ministers shall be determined by the number of Ministries required to provide efficient and good governance. Creation of an additional ministry or reduction of any ministry shall be approved by Parliament. Ministries shall not be created for the purpose only of appointing Ministers.”

This provision postulates that executive power shall vest in the Cabinet headed by the Prime Minister. The Prime Minister and the Cabinet enjoys the executive power. They are responsible for leading the nation and deciding the direction of national public policy. The Prime Minister is the political leader of the Government and the country. He is the main public “face”. He is also the Chairman of the Cabinet, and is responsible for the effective operation of the collective Government. These roles combine political and executive responsibilities. As the political head of the Government, the Prime Minister must have an overview of governmental activity and access to information on any and all the issues that may arise.

Power enjoyed by a Prime Minister stems from his authority to form the Cabinet. It is the Prime Minister, who decides who will actually make up the Cabinet, and what portfolios will be assigned to each person. Consequently, all Ministers owe their allegiance to the Prime Minister, who can ask for their resignation, and, if necessary, advice for their dismissal to the Druk Gyalpo. It can be said that all ministers must refer to the Prime Minister and all ministers hold office at the pleasure of the Prime Minister. These powers of the Prime Minister will keep the Ministers supportive of the Prime Minister, and his policies and priorities.

The Prime Minister is the leader of the cabinet and enjoys this position as the Head of the party in majority in the National Assembly. According to John Morley, “the Prime Minister is the key stone of the cabinet arch”. However, according to Jennings it would be more appropriate to say that Prime Minister is the key stone of the Constitution. Jennings further says “all roads in the Constitution lead to the Prime Minister. From the Prime Minister leads the road to the Queen (read here the Druk Gyalpo), the Parliament and the Ministers.” According to Harold Laski the Prime Minister is central to the cabinet formation, central to its life to central to its death.

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624 Refer ,Guruvayar Devaswom Managing ... vs Pritish Nandy And Anr, 2 December, 1985
The position of the Prime Minister rests on: (i) his chairmanship of the Government, (ii) his leadership in Parliament (iii) his position as the essential channel with the crown, the Druk Gyalpo on all important issues, (iv) for his leadership of the party, and (v) for his patronage of the Cabinet.

Some as Lord Morley and Mr. Gladstone considered the Prime Minister’s Power as “primus Inter Pares” and in the opinion of Sir. W. Harcourt, the Prime Minister is “inter stellus Luna Menires”.\textsuperscript{627} The position in England is different. According to Greaves the Prime Minister forms it (the cabinet) he can alter it or destroy it. The government is the master and the Prime Minister is the master of the government.\textsuperscript{628}

One of the most important practices governing the operation of the Cabinet is that of a responsible Government. While the Cabinet sits at the apex of executive political power, it is nevertheless democratically responsible to the people. One of the distinctive features of the Bhutanese Constitution unlike in England and some other countries, is that the power to create Ministries has been given to Parliament to respond to changing times. The Drafting Committee was conscious and aware of the undemocratic practices, in which the ruling Government takes part in the appointment of Ministers and creation of Ministries. Therefore, the power to create or reduce Ministries has been left to Parliament and not to the Prime Minister which is unique to Bhutan. If the power is left to the ruling Government, unwarranted Ministries or ministerial berths would be created to bring their cronies into the Government and to silence the Opposition. There are instances where almost all the Members of Parliament from the ruling party were appointed as Ministers. Cabinet berth is an allurement and it silences the Opposition. The national interest may be sacrificed by dispersing cabinet post to loyalists and favorites, by silencing certain members. Thus, instead of the Executive, Parliament is empowered to approve the proposal of addition or reduction of ministries as a precautionary measure.

Despite considering ten Ministries in Bhutan as high and too expensive, the number has been retained, because it was reasonably acceptable. A number of six to seven Ministers form strong collegial bond, which is almost inattentive to the voice of public.

In summary, the executive is the part of Government that has sole authority and responsibility for the daily administration of the State. The executive branch executes or enforces the law. They have authority as they are responsible to the public through continuing responsibility of parliamentary questioning, no confidence motion, judicial review and periodic responsibility of electoral process.

\textbf{Article 20}

\textbf{Section 3}

\textit{“Subject to sections 16 and 19 of Article 2, the Lhengye Zhungtshog shall aid and advise the Druk Gyalpo in the exercise of His functions including international affairs, provided that the Druk Gyalpo may require the Lhengye Zhungtshog to reconsider such advice, either generally or otherwise.”}

\textsuperscript{627} Roger’s Constitutional law, 8th ed, p. 158.
In parliamentary democracy, the *Lhengye Zhungtshog* has to aid and advise the Druk Gyalpo in the exercise of His functions. This provision is very important. To aid and advise by a popularly elected *Lhengye Zhungtshog* is a constitutional requirement. This reconfirms the principle of Democratic Constitutional Monarchy and delineation of recommending and approval authority.

The Druk Gyalpo may require the *Lhengye Zhungtshog* to reconsider an advice, either generally or otherwise. Without this provision, His Majesty would be inundated with plurality of advices. Any action or inaction that will bring disrepute to the sacred institution of monarchy should be avoided.

**Article 20**

**Section 4**

“The Prime Minister shall keep the Druk Gyalpo informed from time to time about the affairs of the State, including international affairs, and shall submit such information and files as called for by the Druk Gyalpo.”

The right to information about the happenings of the country is the constitutional right of the Head of State. This Section mandates the Prime Minister to keep the Druk Gyalpo duly informed about national and international affairs. The Prime Minister establishes the communication channel with the Druk Gyalpo. Similarly, the section imposes a responsibility on the Prime Minister to submit such information and files as called for by the Druk Gyalpo, which implies a corresponding right of the Druk Gyalpo to call for information. Denial of such rights would be a violation of the Prime Minister’s constitutional obligation and repudiation of wisdom and correction provided by due process.

**Article 20**

**Section 5 (a)**

“The *Lhengye Zhungtshog* shall:

(a) Assess the state of affairs arising from developments in the State and society and from events at home and abroad;”

This provision enumerates the responsibility of the *Lhengye Zhungtshog*. The *Lhengye Zhungtshog* should assess the state of affairs within and outside the State. Assessment is a continuous process. The Government must ensure efficiency of policies and programmes. The policies and programmes must be periodically evaluated and analyzed. If there are any deficiencies, the Government should notify the relevant organizations and take remedial measures. They must develop alternative solutions and assess their relative strength and weakness. This provision provides progressive policies and development in consonance with events at home and abroad. Events abroad have the benefits of applied research cost and opportunity costs.

Bismarck mentioned:
“Fools say that they learn by experience. I prefer to profit by others experience.” Bhutan profit by others experience.

Article 20
Section 5 (b)

(b) Define the goals of State action and determine the resources required to achieve them;

The Lhengye Zhungtshog has the responsibility to define the goals of the State to respond to the present situations and set visions for future. His Majesty the Third Druk Gyalpo had said that the State must address 50% of its resources and energy to the current problems and necessities to avert agitation and anger. The other 50% must be for future. The future must entail hope. Therefore, the Lhengye Zhungtshog continually requires a new perspective, a new understanding, and a new vision to meet the challenge of uncertainty, inherent in the conduct of the affairs of the State.

The Prime Minister heading the Lhengye Zhungtshog should be a good leader, who enlarges the vision and gives a new impetus to the work of the state by combining respect for law and procedure and pragmatism. The leader inculcates and develops a spirit in the State. The Lhengye Zhungtshog should work for maximum efficiency and minimum set-backs by synchronizing progress and happiness for the people and stability of the Government. It should have the vision to inspire and improve for Bhutan to reflect her soaring spirit and the essence of it’s eternal identity.

The State should mobilize and determine the resources required to achieve their goals, by eliminating waste and maximizing its use. Timely and wise investment is the best resource. Static economics is not a solution. Dynamism is both proactive and wisdom.

Article 20
Section 5 (c)

(c) Plan and co-ordinate government policies and ensure their implementation; and

The Lhengye Zhungtshog shall have short term and long term plans and shall set targets to be achieved. If a plan is to be developed on proper lines, it is necessary to foresee the probable course of future implications and prepare in advance for eventuality. The plan should be realistic, clear and flexible to respond to changing conditions. It should also provide for continuity. Ad-hoc plans are wasteful and often expensive. A planned framework becomes more orderly and disciplined. Planning facilitates participation and invokes interest. A plan must incorporate consideration of the resources and the possibilities for development, innovation and expansion. Myopic planning is regressive and wasteful.

The Lhengye Zhungtshog must co-ordinate and advance unity of command and control in organizations. Co-ordination is of cardinal importance in the running of organizations. It must

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work for the attainment of planned targets. Further, the *Lhengye Zhungtshog* must ensure the implementation of the plans through requisite resources, timely availability of funds and a proper administrative organization. All activities need to be fully coordinated. The military strategy of MITS, men, material, training and supply line are relevant to the efficacious administration, of the government.

**Article 20**
**Section 5 (d)**

*(d) Represent the Kingdom at home and abroad."

This section empowers and imposes duty to the *Lhengye Zhungtshog* to represent the Kingdom at home and abroad. The Bhutanese saying of never to disgrace one’s country is an eternal wisdom. Bhutanese should be icons both within and outside our countries for excellence and goodness.

**Article 20**
**Section 6**

*"The Lhengye Zhungtshog shall promote an efficient civil administration based on the democratic values and principles enshrined in this Constitution."*

Under this section, an efficient civil administration means an administration with the highest standard of honesty, fortitude, selflessness, loyalty, patriotism and professional excellence based on the democratic values and principles enshrined under the Constitution. This provision imposes responsibility upon the *Lhengye Zhungtshog* to ensure that the civil administration of Bhutan is able to deliver. A citizen can seek remedial measure by invoking this provision for the failure of the government to perform on this basis.

The machinery and administration of the Government must adapt to changing times and must not encourage red-tapism and sloth. Its high place must be maintained and functions preserved so that right may be done to people according to law. The *Lhengye Zhungtshog* must feel and rectify the pain and anguish of the suffering citizens ravaged by misfortunes.

The Government of Bhutan must be democratic. It cannot abandon democratic principles, tradition and culture. The people have the power to elect their representatives through free, fair and credible elections and vote in a referendum to make laws and elect a Government of their choice. Democratic executive satisfy a stable and responsible executive. 

630 Public approbation by the people through Parliament should determine their election and provide opportunity

The party in power has a responsibility for the efficient general management of the Government and for the consequences of inaction. It must provide effective leadership. Explaining the importance of a strong Government, His Majesty Jigme Singye Wangchuck said:

*It was important to have a good Constitution that will best ensure a strong Government with the full participation of the people to face and overcome the challenges of the future.*


631 Kuensel dated Friday, December 2005.
Government must provide enlightened administration to ensure peace, progress and security through social upliftment, political, economic and spiritual advancement taking cognizance of social imperatives and freedom of choice. It must follow “Substantive democracy” that invokes public accountability of representative institutions and the democratization of economic, social and other domains of collective human life. Discarding greater social issues, social policies, public safety and security, peace, a just legal and political system, unpolluted natural environment and flourishing economic system, the Government cannot be populous for greater good and common interests. It cannot be hostage to the voice of a few as mentioned under James Madison’s “The Mischief’s of Faction” whereby small and dedicated minorities should not hijack the politics. Social necessities, social opinions through public and social choice must guide the Royal Government of Bhutan.

Article 20
Section 7

“The Lhengye Zhungtshog shall be collectively responsible to the Druk Gyalpo and to Parliament.”

This section ensures collective responsibility of the Lhengye Zhungtshog to the Druk Gyalpo and to Parliament. According to Gordon Walker, collective responsibility means that every member must accept and if necessary defend Cabinet decisions even if one is opposed to and still dislikes them. In case, a minister cannot reconcile to the Cabinet viewpoint he should quit.

In the words of Sri Douglas Home:

“If the Cabinet discusses anything it is the Prime Minister who decided what the collective view of the Cabinet is ... no Minister could make a really important move without consulting the Prime Minister, and if the Prime Minister wanted to take a certain step the Cabinet Minister concerned would either have to agree, argue it out in cabinet, or resign.”

The collective responsibility or ministerial responsibility is at the heart of Parliamentary Government and it serves to bind the Government together to check the unbridled power of the executive. Ministers should be bound by all decisions of Cabinet, even those taken in committees (or ‘inner Cabinets’). Thus, collective responsibility applies even where a Minister had no part in the discussion or decision, or to decisions of which a Minister was not aware at the time but to which he subsequently gave his tacit approval by continuing in office. The doctrine of collective governmental responsibility is totally binding on a Minister, whatever he is doing or in whatever capacity he may be acting. A Minister is a Minister, and there can be no derogation from his obligation always to act in that capacity.

632 Austin Ranney, Curing the Mischiefs of Faction: Party Reform in America, 1976, p.23.
634 This is the view of Sir Anthony Eden, Lord Butler, Sir Douglas-Home and others which is quoted and supported by Mackintosh, The British Cabinet (1968), pp.529,610-26,627
The doctrine of collective responsibility requires the Ministers to be loyal to all the decisions of the Cabinet. Disagreements may be voiced in private but public disagreements may tantamount to resignation.

Collective responsibility also implies that Ministers do not trespass without authorization on the departmental responsibilities of their colleagues. They should respect the advice even if not accepted by Ministers within their departmental policy areas. *The Lhengye Zhungtshog* should be responsible and they should act with accountability. There is a distinction between individual ministerial responsibility and the collective responsibility that each Minister has to support the Government of which he is a member. The responsibility of individual Ministers for their conduct and that of their departments is a very vital aspect of accountable and democratic parliamentary Government. Ministerial responsibility is often described as a constitutional convention, yet it is a convention difficult to define with certainty and which, to a large degree, depends upon the circumstances of each individual case.

It is impossible to lay down rigid constitutional rules about ministerial responsibility, at least in a way that gives practical guidance about behaviour to those holding ministerial office. The principles which should develop should be elastic, and in testing how far they will stretch the personal determination of particular Ministers can be crucial, especially when they are trying to defend themselves against demands for their resignation. The attitude of the Prime Minister is also pivotal, although not even the most ruthless defence of a colleague by the Prime Minister will necessarily save him from loss of office, especially if the Cabinet or the parliamentary party, or the Minister’s constituency or the media, turn against him. A change of Government at any time may produce a Prime Minister, who is determined to apply a different, and perhaps, higher set of standards of ministerial responsibility. It depends on the personalities involved and their interpretation of what the doctrine of ministerial responsibility means. In addition, a Ministerial Code of Conduct has to be in place, and the Ministers must function within the letter and spirit of the Code. Under the ministerial responsibility, the executive must answer questions, face resolutions, no confidence motions and judicial reviews. They must not forget that they are periodically assessed by the electorates.

**Article 20**

**Section 8**

*“The Executive shall not issue any executive order, circular, rule or notification which is inconsistent with or shall have the effect of modifying, varying or superseding any provision of a law made by Parliament or a law in force.”*

The Executive should not negate or act in contradiction with the law of the land. Therefore, it shall be unconstitutional; if the executive issues any order, circular, rules or notification which is inconsistent with or which has the effect of modifying, varying or superseding any provision of law made by Parliament or any law in force.

The idea of constitutionalism was about limiting Government power to do wrong and avoid the miscarriage of justice. Elective Government cannot rape the environment, plunder the national resources and enrich the few through extortion of many poor. Such executive order, circular, rule
or notification is inconsistent with Parliamentary democracy and Democratic Government. The Royal Government of Bhutan must remember Zhabdrung Rimpochhe, 635 who said:

“If beings do not have happiness, there is no point in the hierarchy of the Drukpa upholding the doctrine of the dual system. Therefore, upholding the precious doctrine in one’s heart, it is necessary to enact legal observances.”

Article 21
The Judiciary

Justice and the Rule of Law are two of the noblest concepts evolved by the wit of man. The Romans regarded Justice as a goddess, impartial, impassive and unshaken. The Judiciary is envisaged in all developed societies as a bastion of rights and of justice. In every democracy, the preservation of the Constitution and an independent judiciary go hand in hand.

Nagarjuna 636 mentioned that as the earth is to living and non-living entities, law is to human beings. Thus, justice is a promise and a gift to humanity.

Similarly, Socrates said:

“Justice is virtue and wisdom … injustice is vice and ignorance.” 637

The Judiciary is an institution, on which rests the noble edifice of the Rule of Law, that conducts with unremitting efforts to fulfill its commitment to justice. It represents the solemn will of the State pronounced for the common good of the people.

The Bhutanese legal system has a long traditional background, 638 primarily based on Buddhist natural law and Zhabdrung Ngawang Namgyal’s Code. The Code was based on the fundamental teachings of Buddhism 639 and addressed the violation of both secular and temporal laws 640, which is the foundation of the contemporary Bhutanese legal system 641. These laws enshrine the ten pious acts referred to as Lhachoe Gyewa Chu 642 and the sixteen virtuous acts of social piety referred to as the Michoe Tsangma Chudru. 643 The Code was amended several times over the

635 Zhabdrung Ngawang Namgyal was the first theocratic ruler of Bhutan, who unified the country and established the foundation for national governance and the Bhutanese identity.

636 Nagarjuna or Pelgoen Phagpa Lhuedrup was a famous Buddhist philosopher of the second century A.D.

637 Anthony Preus, Notes on Great Philosophy from Thales to Aristotle, 1996, p.78.

638 “Laws of Lhomoen” Zhalchay Chudue, 1636, p. 17, 26, and 37.

639 See, Rakehna Ngachhum from Bardo Theogred and Kanjur (Tripitika).

640 It is said that the spiritual laws resemble a silken knot (dargye duephue). The silken knot is light and loose at first but gradually tightens with the accumulation of negative deeds. Similarly, secular laws are compared to a golden yoke (sergyi nyashing) that grows heavier and heavier with the degree of crimes committed.

641 Zhabdrung promulgated the first set of Bhutanese laws and codifications of these laws were completed in 1652 during the reign of the first temporal ruler Deb Umzed Tenzin Drugyel.

642 Lhachoe Gyewa Chu includes refraining from: taking life (pranatighatad virati), taking that which is not given (adattadanad virati), engaging in sexual misconduct (kamamithyacarad virati), lying (mrsavadat prativirati), speaking harshly (parusat prativirati), slanderering (paishunayatc prativirati), engaging in worthless chatter (sanbhinmapralapat prativirati), being covetous (abhidhyayah prativirati), being malicious (vyapadat prativirati) and holding wrong views (mithyadrsti prativirati). These ten pious acts can broadly be divided into three categories of non-virtuous actions to be avoided and they are: three non-virtuous actions of body - trumi kayaduscaritani, four non-virtuous actions of speech - catva vagduscaritani and three non-virtuous actions of mind - trini manoduscaritani. This has its basis in the Buddhist principles of Lueki Megawa Sum, Ngagi Migawa Zhi, and Yidgi Megawa Sum.

643 Michoe Tsangma Chudru includes not to kill or steal; not to hold wrong views; not to go against the wishes of one’s parents; not to be disrespectful to elders, learned persons and leaders; not to harbour evil or ill thoughts towards family or friends; not to refrain from helping neighbours; not to be dishonest; not to follow bad examples; not to be greedy or selfish; not to inspire evil thoughts in others; not to be late in repaying debts; not to cheat; not to act differently towards rich and poor, or those of high or low status; not to listen to evil advice; not to be deceitful; and not to be short-tempered or lose one’s patience.
centuries, but it continued to uphold the principles of Buddhism and natural justice set out by Zhabdrung.

The 10th Desi Mipham Wangpo consolidated and amended certain parts of the Code of Zhabdrung and in mid-eighteenth century, the 13th Desi Choegyal Sherab Wangchuk incorporated amendments. Thereafter, the First Druk Gyalpo Gongsar Ugyen Wangchuck and the Second Druk Gyalpo Jigme Wangchuck made further modifications. During the reign of the Third Druk Gyalpo, His Majesty Jigme Dorji Wangchuck, the National Assembly enacted the first comprehensive codified laws known as the Thrimzhung Chhenmo or the Supreme Law. His Majesty Jigme Singye Wangchuck initiated various amendments and enactments of laws to respond fully and effectively to the changing needs of our nation. Emphasizing the importance of justice, equality and fairness, His Majesty Jigme Khesar Namgyel Wangchuck said:

“The most precious love of a King is his People; the most cherished wish of the People is peace and prosperity; Law is the root of peace and prosperity. Thus, no other goal should be noble than the creation of a society based on justice, equality and fairness.”

The paramount duty of the Judiciary is to ensure that falsehood does not triumph over truth, that injustice does not eclipse justice. The Judiciary must be the true custodian of Justice. Therefore, committing to this benevolent mission, late Majesty the Third Druk Gyalpo separated the Judiciary from the Executive with the establishment of Dzongkhag (District) courts in 1961. It was consolidated by establishing the High Court in 1967. Further, His Majesty Jigme Singye Wangchuck in order to take “justice nearer to the people” with a clearer delineation of responsibilities between the Executive and the Judiciary, the first Dungkhag(Sub-Divisional) Court was established in 1978. It was the culmination of the independence of Judiciary and the separation of powers from the apex to the lowest court.

With the adoption of the Constitution, the Judiciary has a major role to play, especially the Supreme Court, which is the highest court of appeal, and the guardian and the final interpreter of the Constitution. It is mandated to protect the fundamental rights of the people.

The Judiciary also has an essential role in protecting the people from the wrong-doing of others, protecting the weak from the strong, and the powerless from the powerful as well as protecting individuals from the unwarranted or unlawful exercise of power by the State. Moreover, the Judiciary plays a crucial role in securing domestic tranquility by providing a structured and institutionalized forum for the resolution of discord and the vindication of civil and criminal wrong-doing. Therefore, the courts will be faced with the role of balancing, and it is often a difficult balance, between the rights of the individual on one hand and the interests of society as a whole on the other. The situations are usually grey and different people of goodwill can come to different conclusions. Court decisions in the constitutional area are often controversial. In this difficult and controversial area, the challenge for the courts is to uphold the Constitution and the
law, and maintain the enduring values of a civil society. Judges should act fearlessly, irrespective of popular acclaim or criticism.

The Courts are the protector of the fundamental rights of the people and the place of justice. Therefore, it is essential for every Court to be empowered with full judicial authority and independence and be isolated from any political influence. The Supreme Court, the High Court, the Dzongkhag Courts and the Dungkhag Courts are established institutions. Apart from these established institutions, there should not be any other forum except in special cases, a specialized forum may be established with proper recommendation and approval. Such institution may be established to provide expeditious and inexpensive relief. Certain special tribunals or courts may be set up by the Druk Gyalpo on the recommendation of the National Judicial Commission to try and adjudicate specialized matters such as administrative, tax, labour, and commercial with an appeal to the High Court as enshrined under section 14 of this Article.

Court system
After very careful considerations between the concentrated system propounded by Hans Kelsen of Austria and the mixed or diffused system, Bhutan followed the middle path. The High Court is designated as the court of first instance for constitutional cases, which provides for one step appeal to the Supreme Court in keeping with the relevant laws related to appeal and the principles of natural law. The Supreme Court of Bhutan functions as the court of last resort for both constitutional and general matters.

Independence of the Judiciary
The Judiciary is an integral part of the structure of the state. The independence of the Judiciary necessarily inspires confidence in the people of the country. It acts as a safe-guard not merely as the manipulation against the law for political purposes at the behest of the government in power but also against the corruption of the judicial organs of the state by the intimidation of powerful outside interests which threaten the impartial administration of justice.

Justice Douglas of the United States said no matter how strong an independent judge’s spine, the threat of punishment which poses the greatest peril to judicial independence would project a dark shadow cast whether by political strangers or judicial colleagues. It is vital to reserve the opportunities for judicial individualism. Justice Douglas further said that an Independent Judiciary is one of the nation’s outstanding characteristics. Indeed, some Judges of the Supreme Court of India have held that the independence of the judiciary is the basic structure of the Constitution.

Judicial impartiality is the quality of mind which depends on the more subtle considerations than the application of the principle that a man must not be a judge of his own cause. A Judicial institution, namely, a court, must first and foremost be free from bias. This rule must be stringently observed according to the dictum enunciated by Lord Hewart who said:

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648 Sub-district Court.
650 Chairman of the Drafting Committee’s explanation during public Consultation in Punakha, 27th Nov. 2005.
651 Lord Buddha mentioned “The Law is that which leads to welfare and salvation…The Law is equal, equal for all beings…Impartial is the law. Refer Dharmasangiti Sutra.
"Justice must not only be done but manifestly seen to be done". 653

Free of bias necessarily means impartiality. Impartiality guarantees a party that the law will be applied to him as to any other party. Thus a court must be independent of and immune from outside influence. This ensures Independence of the Judiciary which is the hallmark of the Judiciary and indeed the Constitution.

Independence of the Judiciary is guaranteed by the Constitution.654 The various aspects of judicial independence include Institutional independence,655 Personal independence,656 Entrenched Judicial independence,657 Jurisdictional monopoly658 and financial independence, which are all dealt with in the Constitution. In addition, the independent administration of constitutional office holders provides another safeguard.659 Salary and benefits cannot be varied660 and the independence of the Judiciary was further strengthened with the enactment of the Judicial Service Act in 2007.

Separation of judicial power from the apex to the lowest court is the required mandate of the Constitution. The independent administration of justice also includes personnel independence such as security of tenure,661 impartial selection process,662 guarantee of adequate facilities,663 and adequate finance.

The judiciary must be strong and independent to discharge its duties without fear or favour. Political or any other form of interference should not paralyze the legal system as it perverts justice. His Majesty Jigme Khesar Namgyel Wangchuck said that a sound legal system is the basis of the nation’s independence, security, Gross National Happiness, and the protector of people’s rights and freedoms.664 If the beacon of the judiciary is to remain bright, the courts must be above reproach, free from coercion and political influence. The Bhutanese legal system must punish the criminals and protect the law-abiding citizens. Humanitarianism and mercy must be distinguished from miscarriage of justice. The rights of the people must be protected and legal means should be followed to render fairness. The Government and the public must have confidence in the judiciary. Confidence in the judiciary does not require a belief that all judicial decisions are wise, or all judicial behaviours are impeccable. If the justice system is based upon the rule of law, values of independence, impartiality, integrity ethical values and professionalism, and if, within the limits

653 AIR 1996 S.C 513.
654 The principles of the separation of powers were originally enunciated in Zhabdrung’s Code. In the Code, the responsibility of adjudication was assigned to Drangpons (law lords – judges). The separation of powers was then affirmed in the Thrimzhung Chhenmo in 1959 and reaffirmed by the resolutions of the 12th, 16th and 73rd sessions of the National Assembly. Moreover, His Majesty in the Kadyon (Royal Edict) empowered the High Court to appoint judges thereby establishing a separate judicial cadre. Under Section 2 of the Civil and Criminal Procedure Code, the Judiciary is separate from the legislature and executive and is fully independent in the exercise of its functions. Eventually, the separation of powers is also guaranteed under section 13 of Article 1 of the Constitution.
655 Section 1 Article 1, the Constitution of Bhutan.
656 According to “The Singhvi Declaration”, 1989, Personal Independence … “shall decide matters impartially, on the basis of facts and in accordance with law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”… security of tenure…protection from arbitrary removal from office… impartial selection process… guarantee of adequate salaries:…prohibition of punitive transfer of judges:
657 Section 1 Article 32, the Constitution of Bhutan.
658 Section 2 Article 21, Ibid.
659 Section 13 Article 14, Ibid.
660 Section 15, the Civil and Criminal Procedure Code of Bhutan, 2001.
661 While the Royal Judicial Service Council is responsible for determining and administering the organizational structure, budgetary and personnel requirements of the Judiciary, the National Judicial Commission is responsible for judicial appointments.
662 Free residence and free transportation for the justices and judges were allotted under the Royal edicts dated First day of the Tenth Month of the Pig year, and the Fifth day of the Twelfth Month of the Sheep year of the Bhutanese calendar.
663 Royal address by His Majesty to the Judges, 11th June 2010.
of ordinary human frailty, the system pursue these values faithfully and fairly, people will repose faith in the Administration of Justice.

Prof. Ben Saul said:

“There are two ways of thinking about judicial independence. One is the independence of the court from the other branches of Government, executive and the parliament. But there is also a view which says the judicial independence is also independence from one’s fellow judges. That is you should not feel coerced or intimidated by the Chief Justice to agree with him in cases for whatever reason. In other words you must maintain independence of judgment, independence of mind which can make judging. A solitary enterprise doesn’t mean you don’t consult your colleagues. It doesn’t mean you don’t circulate draft opinion and discuss the case so on. But ultimately each judge must make up their own minds about how to dispose off the case.”665

This was reinforced by Justice J.S. Verma,

“The principle of representation that applies to the legislature does not apply to the judiciary. It is sufficient that the personnel of the judiciary reflect the values of the society, and they are accountable in a manner consistent with the independence of the judiciary. The judge’s commitment must be only to the Constitutional philosophy and its mandate.”666

It is arguable that the appointment of justices for life is not good. Many countries have amended the term to 75 years. On the contrary, too short a term is equally bad, as an individual judge cannot contribute to the juridical history of the institution. A tenure and an age bar is required to avoid entrenched interest and bias. Therefore, a maximum term of five years for the Chief Justice of Bhutan has been constitutionally established as an appropriate length of time. It will have no impact on the independence of the Judiciary. Further, for the purpose of maintaining the independence of the Drangpons of the Supreme Court, the term of office has been enshrined as ten years or until attaining the age of sixty-five years or whichever is earlier. Similarly, the term of office of the Chief Justice and the Drangpons of the High Court shall be ten years or until attaining the age of sixty years, whichever is earlier. Nobody should hold any office for too long. No institution must be burdened by perpetuation. Hamilton mentioned that

“the qualification of a person who may choose or be chosen as has been remarked upon other occasion are defined and fixed in the Constitution and made unalterable by the legislature.”667

Prof. Ben Saul elucidated that:

“A court has entrenched judicial independence as a result of having tenure where you just can’t be sacked because the Government doesn’t like the decision you make.”668

665 Supra, n.140.
666 Supra, n.134.
668 Supra, n.140.
The independence of the Judiciary is strengthened with the enactment of the Judicial Service Act in 2007. The Act guarantees both institutional and personal independence. Further, the court building manifests physical separation of power affirming the principle of independence, cardinal to the doctrine of equal protection as enshrined under the Constitution. Among others, the independence of the Judiciary is manifested through:

(a) Separation of judicial power from the apex to the lowest court;
(b) Personnel independence;
(c) Impartial selection process;
(d) Guarantee of adequate facilities and adequate finance;
(e) Distinctive court building, distinct kabney and court seal; and
(f) All personal administration and financial operations are decentralized to respective courts to provide for independent administration of justice.

The nation will require judges with independent mind without prejudices and pride. Modesty is the judicial garment. Lord Justice Scrutton said:

“the habits you are trained in, the people with whom you mix, lead to your having a certain class of ideas of such a nature.”

The Judiciary has the responsibility of delivering justice through harmonious reconciliation of individual conduct with general welfare of society. Justice encompasses social justice, economic justice, political justice, etc, as enshrined in the Constitution. Social justice is the abolition of the inequalities of wealth, opportunity, status, religion, caste, title and the like. Economic justice aims at distribution of material resources for the common good and to prevent concentration of wealth including equal pay for equal work, right against exploitation, etc. Political justice means absence of any unreasonable or arbitrary distinction among the people in political matters.

The Judiciary has the solemn duty of upholding the fundamental rights and forbidding legal injury to citizens. The Judiciary has salutary provisions of the Constitution to protect democracy.

Judicial restraints

Independence of the judiciary is neither the right nor the privilege of the judges, but it is the right of all the consumers of Justice. Although, an independent, competent and impartial judiciary is essential to uphold the rule of law, guarantee fair trial, protect the rights and ensure access to justice, judges should conduct themselves in such a manner as to preserve the dignity of the judicial office, and the impartiality and independence of the Judiciary. Using his or her power, a judge must remember the advice of the Harvard Law School to their graduates, “the wise restraints that make men free”.

Conversely, Shakespeare warned in Measure for Measure,

“O! it is excellent To have a giant’s strength; but it is tyrannous To use it like a giant.”

The other institutional restraints are the constitutional and legal values that all persons are equal before the law and are entitled to a fair trial and public hearing by an independent court. The

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671 William Shakespeare, Measure for Measure, Act II Scene 2, line 107 & 108.
Apart from transparency and credibility of the Judiciary, fair trial and justice is of paramount importance for the people and that the Judiciary is the most important organ of the government...  

Although a judge is vested with statutory power, he should not exercise it arbitrarily as it is amenable to challenge. Judges should pronounce reasoned judgments within the parameters set by law. A great American jurist, Justice Holmes’s view was:

“that judges must show great deference to popularly elected legislature and previous court decision – and thus be slow to make drastic changes in public policy.”

It must be balanced with loose construction as advocated by Chief Justice John Marshall of the United States, who said that “the Constitution gives general guidance about basic principles but allows play in the joints” and in his judgment in McCulloch v. Maryland, he mentioned that “we must never forget that it is a Constitution we are expounding.”

Excessive judicial activism and direct involvement in the functioning of the legislature and executive would tantamount to kyriarchy. Judiciary of Bhutan must set an example of the separations of powers. Respecting the original will of the Constitution and to be the guardian is the responsibility and duties of the Judiciary.

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672 The justice system adopted for the community of monks begin with the premise that everyone is equal before the law. Lord Buddha had said “I preach the Law equally.” Equality is one of the true supporting values of a Constitution. He further mentioned “On my path, all are considered equal”. Refer bka’-'gyur sutra, zhaba, page 240 (back page).

673 Seven Practices of Reconciliation (saptadhikarana-samtha) was formulated after four days of discussion by the bhikkhus. It is to be used in settling disputes within the sangha. The fair trial method is clearly depicted in the Seven Practices of Reconciliation (saptadhikarana-samtha):

1. The first practice is samukha-vinaya, or face to face sitting. According to this practice, the dispute must be stated before the entire convenon of bhikkhus, with both sides of the conflict present. This is to avoid private conversation about the conflict which inevitably influences people against one side or the other, creating further discord and tension.

2. The second practice is smriti-vinaya, or remembrance. In the convocation, both parties involved try to remember from the beginning everything that led up to the conflict. Details should be presented with as much clarity as possible. Witnesses and evidence should be provided, if available. The community listens quietly and patiently to both sides in order to obtain adequate information to examine the dispute.

3. The third practice is amudha-vinaya, or Non-stubbornness. The monks in question are expected to resolve the conflict. The community expects both parties to demonstrate their willingness to reach reconciliation, tatsvabhaisya-vinaya. Stubbornness is to be considered negative and counterproductive. In case a party claims he violated a precept because of ignorance or an unsettled state of mind, without actually intending to violate it, the community should take that into account in order to find a solution that is agreeable to both sides.

4. The fourth practice is tatsvabhaisya-vinaya, or voluntary confession. Each party is encouraged to admit his own transgressions and shortcomings without having to be prodded by the other party or community. The community should allow each party ample time to confess his failings, no matter how minor they may seem. Admitting one’s own fault begins a process of reconciliation and encourages the other party to do likewise. This leads to the possibility of full reconciliation.

5. The fifth practice is pratijnakaraka-vinaya, or accepting the verdict. When the verdict is reached, janapticaturthi-karmavacana, it will be read aloud three times. If no one in the community voices disagreement with it, it is considered final. Neither party in dispute has the right to challenge the verdict. They have agreed to place their trust in the community’s decision and carry out whatever verdict the community reaches.

6. The sixth practice is yadhuyastikiya-vinaya, or Decision by Consensus. After hearing both sides and being assured of the wholehearted efforts by both sides to reach a settlement, the community reaches a verdict by consensus.

7. The seventh practice is tretastara-vinaya, or Covering Mud with Straw. During the convocation, a venerable elder monk is appointed to represent each side in the conflict. They are high monks who are deeply respected and listened to by others in the sangha. They sit and listen intently, saying little. But when they do speak, their words carry special weight. Their words have the capacity to soothe and heal wounds, to call forth reconciliation and forgiveness, just as straw covers mud, enabling someone to cross it without dirtying his clothes.

674 Royal address by His Majesty to Judges, 11th June 2010.
676 Supra. n.440.
However, Justice Michael Kirby observed:

“Modesty is the judicial garment normally it is usual to leave it to parliament but sometimes the urgency at the injustice and the fact the parliament has not built with it because the people involved may be unpopular minority that is where the judges have their responsibility. To defend all the people and to make sure that there is equal justice under the law.”

**Appointments**

Appointment of qualified Drangpons is necessary to demonstrate changes in the Judiciary. Therefore, under Chapter 6 of the Judicial Service Act, appointment of Drangpons to the Supreme Court and the High Court shall be:

(a) A natural born citizen of Bhutan;
(b) Not married to a person who is not a citizen of Bhutan.
(c) With the requisite qualifications to ensure a qualified, independent and accountable judiciary;
(d) With moral courage and integrity, reputation for fairness and uprightness, decisive, dignified and without bias of religious and regional prejudice;
(e) Have no political affiliations;
(f) On the basis of objective criteria and select candidates with those subjective qualities needed for a good judge;
(g) With a good track record of adhering to established procedure and upholding the rule of law by reviewing past judgments rendered by the candidate; and
(h) Have a remainder of at least eighteen months of service subsequent to appointment, in case of the Chief Justice of Bhutan.

The provisions were supposed to have been comprehensive and the best. Unfortunately, it lacks transparency for the august posts of Drangpon, whose decisions have pervasive and enduring influences upon the individuals, public and nation. A Drangpon without empathy for justice and plight of a victim is unfit to occupy such a post. His Majesty Jigme Khesar Namgyel Wangchuck said that a judge should be the repository of high intellect and professional, custodian of our age old customs, tradition and culture, and the guardian of the national language, which has been the basis of our success initiated by our forefather with wisdom and farsighted vision. Seniority stifles merit, selection breeds favoritism and publicity promotes mediocrity. Press is too critical on the appointment of a Chief Justice but they are oblivious of the Justices. Popular criticism of one man’s commission and the Chief Justice is both a misnomer and promotion of injustice. Such criticism has vitiated the authority of a Chief Justice and promoted indiscipline.

The Judiciary wanted to include Dzongkhag Drangpons in Article 2, similar to that of Dzongdas. It was an egoist approach without rationality. It should have been left to the National Judicial Service Council. It was clarified during the public discussion as follows:

Firstly, the Constitution is a document where only principles and the most important provisions are enshrined. Acts should entail details. The appointment of the Dzongkhag

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677 Supra., n.69.
678 Royal audience by His Majesty Jigme Singye Wangchuck, 19th Nov. 2001.
679 Royal address by His Majesty during the 21st Annual Judicial Conference held at Supreme Court, 3rd July 2014.
Drangpons is provided comprehensively under the Judicial Service Act. The Dzongkhag Drangpons will be appointed by the Chief Justice after getting the Royal consent from His Majesty. The Drangpons of the Dzongkhags have not been included in the Constitution because they are not constitutional post holders. Hence, the appointments of the Dzongkhag Drangpons are covered in the Act. It is true that 70% of the people live in the Dzongkhags and it is the Dzongkhag Drangpons, who preside over cases in the Dzongkhags. The posting, placement, appointments and promotion are all done by the Chief Justice. It is better to submit recommendation to His Majesty rather than incorporating in the Constitution. The reason that they benefit the people more cannot be the basis to incorporate the provision on appointment of Dzongkhag Drangpons in the Constitution.680

The public also opined about the duration of postings. It was clarified during the Public consultation that:

Regarding the issue of Dzongkhag Drangpon, it is neither a constitutional post nor has it been incorporated in the Constitution. It is provided under the Service Act which specifies the duration of posting ranging from 3-5 years in a particular court.681

Accountability682
In every sphere of public, there must be accountability. It is often criticized that the Judiciary is not accountable.

Prof. Tushnet mentioned that:

“Now there is one obvious mechanism of accountability which is that judges on lower courts are accountable to higher courts at least in those instances. Their decisions can be appealed and the judges of the higher courts assess the decisions to see if they are consistent with the higher court judges’ views of what the law requires. Now there are two things worth noting about this kind of accountability. The first is that it won’t work; it doesn’t exist for judges on what we call apex court, the highest level of the constitutional system where decisions are not subject to review by other courts. And the second is that mostly for reasons are judicial capacity; higher courts typically are unable to review every decision made by a lower court. And so even at the lower court level there are some opportunities for lower court judges to rule to pursue personal agendas. So appeals to higher court should be understood as mechanism of accountability but they are not fully sufficient. The other kinds of mechanisms or the mechanisms that give the level of political accountability to and these come in, what I call, direct and indirect forms. Direct political accountability occurs when a judge makes a decision and politicians have some way of holding the judge accountable for that decision. Obviously the primary example is removal from office.”683

680 Chairman of the Drafting Committee’s explanation during public Consultation in Wangduephodrang, 7th Dec. 2005.
682 “Accountability” comes from Latin accompläre (to account). It was used in 13th century Norman England. Bruce Stone, O.P. Dwivedi, and Joseph G. Jabbar list 8 types of accountability: moral, administrative, political, managerial, market, legal/judicial, constituency relation, and professional. Political accountability is the accountability of the government, civil servant and politicians to the public and to legislative bodies.
683 Spura, n.340.
Drangpon is a powerful post. Therefore, it is often criticized that selection and appointment requires a more democratic process. Senate confirmation is often political and appointment by the Executive is irrational. Collegiums are under public scrutiny. Therefore, Bhutan opted for the National Judicial Commission. However, it also requires transparency.

Justice J.S Verma said:

"Judges are unelected. Therefore, they are not democratic and so they don’t exhibit the sovereignty of the people. Judges are also accused of obstructing the way of the democratic decisions made by parliament. The function of judges in constitutional democracies have seminal role. These criticisms are negated by the constitutional principle enshrined in Schedule III pertaining to the Oath taken by the constitutional offices and by members of parliament. That Oath states that, “…I shall bear true faith and allegiance to the Constitution of Bhutan.” So it’s like a directive from the Constitution to the political branch to respect how the Constitution allocates decision making power between Parliament and the Judiciary."

Many people say that the ultimate purpose of an established political system by a Constitution is to protect human dignity, equality and freedom. Democracy established the structural values. Excessive transgression by populist democracies or a majoritarian democracy is countered by the structural values of democracy and rule of law. Preserving the political system which is a very special power entrusted through judiciaries is a power stand about the legitimacy of the judiciary in this kind of democratic system. Election is not the only form of legitimacy in a political system. In some countries the police and teachers are elected, the militaries are not elected and yet we regard all of those occupations as important parts of preserving a democratic culture and a democratic system.

Judiciary’s legal expertise and knowledge has special capacity to perform the functions of judicial supervision of the political branch. One of the reasons why the judiciary acquires legitimacy in that fashion is because of its relative independence from politics. In other words, parliament and the executive acquire legitimacy because they are popularly elected. But judiciary acquires legitimacy in a constitutional setting precisely because it’s not elected. In other words, judiciary is insulated from those everyday popular political pressures which would otherwise compel it to decide the cases in the most popular way; that pleases the most people. But this is precisely why the judiciary is so legitimate in a democratic constitutional setting because it is immune from that political influence.

Article 21
Section 1

“The Judiciary shall 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 and to enhance access to Justice.”

The Judiciary has the sacred duty to safeguard and uphold justice from over-reaching by the executive and the legislature. It has the constitutional duty to deliver justice in its decisions and

684 Supra, n.134.
actions. Moreover, it has the obligation to circumvent the temptation to capitulate its fundamental responsibilities in administering justice fairly and equally. It must not only be seen to be fair but it must appear to be fair to elicit trust and eliminate suspicion. Public trust and faith in the Judiciary is very crucial for the justice to be delivered without fear and favour. A judicial decision has to be made according to the law and rules. The Judge’s approach has to be guided by the concept of the rule of law.

The Constitution of Bhutan makes a mention of the principle of undue delay for the purpose of ensuring timely delivery of justice. Talmud invokes that “Judgment delayed is judgment voided.” The courts must endeavour to appropriately address the agony of uncertainty and unremitting ordeal of indefinite delay. It is resonated in section 125 of the Judicial Code of Conduct:

“A Drangpon shall submit the list of those cases which are unduly delayed and pending before him.”

It is the constitutional duty of the Judiciary to safeguard, uphold, and administer justice fairly and independently without fear, favour, or undue delay in accordance with the Rule of Law. A judge must be honest to his Oath and must uphold the Constitution and the Laws without fear or favour.

Chief Justice Marshall has said that:

“The greatest scourge and angry Heaven ever inflicted upon an ungrateful and a sinning people was an ignorant, corrupt or a dependent Judiciary.”

Every judicial action and speech must be according to the Rule of Law to inspire trust and confidence in the administration of justice. The Rule of Law, as enshrined in the Constitution, embodies a principle of institutional morality, a principle which suggests legal limitation on the power of the government to constrain abuses in the administration of the laws, to oppose the government of will instead of law, and to act as the antithesis of arbitrary rule. The Rule of Law is the principle that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedure. The principle is intended to be a safeguard against arbitrary governance. The alternative to the Rule of Law is the rule of power, which is typically arbitrary, self-interested and subject to influences.

Society is entitled to expect that a judge must be a man of high integrity, honesty and required to have moral vigour, ethical fairness and impervious to corrupt or venial influences. It is therefore implicit that a judge’s conduct must be free from impropriety and it must be in tune with the highest standards of probity. Judges individually and collectively must attach great importance to maintaining the confidence of the people.

In the words of Chief Justice Marshall:

686 Cited by Justice Van Devanter in Evans Vs. Gore 64 LED 887.
“Power of Judiciary lies on deciding cases, nor in imposing sentences, nor in punishing for contempt: but interest and faith of the common man.”

Judicial functions involve an objective, as distinguished from a subjective determination, that is, coming to a decision upon consideration of facts and circumstances according to law.

The Rule of Law demands that both the people and the government must obey all laws. Dicey’s rule of law encompasses both the material rule of law and the formal rule of law. The material rule of law requires the realization of a just legal order, and the formal rule of law requires the state activities to be based on laws that are consistent with the Constitution. In his treaties, “Law of the Constitution”, he identified three principles, which together establish the rule of law as under:

(a) The absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power;
(b) Equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts; and
(c) The law of the Constitution as a consequence of the rights of individuals as defined and enforced by the courts.

In Buddhism, Dhammanuvatti enjoins living in conformity with righteous laws and principles, both in personal life and in work. Laws must be in accord with moral and ethical values, which encompass cardinal, spiritual, cultural, ethical (normative, positive, descriptive and meta-ethics), legal and moral values.

The Buddha asked his followers to treat the Dhamma (doctrine of righteousness) and Vinaya (the Constitution and the Code of Laws) as their teacher when the Lord Buddha would not be there. According to the doctrine of righteousness, one may sometimes escape social sanction or punishment, but the ethical basis nevertheless results in punishment in this life or the next. In a Buddhist democracy, the rule of law requires not only consistency in the expression of the law but also in its application. Good law conforms to moral righteousness.

It was proclaimed by Guru Rinpoche that “The powerful must know the limit of their power.”

The rule of law is the recognition of the supremacy of law, due process of law and judicial review of administrative action, and the elimination of discrimination. It conforms to the Buddhist philosophy of:

“Upekkha, impartiality, fairness, and understanding that all beings experience good and evil in accordance with the karma they have created; steadfastness in maintaining laws that are righteous”.

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690 The Vinaya Laws. Of all the monastic laws, the Vinaya laws are most extensive as well as intricate and reveal the legal aptitude as also the common sense on the part of the Buddhists. They are obviously vivid and run into minutest details, so that even a partial knowledge of them gives us a fair idea of the monastic life of the early Buddhists. They are systematically and scientifically arranged, though their classification may fall short of the modern methods. The principle underlying the classification is the motive and magnitude of the offence.
691 Pema bka’thang, p. 150 (back page).
Without the Rule of Law and the assurances that comes from independent decision-makers, it is obvious that equality before the law will not exist. Uniformity, consistency and certainty in decisions will not be ensured. The liberal democracy has self sustaining rule of law in the following respect:

(a) The law is equally enforced to everyone including all State officials and no one is above the law.
(b) The legal state is supreme throughout the country leaving no areas dominated by organized crime, local oligarchs or political bosses.
(c) Corruption is minimized, detected and punished. Corruption is obviously the single most important element in many countries in the world endangering the rule of law.
(d) The state bureaucracy at all levels competently, efficiently and universally appraises the laws and assumes the responsibility in the event of an error.
(e) Responsibility for maintaining equal application of the laws is democracy.
(f) A police force must be professional, efficient, and respectful of individuals’ legally guaranteed rights and freedoms including rights of due process.
(g) It is the condition of the rule of law that citizens have equal and unhindered access to the justice system to defend their rights and to contest law suits between private citizens, between private citizen and public institutions.
(h) Criminal cases and civil and administrative cases must be heard and resolved expeditiously.
(i) The judiciary at all levels is neutral and independent from any political influence.
(j) Rulings of the courts are respected and enforced by other agencies of the State and that is very important.
(k) The court is an institution to find out the truth and justice. Truth and justice are uncompromising values. Truth and Justice does not require the support of the numbers.

Access to Justice - Access to justice is vital in redressing the grievances of victims. Through unhindered access, victims would be comforted and the offenders be made accountable. The Judiciary has made progress in refining a just and an efficient legal system, enhancing greater transparency and strengthening the rule of law, while keeping the cost of litigation inexpensive with Courts in all twenty Dzongkhags and fifteen Dungkhags. These reforms have addressed the complaints that the litigants had to wait for a long time before their complaints were registered in the court and addressed the allegation that the court officials were indifferent, hostile or arrogant.

Access to justice refers to the methods by which individuals are able to get legal information and legal services in resolving disputes. It includes access to a court procedure, to legal aid and to alternative legal mechanisms to resolve conflicts. Through access, justice systems can provide remedies which will minimize or redress the impact or misfortune. Moreover, fair and effective justice systems through access to justice can eliminate impunity and deter people from committing further injustices, or from taking justice into their own hands through illegal or violent means.

The Judiciary is an extension of the Rights, for it is the Courts that would give a force to the Rights. The Judiciary is an arm of the social revolution, upholding liberty and equality envisioned by the Constitution.
The need for a judicial department as a third branch of the government was lucidly expressed by Joseph Story when he said:

“Where there is no judicial department to interpret, pronounce, and execute the law, to decide controversies, and to enforce rights, the government must either perish by its own imbecility, or the other departments of government must usurp powers, for the purpose of commanding obedience, to the destruction of liberty. The will of those, who govern, will become, under such circumstances, absolute and despotic; and it is wholly immaterial, whether power is vested in a single tyrant, or in an assembly of tyrants. No remark is better founded in human experience, than that of Montesquieu, that “there is no liberty, if the Judiciary power be not separated from the legislative and executive powers...” In every well organized government, therefore, with reference to the security both of public rights and private rights, it is indispensable, that there should be a judicial department to ascertain, and decide rights, to punish crimes, to administer justice, and to protect the innocent from injury and usurpation.”

Article 21
Section 2

“The judicial authority of Bhutan shall be vested in the Royal Courts of Justice comprising the Supreme Court, the High Court, the Dzongkhag Court, the Dungkhag Court and such other Courts and Tribunals as may be established from time to time by the Druk Gyalpo on the recommendation of the National Judicial Commission.”

Under the Constitution, the judicial authority is vested in the Royal Courts of Justice. The Constitution has given exclusive jurisdiction for adjudication to the Royal Courts of Justice. The Judiciary of Bhutan has a jurisdictional monopoly and any ouster of such jurisdiction is unconstitutional. It is similar to the Constitution of the USA and the Milan declaration:

“The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.”

Justice Michael Kirby observed:

Article 21.2 the ‘judicial authority’ of Bhutan shall be vested in the Royal Courts of Justice. Now that is probably a provision that hasn’t yet gainfully explored but I predict that this provision will become very important in the decades ahead. What is that judicial authority of Bhutan mean? It means those matters which are properly the subject of the exclusive decisions of the Judges and that can sometimes be controversial. In my own country it’s been quite controversial. What can the Judges do? It’s pretty clear in Australia that criminal trials can only be conducted by Judges. So Parliament could not set up an administrative tribunal to conduct criminal trials. That is something that belongs to the Judiciary but you get border line cases. In Australia we have something called the Courts Marshal system. That’s to say the military have their own special

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tribunals for discipline of the military. But what happens when that tribunal is dealing with civil offence by military persons. If the military person bashes the civilian, does that belong to the Court Marshal or is that part of the judicial power that belongs to the general courts. So I predict that this expression the ‘judiciary authority’ of Bhutan vested in the Royal Court of Justice is a very important issue. If you look at the American and the Australian Constitution law you will see that the Courts have been vigilant and very jealous of guarding their territory. One of them concerned the National industrial tribunal which had been set up in 1904 and it had operated from 1904 to 1956 as a court. But the High Court of Australia said that it wasn’t properly a court because it wasn’t applying the law to the facts of a case. It was instead making new laws in the form of industrial awards and therefore it couldn’t be a court, the High Court said. So that was the case where it was not properly part of the judicial authority. This is the technical matter but at its heart its quite important matter that the courts will keep to themselves those matters that the traditionally courts have done and which courts do best and for which you have to have independent people called Judges to deal with them. There is a provision elsewhere in the Constitution for the creation of administrative tribunals and Parliament is allowed to setup those tribunals. I would think reading the provision of Article 21.2 can only be done if Parliament avoids giving the tribunal a part of the Judicial Authority of Bhutan because it only belongs to the Courts. The courts in America, in Australia and in most countries with written Constitution are very jealous of protecting the areas which belong only to the Courts. The other administrative tribunals can be created under Article 21.16 and I will just read you what that provision says. It says Parliament may, by law, establish impartial and independent Administration Tribunals as well as alternative dispute resolution centers. That’s very modern provision because alternative dispute resolution is quicker and more informal and cheaper. It’s a good way to bring Justice to the people. But there will be limits on what they can do where it intrudes into the traditional territory that the courts have performed. So these are the provisions of your Constitution and there are provisions which are very clear. I have read a lot of world’s constitutions and most of them are very long and very hard to understand.694

This provision establishes and strengthens the Judiciary and barricades ouster jurisdiction. The Royal Courts of Justice comprises the Supreme Court, the High Court, the Dzongkhag Court, the Dungkhag Court and such other Courts and Tribunals as may be established from time to time by the Druk Gyalpo on the recommendation of the National Judicial Commission.

Article 21
Section 3
“The Supreme Court shall be a court of record.”

A court of Record is a court where of the acts and judicial proceedings are enrolled for a perpetual memorial and testimony.695 A Court of Record has been defined as a court whereof the

694 Supra, n.69.
695 AIR 1991 SC 2176.
acts and judicial proceedings are enrolled for a perpetual memory and testimony and which has power to fine and imprison for contempt of its authority.\textsuperscript{696}

In the context of the Indian Constitution Dr. B.R Ambedkar stated in the Constituent Assembly:

\begin{quote}
"a court of Record is a court the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any court".
\end{quote}

The Supreme Court is required to keep a record of its proceedings and judgments, which cannot be altered or amended. In short, once the judgment is rendered, it becomes a record of the court and is final and binding. Thus, a court of record is a court, the records of which is admitted to be of evidentiary value and are not to be questioned a record of the court and when they are produced before any court. The records of the Supreme Court are presumed accurate and cannot be collaterally impeached. A Court of record is one whose acts and judicial proceedings are enrolled for perpetual memory and reference. The Supreme Court as the Court of record may fine and imprison any person for contempt and can also take cognizance of contempt of lower courts, and \textit{suo moto} initiate contempt proceedings against a person. The public interest demands such extraordinary power and the Court should not shrink from exercising it.

A judgment of a probability is always a personal commitment. Hence, a judge will try to keep in his mind, total situation as presented to him by the parties, similar cases that will come up in the future, whole effect of his findings on the community and its standards of right conduct. Lord Buddha said:

\begin{quote}
"He who dispenses justice in an arbitrary manner could never be considered one who abides by the law. One who clearly ascertains both right and wrong, is the one who is held as wise and just."\textsuperscript{697}
\end{quote}

Since the Constitution vests the Supreme Court with power of the Court of Record these powers cannot be taken away by any legislation.

\textbf{Article 21}

\textbf{Section 4}

\textit{“The Chief Justice of Bhutan shall be appointed from among the Drangpons of the Supreme Court or from among eminent jurists by the Druk Gyalpo, by warrant under His hand and seal in consultation with the National Judicial Commission.”}

Under this section, the Chief Justice of Bhutan shall be appointed from among the Drangpons (Judges) of the Supreme Court or from among eminent jurists by the Druk Gyalpo, by warrant under His hand and seal in consultation with the National Judicial Commission. According to the provision, it is not necessary that the Chief Justice of Bhutan has to be appointed from the Drangpons of the Supreme Court; as the candidate can also be from among eminent jurists, who is an acknowledged authority having universal recognition and acceptance as a legal luminary. The Chief Justice of Bhutan should be of the highest caliber, possess erudition, character and integrity. He should also be a competent administrator capable of handling complex situations.

\textsuperscript{696} Refer, Dictionary of English Law (1\textsuperscript{st} ed), p. 526.

\textsuperscript{697} Daw Mya Tin, \textit{The Dhammapada, The Teachings of the Buddha}, verse 19: Endowed with Dharma.
In the words of the Law Commission of India,

“Not only should the judge have experience but he should also be a competent administrator, capable of handling complex matters that may arise from time to time, a shrewd judge of men and personalities, a person of sturdy independence and towering personality, who would on the occasion arising be a watch dog of the independence of the Judiciary”\(^{698}\)

The Constitution makes it mandatory for the Druk Gyalpo to appoint the Chief Justice of Bhutan by warrant under His Majesty’s hand and seal in consultation with the National Judicial Commission. The phrase “consultation” is used in many constitutions. It is a more appropriate word to select the best candidate. Consultation and appointing processes eliminate manipulation and ensure compliance of necessary procedure. Warrant under His Majesty’s hand and seal affirms the completion of the process and prevents unlawful action. The process makes the appointing and recommending authorities cautious, and removes bias and promotes merit. It certainly can minimize politicizing the Judiciary and enhance accountability.

**Article 21**

**Section 5**

“The Drangpons of the Supreme Court shall be appointed from among the Drangpons of the High Court or from among eminent jurists by the Druk Gyalpo, by warrant under His hand and seal on the recommendation of the National Judicial Commission.”

The principles of judicial independence including accessibility, expertise, impartiality, efficiency and fairness are essential to a well functioning and highly respected judicial system. *Dhamma* in Buddhism is often equated with *Sama* which may be translated as impartiality and a sense of justice.

The selection of the Drangpons of the Supreme Court must be objective and should remove any perception of political bias or interference. The Executive and Parliament should not play a role in the selection and appointment of Supreme Court Drangpons. Candidates should not be subjected to parliamentary or public examination and review. Such a process would politicize the appointment process and jeopardize the principle of the independence of the Judiciary. In addition, political interference in the Drangpons’ appointment process would have the following negative implications:

(a) There will be no separation of powers between the three arms of the government which would infringe on the basic principle of our democracy.

(b) There will be no certainty as to the basis upon which appointments are made and promotions given. This will lead to the possibility, at least in appearance, that judges may pander to the appointing authority.

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(c) There will be no certainty as to the competence and accountability of the judges appointed.

The judicial appointments should be made by the National Judicial Commission. It is a nonpartisan Commission, which consists of members from Parliament, Executive, and the Judiciary. The cross-section members would ensure integrity and transparency of the judicial appointment process. It would select the best and the most competent Drangpons.

The Supreme Court should be composed of seasoned and experienced justices of proven record. The proven record will be tested from his/her tenure as the Drangpon of the High Court and Dzongkhag Court and his/her judgments. His or her judicial temperament, philosophy and attitude are important for the appointment to the Supreme Court. In addition to these, the Drangpons of the Supreme Court should be persons of high integrity, morality and must possess sound legal knowledge. The Constitution also provides opportunities for eminent jurists with acknowledged authority of law and who are universally accepted to be considered for appointment, so that they can contribute to the Judiciary and the country. The Judiciary of Bhutan must accommodate exceptional jurists. The Judiciary should have a person, who is expert in law along with human traits or values of impartiality, morality and honesty.

Article 21
Section 6(a)

“The term of office of:

(a) The Chief Justice of Bhutan shall be five years or until attaining the age of sixty-five years, whichever is earlier; and”

It is arguable whether the appointment of Justices for life is healthy for the system. Many countries have amended that term to 75 years. On the contrary, too short a term is equally bad as an individual judge cannot contribute to the juridical history of the institution. A tenure and age bar is required to avoid entrenched interest and bias. Therefore, a maximum term of five years for the Chief Justice of Bhutan has been constitutionally established as an appropriate length of time. It will have no impact on the independence of the Supreme Court.

Danger or presence of a biased Judge for indefinite tenure will terminate the hope for good Drangpons and institution. No institution must be burdened by perpetuation. Therefore, to extend the term of the office of the Chief Justice of Bhutan is not desirable, as nobody should occupy any office for too long to establish roots. Moreover, the Chief Justice of Bhutan should not be reappointed as it will weaken or erode the independence of the person.

It was explained:

Chairman of the Drafting Committee’s explanation during public Consultation in Chukha, 25th March 2006.
Regarding the Chief Justice’s age, it should be kept as 65 years only because generally we always go for this age. Secondly, it would be appreciated if the words ‘five years or whichever is earlier’ could be left as it is. There is no need for increasing the tenure of the Chief Justice. Any work can be done within five years, if capable. Even hundred years is not enough for those who are incapable. Thirdly, appointment of new person would generate hopes and expectations and the office of Chief Justice is of immense importance. That is why, if he is kept for longer duration, it won’t do any good. It is better to be left as five years only. If he is kept for longer duration, there is a risk that he might work for his personal interests. Therefore, either 65 years of age or five years of term is appropriate. Regarding the submission as to the Chief Justice of Bhutan taking part in other parties and associations, it is submitted that taking part in such associations should be prohibited. Associations might lead to discrimination and partiality. It is indeed not good. Thus, it is necessary that the Ex-Chief Justice of Bhutan not be allowed to participate in any party or association.

Article 21
Section 6(b)

(b) The Drangpons of the Supreme Court shall be ten years or until attaining the age of sixty-five years, whichever is earlier.

For the purpose of maintaining the independence of the Drangpons of the Supreme Court, the term of office has been enshrined as ten years or until attaining the age of sixty-five years. Nobody should hold any office for too long. The society demands new ideas and dynamism. No institution must be burdened by perpetuation.

Although selection process is comprehensive, things can go wrong. A wrong Judge may occupy that august post. Age and sickness may incapacitate him or her. Therefore, fixed tenure is a saving grace. During the public consultation, several persons proposed that, if the Druk Gyalpo had to step down at the age of 65 years, the age limit for the constitutional posts and the drangpons of the Supreme Court should also be brought down to 60 years. However, as His Majesty mentioned, it is very important that the holders of Constitutional offices should be experienced, qualified, and competent people with no political affiliations. The posts were, therefore, kept open to capable people among the public, including those who had retired from the civil service. With the present age fixation, it would broaden the scope of selecting good and experienced candidates from the broader pool of civil society at large.

Article 21
Section 7

“The Supreme Court of Bhutan, which shall comprise the Chief Justice and four Drangpons, shall be the highest appellate authority to entertain appeals against the judgments, orders, or decisions of the High Court in all matters and shall have the power to review its judgments and orders.”

Chairman of the Drafting Committee’s explanation during public Consultation in Chhukha, 25th March 200.
This provision limits the number of Justices in the Supreme Court. His Majesty said that a government should neither increase to “pack the Court”\textsuperscript{701} nor decrease the number of Justices in the Supreme Court.

The Supreme Court is the highest appellate court for all cases arising under the Constitution or the laws of the Kingdom of Bhutan. Once the Supreme Court has delivered its decision, it becomes final and binding. There should not be any question of next appeal except to review its judgment and orders by the Supreme Court itself. As the final arbiter of the law, the Supreme Court is bestowed with the sacred duty to fulfill the promise of equal justice under the law, and thereby, function as guardian and interpreter of the Constitution. Therefore, the Judiciary must never relegate the Constitution while expounding timeless principles, as it is, in Hamilton’s words, a “citadel of the public justice and the public security”.\textsuperscript{702}

It is a part of natural justice to avail an opportunity of review. “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”\textsuperscript{703}

Although section 7 does not place any restrictions on the powers of the Supreme Court to review its decisions, it is submitted that the Court should be reluctant to accede to please for review of its decisions, light-heartedly. The test should be to consider if it is absolutely necessary and essential that the question already decided should be re-opened. This would depend on the nature of the infirmity alleged in the earlier decisions, its impact on public good and the genuineness, validity and the compelling character of the considerations urged in support of the contrary views. It would also be necessary to consider whether the earlier decision has been followed in a large number of decisions and acted upon.

The power of review is not an inherent power but conferred by the Constitution and can be considered to be a restricted power which is conferred on the Supreme Court in order to correct as earlier order or to improve it because some material facts were not on record at the time of passing the earlier order.

As the highest appellate authority, the Supreme Court has authority to entertain appeals against the judgments, orders, or decisions of the High Court in all matters and shall have the power to review its judgments and orders.

The People wanted appeal to be made to His Majesty. Responding to it, it was explained that the Druk Gyalpo, as the Head of State, would be the protector and upholder of the Constitution. Therefore, by a Constitutional principle, the Supreme Court should be the final authority on its interpretation. However, access to His Majesty is not denied under Article 2, section 16 (c) where His Majesty the Druk Gyalpo has the royal prerogatives to grant amnesty, pardon, or reduction of sentences.\textsuperscript{704} His Majesty will not adjudicate cases, which is neither proper nor reasonable. The Supreme Court will adjudicate the cases according to the judicial authority vested in the Royal Courts of Justices pursuant to section 2 of Article 21.\textsuperscript{705}

\textsuperscript{701}President Franklin D. Roosevelt of United States of America proposed Court Packing Plan in 1937 to increase the size of the Court and thereby assure a majority of pro-New Deal Justices.
\textsuperscript{703}Refer Article 14(5), \textit{The International Covenant on Civil and Political Rights}.
\textsuperscript{704}Kuensel dated 30th November 2005.
\textsuperscript{705}Public Consultation in Bumthang, 21st May 2006.
Article 21  
Section 8  

“Where a question of law or fact is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court, the Druk Gyalpo may refer the question to the Supreme Court for its consideration, which shall hear the reference and submit its opinion to Him.”

The function of a court of law is to answer questions of law or fact when properly raised before it in a dispute between the parties. However, this section confers a particular jurisdiction, commonly called the consultative or advisory jurisdiction, on the Supreme Court to give its opinion on questions unconnected with a pending case. His Majesty has been authorized by this section to refer to the Supreme Court a question of law or fact which in His opinion is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court. The wording of this section is broad. There is no condition that limits this provision only in respect of matters falling within the powers, functions and duties of the Druk Gyalpo. The Supreme Court will be bound by the recitals in the order of reference.

In many constitutions of the world, the power to obtain the opinion of the Supreme Court is bestowed upon the Head of the State. The Prime Minister, as the head of Executive branch of the Government and belonging to a political party, cannot obtain the opinion of the Supreme Court as it would violate the cardinal principle of separation of powers.

Prof. Ben Saul observed:

“In Australia and in quite a few common law countries it is said that the courts may not issue advisory opinions. The reason for this in Australia and some other countries is that judicial power is understood as a power to resolve existing legal disputes between parties which have a reason under particular law. And the purpose of advisory opinion is for court to give a view or opinion to somebody; let’s say government or parliament or the king or whoever might be to give them prospective legal advice just like being a very special lawyer giving advice to government or someone about how a law might be interpreted or should be interpreted or might operate in the future. Now in some countries this happens. In Germany, you can issue advisory opinion. In the international court of justice the general assembly, for example, can make a request to the international court to give an advisory opinion even when there aren’t parties in disputes before the court. And it can be very useful devise. It can provide clarity about obligations which may otherwise be uncertain and therefore give good information to government about how they can go forward. What might be possible or what is most likely to be struck down as unconstitutional.

“Now in Australia, this is impossible because our judicial power is a power to decide what is called in the Constitution ‘a matter’ and a matter has been defined by a court as a legal dispute between two or more parties. So the High Court can’t give advisory opinion. We don’t have a constitutional power to do that. And this is true in a number of common law countries. Now in contrast that’s not a problem for Bhutan because if you look at Article 21(8) of your Constitution there is a power to provide advisory opinions.
Article 21(8) simply says where question of law or fact is of such public importance that it is expedient to obtain the opinion of the Supreme Court. The king may refer the question to the Supreme Court for its consideration which shall hear the reference and submit its opinion to Him. In other words, it’s not creating a binding judgment resolving the dispute between parties but rather providing advice to government about what might be constitutional or unconstitutional. So this is the decision made by the Bhutanese people that the advisory opinions are not non-justiciable. They are within the power of the Supreme Court in a way which doesn’t happen in a number of other countries. The remaining categories are I think will be challenging for Bhutan as they are like in many other courts.”

Advisory opinion is a difficult issue. It was incorporated as a few countries have this provision. Under leadership of Chief Justice of the United State of America, John Jay, the court rejected advisory opinion request by George Washington.

Article 21
Section 9

“The Supreme Court may, on its own motion or on an application made by the Attorney General or by a party to a case, withdraw any case pending before the High Court involving a substantial question of law of general importance relating to the interpretation of this Constitution and dispose off the case itself.”

The Supreme Court has the power to withdraw any case involving a substantial question of law of general importance relating to the interpretation of the Constitution that is pending before the High Court, and dispose off the case itself.

Article 21
Section 10

“The Supreme Court and the High Court may issue such declarations, orders, directions or writs as may be appropriate in the circumstances of each case.”

The Supreme Court and the High Court shall have exclusive jurisdiction to enforce the fundamental rights under Article 7. Multiple levels of courts in certain cases are not feasible. Therefore, the lower Courts do not have the jurisdiction to admit petitions filed under Article 7 for the reason that the Supreme Court and the High Court have the exclusive jurisdiction to decide constitutional matters especially in enforcement of fundamental rights. Further, to remedy the fundamental issues under the Constitution, the process must not be made too long through appeal systems.

The province of the court is to protect the absolute rights of individuals. It is an essential criterion to revise and correct the proceeding in a cause already instituted. Hence, the Supreme Court and High Court may have the discretion to issue declarations, orders, directions or writs as may be appropriate. The High Court is rendered with such exclusive jurisdiction for the reason that, if only the Supreme Court has the jurisdiction, all the cases would be filed in the Supreme Court.

706 Supra, n.140.
Court directly. This will undermine the principle of natural justice to be reviewed by a higher court.

**Article 21**

**Section 11**

“*The Chief Justice of the High Court shall be appointed from among the Drangpons of the High Court or from among eminent jurists by the Druk Gyalpo, by warrant under His hand and seal, on the recommendation of the National Judicial Commission.*”

To ensure independence and enhance professionalism, the National Judicial Commission is entrusted with the responsibility to recommend the appointment of the Chief Justice of High Court. The rationale and principle of recommendation and appointment in the Judiciary is similar and consistent. Bhutan expects and is entitled to have judges, who are qualified, independent and perceived to be independent from political influence. When Bhutanese people understand that the selection is done by an independent body, they will repose confidence in the system.

The Chief Justice of the High Court can be appointed from among the Drangpons of the High Court or also be appointed from among the eminent jurists with acknowledged authority on law but on the recommendation of the National Judicial Commission. The appointment has to be by the warrant under the hand and seal of the Druk Gyalpo.

**Article 21**

**Section 12**

“*The Drangpons of the High Court shall be appointed from among the Drangpons of the Dzongkhag Courts or from among eminent jurists by the Druk Gyalpo, by warrant under His hand and seal, on the recommendation of the National Judicial Commission.*”

Appointments of Drangpons to the High Court will be based on established, well known and understood advisory process, in order to facilitate the selection of the best candidates. The Drangpons of the High Court shall be appointed from among the Drangpons of the Dzongkhag Courts or from among eminent jurists by the Druk Gyalpo, by warrant under His hand and seal, on the recommendation of the National Judicial Commission.

The criteria by which a person is deemed qualified have necessarily to be objective. Criteria have been scrutinized time and again, and essentially revolve around the core principles of competence and integrity. The former principle is self-evident. The second is more nuanced, encompassing qualities that include an understanding and respect for the role and function of the judge that demands independence, impartiality, objectivity and judiciousness. The basis for elevation is analogous to the preceding sections.

**Article 21**

**Section 13**

“*The term of office of the Chief Justice and the Drangpons of the High Court shall be ten years or until attaining the age of sixty years, whichever is earlier.*”
Judicial independence is comprised, *inter alia*, of three essential aspects, namely security of tenure, financial security and administrative independence. The fixed term of ten years ensures security of tenure. While stability is ensured by long tenure, change is necessary. *Status quo* has been met with dismay and unspoken fear, which saturate prejudice and obsession. Changes herald hope and dissipate anger. During the Parliamentary debate of the Constitution, Parliament motioned that the term of ten years for the High Court Drangpons may be removed for the following reasons:

- The legal study takes around seven years and involves substantial investment; and
- The present set of Drangpons are very young and they may have to retire at a very early age (early 50s), whereby, the system will lose bright and young Drangpons.

However, it is to be noted that nobody should occupy any office for too long to perpetuate status quo. Moreover, new ideas and dynamisms are required to adapt and move with change and no institution must be burdened by perpetuation. Change entails hope. However, the Drangpons of the High Court can be elevated as the Chief Justice of the High Court and as a judge of the Supreme Court.

**Article 21**
**Section 14**

*"The High Court of Bhutan, which shall comprise of a Chief Justice and eight Drangpons, shall be the court of appeal from the Dzongkhag Courts and Tribunals in all matters and shall exercise original jurisdiction in matters not within the jurisdiction of the Dzongkhag Courts and Tribunals."*

Litigants must have the right to assail judgments of the subordinate courts by preferring appeals whereby the rule of law is upheld and fair justice is delivered. Therefore, the provision provides the opportunity for the aggrieved parties to appeal to the High Court against the decision of the *Dzongkhag* courts and the tribunals. With this provision, the principle of natural justice to appeal against the decision of the subordinate court is ensured.

The Constitution must fix the number of judges in the higher courts and not be the victim of changing fortune and celluloid moods of the authorities.

**Article 21**
**Section 15**

*"The independence of the Drangpons of the Supreme Court and the High Court shall be guaranteed, provided that a Drangpon may be censured or suspended by a command of the Druk Gyalpo on the recommendation of the National Judicial Commission for proven misbehaviour, which, in the opinion of the Commission, does not deserve impeachment."*

For the effective delivery of justice, institutional and personal independence of the Judges is indispensable.

In Laski’s words:
“The independence of Judiciary from the executive is essential to the freedom. In that sense, the doctrine of separation of powers enshrines a permanent truth, for it is obvious that if executive could shape judicial decisions in accordance with its own desire, it would be unlimited master of the state.”708

Independence of Drangpons as well as of the institution of Judiciary is protected by the security of tenure. Parliament cannot suo moto censure the Drangpons as it would result in undermining their independence and impartiality. The benefits of the Drangpons should not be varied to his or her disadvantage, for they are the components of security of tenure. Neither any allurement nor intimidation should destroy the independence of the Drangpons.

Justice Douglas of the United States said:

“no matter how strong an independent judge’s spine, the threat of punishment which poses the greatest peril to judicial independence would project a dark shadow cast whether by political strangers or judicial colleagues.”709

The Drangpons can be censured or suspended only for proven misbehaviour. This is to secure the security of tenure to the Drangpons of the Supreme Court and the High Court. The Supreme Court will have to administer justice not only between citizens but also between citizens and the executive authority of the State. To perform this great task, independent, impartial, incorruptible and courageous Drangpons are required. Security of tenure negates fear and retribution.710

Notwithstanding the security of tenure, law is uniform. Security of tenure is not a licence and a prerogative to break laws. Drangpons must themselves obey laws to execute them. Therefore, the Drangpons should hold office quamdiu se bene gesserit (during good behavior) and they should be removed only by way of impeachment. Therefore, if the National Judicial Commission believes that the Drangpons have engaged in a serious misbehaviour, they can initiate an impeachment proceeding. Allaying the criticisms and apprehensions, the people were informed that:

Corrupted Drangpon should not be appointed as a judge. So, rigorous selections are conducted before making the appointment. However, if a Drangpon is corrupted, we have a unique provision. One can appeal after ten days from a Dungkhag Court to the Dzongkhag Court and from the Dzongkhag Court to the High Court and to the Supreme Court. Further, under this provision, Drangpons of the High Court and the Supreme Court shall be censured and suspended for proven misbehaviour and on recommendation of the National Judicial Commission, which in the opinion of the Commission, does not deserve impeachment. Moreover, there will be a separate Act to deal with it in details.711

The Kingdom must prevent a situation than have the need to correct the errors. Therefore, Justices of the Supreme Court should be selected very strictly. They will be appointed from

710The high tradition of the British Judiciary developed only after the Act of Settlement of 1701 which declares that the judges of the superior courts of England hold office quamdiu se bene gesserit (during good behaviour) and not durante bene placito nostro (during the Kings pleasure).
711Chairman of the Drafting Committee’s explanation during Public Consultation in Samste, 27th March 2006.
amongst the Judges and other eminent jurists with proven track record. Those candidates should be qualified in law, experienced in adjudication and due process of law and must possess high ethical standards. Moreover, press and public should be very attentive and active.712

Article 21
Section 16

“Parliament may, by law, establish impartial and independent Administrative Tribunals as well as Alternative Dispute Resolution centres.”

This section provides a discretionary power to Parliament to establish independent Administrative Tribunals as well as Alternative Dispute Resolution centres to expedite the cases, maintain informal judicial process, and uphold the Bhutanese traditions and culture of mediation and negotiated settlement. Alternative Dispute Resolution must discourage litigations and persuade people to compromise whenever possible. Ill feelings, anxiety and nominal gain among the litigants are not worthwhile and it is essential to keep in mind the cost factor.

Parliament should, by law prescribe the jurisdiction, power and authority of such tribunals and prescribe the procedure to be followed by them without infringing the jurisdiction of the Courts. Tribunals may be established with respect to matters, such as tax, industrial, labour or contract disputes. The avowed purpose of the Constitution is to bring into place a welfare state. An effective mechanism to adjudicate these administrative disputes would be beneficial to individuals and to society at large. It will facilitate the establishment of a true welfare state, a state founded on principles of justice, peace and happiness for the Bhutanese.

Prof Ben Saul observed:

“In the olden days, hundreds of years ago, primarily the courts make this kinds of decisions about people’s rights and interest. But these days modern government is incredibly complex. Lots of decisions have to be made about lots of areas of human life. And you can’t give all those decisions to courts because you can’t afford that many Judges with wider complex and it’s too expensive. And it might be more efficient for Bureaucratic purposes to use Administrative tribunals as Justice Kirby mentioned. They might be cheaper, quicker and not so legalistic. They don’t have formal rules of evidence and not have lawyers battling out for days and beginning credibly expensive and so on. It’s the way of making modern bureaucracy and modern Government work. But the questions for you as you develop Administrative tribunals and as you work out, what is the judicial power of judicial authority of Bhutan. Where is that balance lie? What can properly be done only by the Courts and what can be permissibly done; constitutionally done by Administrative tribunals? These days administrative tribunal in Modern Government often have greater consequences for your liberty, for your freedom, for your rights than some traditional courts who may apply less penalties and be less invasive. That’s a hard question for how you distribute decision making between administrative and judicial bodies.”713

713 supra, n.140.
Article 21
Section 17

“The Druk Gyalpo shall appoint members of the National Judicial Commission by warrant under His hand and seal. The National Judicial Commission shall comprise:

(a) The Chief Justice of Bhutan as Chairperson;
(b) The senior most Drangpon of the Supreme Court;
(c) The Chairperson of the Legislative Committee of the National Assembly; and
(d) The Attorney General.”

The independence of the Judiciary is an important element of Bhutan’s constitutional structure. The essential element of the principle of judicial independence is that members of the Judiciary should be able to decide matters according to law, free from all inappropriate and undue pressures. For this reason, the constitutional importance of judicial appointments, especially those of the Justices of the Supreme Court and the High Court is paramount.

Appointments of Judges and judicial personnel, the term of office, and entitlements and privileges affect the maintenance of Rule of Law, good governance and the raison d’être of the Judiciary. The Constitution Drafting Committee members discussed these issues in detail and resolved to come out with the best solution.\(^{714}\)

Many countries have embarked on reforms to reduce the opportunity for political patronage and to increase public confidence in the Judiciary. There are three ways of making judicial appointments. The first is to elect judges, just as we elect our politicians. Given that the judges make decisions about the law for the society, the idea may have some appeal. However, it should be noted that choosing judges in this way can undermine the basic principle of democracy that is the separation of powers. Judges should be independent and non-partisan. Judges must do justice according to the law and not according to who has voted them in. Therefore, election of Judges was not accepted.

Secondly, governments could nominate someone to be a Judge with that person to be confirmed by a vote of Parliament. However, it could lead to political appointments, as the United States has shown with heated confirmation battles over appointments to the US Supreme Court. It is argued that this process undermines, at the very least, the perception of an independent Judiciary and therefore does not instill public confidence in those appointed. Sir Gerard Brennan noted shortly before his retirement that “judicial independence is at risk when future appointment or security of tenure is within the gift of the Executive”.\(^{715}\)

The third option is to create a judicial appointment commission to assist the government. Commissions have been adopted, or are now being considered, in some parts of the US and in Canada, Italy\(^{716}\), New Zealand, Portugal,\(^{717}\) South Africa, Israel, France\(^{718}\), UK, India\(^{719}\) and

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\(^{716}\) Italy’s self-governing body to control judicial appointments is the Consiglio superiore della magistratura (Csm). The Csm consists of 33 members, comprising 20 judges elected directly by the Judiciary, 10 lawyers or university law professors.

\(^{717}\) Portugal’s judicial self-governing body is the Conselho Superior da Magistratura (CSM), which consists of 17 members.
other countries. Research shows that judicial appointment commissions are a better method of choosing judges than the other systems. They are fairer, produce Judges of high quality, can result in greater diversity of appointments and can improve public confidence in the judicial system.

Bhutan had the advantage and the opportunity to create its own judicial appointment commission by adapting to what has worked in other nations. The seeds for such a healthy trend had already been sown by the Civil and Criminal Procedure Code of Bhutan. Section 14 of the Code provides:

“He Majesty the King shall appoint qualified, experienced and competent persons of high integrity as members of the National Judicial Commission.”

The National Judicial Commission comprises of broad based membership with the Chief Justice of Bhutan as the chairperson, a senior most Drangpon of the Supreme Court, the Chairperson of the Legislative Committee of the National Assembly and Attorney General appointed by the Prime Minister as the members. It is entrusted with the responsibility of making judicial appointments, which has the following advantages: 720

(a) The National Judicial Commission will increase public confidence in the courts and assure that people understand how appointments have been made thus eliminating any actual or perceived impropriety.

(b) The constitutional importance of the judicial role, and the fact that Judges have to make decisions which significantly affect the liberties and rights of citizens, make it vital that those who become Judges are suitable to hold that office. The Commission will help to maintain and ensure the quality and integrity of the judges as well as the Judiciary, as an institution. Putting the responsibility of judicial appointments in the hands of the Commission will help to ensure a consistent and principled approach to the appointments.

(c) The creation of the National Judicial Commission will open up the appointment process to more public scrutiny because the Commission is composed of members from the Legislature as well as an appointee of the Prime Minister in the person of the Attorney General.

The duties and responsibilities of the National Judicial Commission are enumerated under the Judicial Service Act, 2007.

714 The body responsible for judicial appointments in France is the Conseil Superieur de la Magistrature (CSM), which consists of 12 members.
715 The Law Commission in 1977 had recommended that a High Level Panel consisting of the Chief Justice of India, Minister of Law and Justice and three persons each of whom has been the Chief Justice or Judge of the Supreme Court be set up. In 1987, the Law Commission, in its 121st Report recommended the setting up of a National Judicial Services Commission. Following this recommendation, the Constitution (67th Amendment) Bill, 1990 was introduced.
716 The presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee, 9th May 2008.
Article 21
Section 18

“Every person has the right to approach the Courts in matters arising out of the Constitution or other laws subject to section 23 of Article 7.”

This section mandates corrective and distributive justice by courts. Any person, who complains of infringement of any of his rights conferred by the Constitution or by the laws have the right to move and initiate appropriate proceeding before any court in the Kingdom of Bhutan. Through this provision, the Courts will ensure that the will of the people, as expressed in the Constitution, would be supreme over the will of the Legislature. As the American Jurist, James Madison pointed out, the interpretation of the Constitution should be left to the reasoned judgment of independent judges, rather than to the tumult and conflict of the political process.721

Prof. Ben Saul commented:

“Article 21(18) it says “every person has the right to approach the court in matters arising in the Constitution” Will judges interpret that restrictively in the way that common law courts in Britain, Canada, and Australia even United States have done? Does the Bhutanese Constitution give greater rights of access to citizens in Bhutan and to try to safeguard the public interest in ensuring laws are constitutional and not violating the Constitution. There is risk of flood gates opening for litigation by all kinds of citizens who are particularly affected by law so that they want to claim the constitutional rights to challenge laws passed by parliament. Does that clog up the courts; does that flood the courts with litigation and overwhelm the courts so that the courts can’t focus on the key cases where a person does truly have special interest. So this is about access to justice, it’s about how you say the importance of the constitutional protection from the perspective of individual citizens in your community.”722

Article 22
Local Governments

Bhutan has a unitary system of Government with a history723 of Local Government based on functioning democracy at all levels of the society. It is governed as one single unit with one legislature. It is a continuation of the historical evolution and political system, which was resuscitated and refined by His Majesty Jigme Singye Wangchuck. His Majesty initiated the decentralization process with the establishment of the Dzongkhag Yarkye Tshogdue in 1981 and the Gewog Yarkye Tshogchung in 1991.

His Majesty Jigme Khesar Namgyel Wangchuck explained:

_In the Kingdom of Bhutan, we have experienced 26 years of decentralization of power. We all know that after His Majesty Jigme Singye Wangchuck ascended the Golden Throne, whatever we did, we did it under His guidance. The result of which is that, peace_

721 Charles Evans Hughes, “The Republic endures and This is the Symbol of its Faith”, The Court and Constitutional Interpretation, 1932.
722 Supra, n.140.
723 Prior to monetization of taxation in Bhutan in 1954, there was a central government with regional governments under Penlops and Chilas, Dzongkhags and Gewogs.
and happiness prevails in our country and our economic development has grown to a great extent. With such economic development and absence of tension between the government and the people, our country is experiencing a great level of peace and tranquility. However, we can never say whether such opportunity will come again or not. His Majesty has been time and again telling us that no one knows whether such opportunity will come or not, therefore, grab the opportunity just now. His Majesty also said that our people are ready to shoulder any kind of responsibilities. 

The decentralization policy enables the people to participate in the decision making process. It empowers the local people to develop their areas, bestow responsibilities and accountabilities, enhance capability towards self-reliance and be responsive, effective and efficient in administration and social service to the local people.

Local Governments are neither part of Executive nor Legislature. Decentralization and streamlining of the administrative system pave the way for greater participation of the people in the socio-economic development of the country.

Therefore, His Majesty Jigme Singye Wangchuck said:

_We have the Dzongkhag Yargay Tshogchung and the Gewog Yargay Tshogchung Acts which has given the power to the people in policy making, administration and matters relating to finances._

Local Government promotes self-governance, shares power with the people at the grass root level, develops local resources and capabilities, and attends to their local interests. Self-governance builds capabilities, and develops and promotes competences. It provides new insights on a wide spectrum of issues, skills to self-development and knowledge on specific pursuits. Collectively, it promotes desire for continuous learning and improvement to satisfy the public. Self-government enhances responsibility of creative force that is responsive and not repressive.

Local governance creates decentralization that leads to accountability. Under the gaze of the public, the leaders are continuously accountable at the operational level and finally to the electorate. So they ought to be responsible and must continuously gain enough support in their constituency. Moreover, the people should have direct and free choice of electing independent local leaders from the candidates of their choice and not the candidates forced upon them through the selection and nomination of political parties. Decentralization makes the realization of value for money.

His Majesty Jigme Singye Wangchuck said:

_Political and monetary powers will be bestowed to the local governments to facilitate direct participation of the people for the management of their social well being and economic development._

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726 Royal Command issued on Thursday 22nd June 2006.
727 Public Consultation in Samdrup Jongkhar, 22nd April 2006.
Decentralization to the Local Governments is a desirable means of diminishing tension among the Gewogs and the Centre. Local Government is essential for developing a political competence and delegation.

During the public discussion, there were suggestions for the role of opposition in the Local Government. Opposition was not necessary as the local governance was not based on political parties. Dzongkhags and Gewogs must not be fractured and divided. The Bhutanese society was based on consensus without losers and winners.

The Article for the Local Government had the most intensive and extensive debate among the Drafting Committee Members. It was repeated in Parliament. Local Government is the grass root democracy that emphasizes trust in small decentralized units and municipalities for local identification of problems, solutions at the field level and involvement of the local people. Decentralization will bring about constitutionally organized institutions that will endeavour to implement the vision of the Constitution, enjoined by section 7 of Article 9, which reads:

“... to develop and execute policies to minimize inequalities of income, concentration of wealth, and promote equitable distribution of public facilities among individuals and people living in different parts of the Kingdom.”

The UNDP rightly observed:

“A comprehensive Article on Local Governments (Article 22) supports the policy of decentralization.”

Local Government ensures equal treatment of all the Dzongkhags. Rural and urban migration could be mitigated. With passage of time, there will be equal growth with the maintenance of local knowledge, family values and respect for nature. All these would be continuously judged by the electors. Negligence of any area is a failure of a nation. Hence, Local Government and decentralization are curative and preventive actions.

**Article 22**

**Section 1**

“Power and authority shall be decentralized and devolved to elected Local Governments to facilitate the direct participation of the people in the development and management of their own social, economic and environmental well-being.”

This section enjoins power and authority to be decentralized and devolved to elect Local Governments.

His Majesty Jigme Khesar Namgyel Wangchuck said:

*Constitution has been drafted, for the long-term interest of the sovereignty and security of the country, for the welfare of our people, to strengthen and improve the system of*

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728 Royal Command of Thursday, 22nd June 2006.
729 Supra, n.234.
decentralization of power, and to provide a good democratic system with specific objective to benefit the people of our country.730

Decentralization facilitates direct participation of the people in Local Government to respond to the aspirations and concerns of the communities, and meet their needs within available resources to solve problems easily and timely. Local initiative can be developed and it provides an opportunity for many people. Their decisions and actions have direct impact on them. Therefore, local governance maximizes the uses, avoids wasteful expenditures and vested interests. It will facilitate the direct participation of the people and take initiatives in the development and management of their own social, economic and environmental well-being. It will encourage them to take their own decisions and learn to shoulder responsibility. An Elected Local Government will provide direct and free choice to the people.

**Article 22**  
**Section 2**

*“Bhutan shall have Local Governments in each of the twenty Dzongkhags comprising the Dzongkhag Tshogdu, Gewog Tshogde and Thromde Tshogde.”*

It is imperative to define the Local Government to avoid multiple implications and deter deviation from the principle enshrined in the Constitution. Local Government comprises of the Dzongkhag Tshogdu, Gewog Tshogde and Thromde Tshogde. The terminologies “Tshogdu and Tshogde” in relation to Dzongkhag Yargey Tshogdu (DYT) and Gewog Yargey Tshogde (GYT) and Thromde, have been adopted. Earlier, instead of “Tshogdu and Tshogde” the terminology “Tshogchung” was used but however, it was debated in the Constitution Drafting Committee that the terminology was demeaning and undermining the Local Government. Further, terminologies as Gyal-yong Tshogdu and Lodey Tshogde have been used before. Generally, Tshogdu means assembly or congress while Tshogde was used for smaller organ as used during the Buddha’s time, like Nga de Zangpo.

**Article 22**  
**Section 3**

*“Local Governments shall ensure that local interests are taken into account in the national sphere of governance by providing a forum for public consideration on issues affecting the local territory.”*

This section provides for bottom up democracy. In such type of democracy, the Local Governments will directly be accountable and responsible to the electorates. The Local Government should ensure that local interests are taken into account in the national sphere of governance by providing a forum for public consideration of issues affecting the local territory. Local interest will be protected by providing a forum for public consideration. Without Local Government, there will not be a forum where the voice of the people of Gewogs, Thromdes and Dzongkhags would be heard and the voice of the local areas will be mute to. Their interest will be marginalized. Disparities among the Gewogs, Thromdes and Dzongkhags will increase. All

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these will contribute to social tension and economic frustration, and endanger peace, security and sovereignty.

Local Governments will have to provide a strong and united voice at the national level for the common concerns and aspirations of local communities. However, a citizen must never shy away from the principle of the national interest in quest of selfish personal advantage or local interest. No Bhutanese shall endanger the Nation, which protects them. Further, this Article will awake their soul and conscience to applaud their achievements, to aim at improving their areas and to be proud of the place that they share. Thus, Local Government is national development for peace and prosperity of its people.

**Article 22**

**Section 4**

*The objectives of Local Government shall be to:*

(a) *Provide democratic and accountable government for local communities;*

This provision directs the Local Governments to provide democratic government for local communities. Democratic values and principles are pervasive in the Constitution. No authority or organization can be autocratic to violate the democratic values and principles. In a democracy, administration and management can be managed only with the goodwill of the electorates. With democracy at the grass-root level, the democratic base would be broadened.

This section directs the Local Governments to provide good governance for its community with informed local issues. The Local Government must have a comprehensive approach considering all aspects of environmental, social and economic well-being through effective strategies and planning, based on extensive community consultation by balancing competing claims and interests openly, fairly and sympathetically in a sustainable manner. Local Government is electorally accountable to the local community, and it must manage its affairs in a transparent manner. Decentralization advances democratic values such as liberty, equality and welfare. It is the responsibility of the Local Government to uphold and execute the highest standards set by the legislation and public policy. With fairly detailed provision, the interest of the Local Government would be protected and the local leaders would be constantly checked by the electorate under its empowered vigilance.

**(b) Ensure the provision of services to communities in a sustainable manner;**

Local Government comprising of local leaders would best know what is good and bad for the local environment and people. Every activity in that community has direct impact and result. Therefore, it must ensure that plans, policies and implementation of projects are consistent with the situation, requirements and efficiency. The services must be sustainable so that the plans and policies are pragmatic. It should gradually and ultimately lead to public vigilance.
Short term and vested interests are not sustainable. Memories will vary the intentions, but results would judge its sustainability. Socially sustainable and inclusive development is the service to the communities that favours both economic growth and the protection of the environment.

**Article 22**  
**Section 4(c)**

(c) **Encourage the involvement of communities and community organizations in matters of local governance; and**

The system must encourage the involvement of communities and community organizations in matters of local governance. Involvement inculcates participation and originates consultation. It confers ownership and increases their values.

His Majesty Jigme Singye Wangchuck said:

> Policy is the decentralization of administration and implementation of Dzongkhag Plans. This policy is directed at bringing about greater involvement of local officials and people in the formulation and implementation of Dzongkhag Plans.\(^{731}\)

The involvement of communities and community organizations in matters of local governance is a good way of making up the ‘democratic deficit’. Stronger communities and safer communities are communities that can be fully involved in the planning and implementation of their local plan and strategy. Encouraging communities to take ownership of the strategic development and implementation process will enhance the impact of partnerships. Furthermore, involvement of local community protects the local areas and promotes its values.

**Article 22**  
**Section 4(d)**

(d) **Discharge any other responsibilities as may be prescribed by law made by Parliament.**

His Majesty Jigme Singye Wangchuck pointed out that there had been some concerns on the administrative structure and functions of the Local Governments. The Constitution has, therefore, made a provision for Parliament to regulate the powers and functions of Local Governments to ensure that Local Governments are self reliant and self sustaining.\(^{732}\)

The provision, “law made by Parliament”, provides flexibility within the framework of the Constitution. If circumstances change, laws should adapt to changing times. If they are rigid and inconsistent with changing times, the system will tend to ossify.

**Article 22**  
**Section 5**

\(^{731}\)Kuensel dated 17th December, 1981.  
\(^{732}\)Kuensel dated 23rd March 2005.
“A Local Government shall strive, within its financial and administrative capacity, to achieve the objectives set out under this Article.”

A Local Government shall strive to achieve the objectives set out under this Article by decreasing dependency and strengthening administrative and management capacity. Local Government should have the responsibility of formulating plans for social and economic development of that area. Self-sufficiency liberates people from domination and external control. It encapsulates the objectives of freedom to enhance growth and development. This provision imposes self-discipline on the Local Government to maximize outputs within its financial and administrative capacity.

His Majesty Jigme Singye Wangchuck said:

The government had given financial and administrative powers to the DYT and Gewog GYT chairmen, and it was up to them to ensure that this power was not misused, but exercised properly for the benefit of their Gewogs and Dzongkhags.733

Article 22
Section 6(a)

“The Dzongkhag Tshogdu shall comprise:

(a) The Gup and Mangmi as the two elected representatives from each Gewog;”

A Gup734 is one of the oldest institutions of Bhutan and it must be cherished and preserved. The term ‘Gup’ has been there since the time of the third Desi. Responding to a change of the term ‘administrator,’ it was explained that the word administrator is neither a historical word nor Bhutanese.735 Thus, the Gup is a member of the Dzongkhag Tshogdu and so is the Mangmi.736

The Gup and Mangmi being elected, the greatest incentive for them to perform is to renew the confidence of the people through re-election. The Constitution has empowered the people either to elect or to reject a candidate by vote.

In Abraham Lincoln’s words “The ballot is stronger than the bullet”.737 The people of Bhutan must diligently exercise this enormous power in selecting the desired candidate. It is to ensure that the result is representative of the will of the electorate. This will be ensured through the instrument of the ballot in which the people alone will have the say.

Article 22
Section 6(b)

“(b) One elected representative from that Dzongkhag Thromde;” and

733Kuensel dated 17th June 2003.
734Head of a Gewog.
735Chairman of the Drafting Committee’s explanation during public Consultation in Trashi Yangtse, 28th Dec. 2005.
736The institution of Mangmi or “Chhoepon” is a beautiful administrative unit devised for efficient administration at the lowest level. It was known by different names in different Dzongkhags. It was known as “Perpon” in Mongar, “Leytuen” in Bumthang, and “Tsopla” in Pemagatshel.
The Thromde must be a part of the Dzongkhag Tshogdu to maintain the interaction between the rural and urban population. Both the rural and urban population must work together to jointly alleviate and overcome any difficulty in the respective Dzongkhags. Therefore, it is necessary to have a representative from the Dzongkhag Thromde in the Dzongkhag Tshogdu.

**Article 22**  
**Section 6(c)**

“(c) One elected representative from Dzongkhag Yenlag Thromdes.”

Depending on the density of the area, some Dzongkhags may have a Yenlag Thromde\(^\text{738}\). If there is Yenlag Thromde in that Dzongkhag, it is necessary to include one elected representative from such Yenlag Thromde in the Dzongkhag Tshogdu, so as to maintain close interaction between rural and urban population. Local Government is inclusive and not exclusive. Exclusion is divisive and antagonistic.

**Article 22**  
**Section 7**

“A Gewog shall be divided into Chiwogs\(^\text{739}\) for the election of the Tshogpas to the Gewog Tshogde. The Gup and Mangmi, who are elected by the people of the Gewog shall be the members of the Gewog Tshogde. The Gup shall be the Chairperson of the Gewog Tshogde.”

Chiwog was a historical and functional unit based on geography and accessibility. However, traditional constituencies of Chiwogs could not continue as the numbers were too many.

There was no controversy under this section during the Constitution Drafting Committee meetings except relating to the position of the Gup. The members said that the Gup should not be the Chairperson. The objection was that the institution of Gup combines both executive and administrative powers without checks and balances. It was said that the Gup is by nature of his job, an executive. However, combination of powers, having been a historically unique system, must continue with the provision as enshrined in the Constitution. His Majesty said that to break and divide the community by altering the traditional role is not advisable. The reasons for having a Gup as the member and the Chairperson are:

(a) The composition of the Dzongkhag Tshogdu and Gewog Tshogde is based on the existing model of our Dzongkhag Yargay Tshogdu and Gewog Yargay Tshogchung; and

(b) The Gup being the member of both the Dzongkhag Tshogdu and Gewog Tshogde may lessen the tension of the local democratic polity at the Dzongkhag and the Gewog level.

His Majesty Jigme Singye Wangchuck emphasized the importance of having good understanding and close cooperation between the Chairperson and the members of the Tshogdus and

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\(^{738}\) Satellite town.

\(^{739}\) Units under a Gewog (County).
Tshogchungs. If there exists good cooperation between the Chairperson and the members, it would enhance the position and effectiveness of the Chairman.\(^{740}\)

**Article 22**

**Section 8**

“A Thromde Tshogde shall be headed by a Thrompon, who is directly elected by the voters of the Dzongkhag Thromde. The powers and functions of the Thrompon shall be defined by law made by Parliament.”

It was argued during the Constitution Drafting Committee meeting that all the municipalities (Thromdes) should be considered equal and be placed in the same category as Gewogs under Dzongkhag Tshogdu. Such a proposal was neither considered appropriate nor practical. Similarly, a suggestion to categorize the municipalities into at least two classes on the basis of population density in relation to the size of the Dzongkhag was also not considered tenable. Although population, size and accessibility are important, they are not exclusive factors. By logical progression one would then make the capital city of Thimphu and Phuntsholing at par with the Dzongkhags thus increasing the number of the Dzongkhags and the members of the National Assembly.

The Metropolitan Thrompon\(^{741}\) must be elected from the urban areas and they must function within the ambit of their Acts. The Constitution cannot differentiate and discriminate between the rural and urban areas. If twenty Dzongkhags with larger areas can be under a Dzongda, urban areas could also be under a Dzongda. Population must not be the sole discerning factor. What matters is accessibility and service. Dzongda is a Chief Executive appointed on the recommendation of the Prime Minister and he is the Resident Representative of all the Agencies of the Government in the Dzongkhag. However, bigger municipalities can be made Dungkhags.

**Article 22**

**Section 9**

“A Dzongkhag Thromde shall be divided into constituencies for the election of the members of the Thromde Tshogde.”

In order to provide equal opportunity to all, the Thromde should be divided into constituencies. Constituencies will be delimited by the Election Commission and in accordance with the Municipal Act. Without Dzongkhag and Yenlag Thromdey, many strategic areas may be depopulated thereby causing social and security problems. With access to facilities provided by local Thromdey, rural population may opt to continue in their inherited places.

**Article 22**

**Section 10**

“A Gewog Tshogde or a Thromde Tshogde shall not have more than ten and fewer than seven elected members.”

\(^{740}\)Kuensel dated 17\(^{th}\) June 2003.

\(^{741}\)Municipal Administrator or Mayor.
The range of membership is well considered to create stability and to promote democratic functionality. If the members are too few, one or two members can play pivotal role and influence the whole decision of the Tshogde. The number of members should be reasonable for proper functioning and to have a rightful decision in upholding the democratic principles and values.

Article 22
Section 11

“The Dzongkhag Tshogdu shall elect a Chairperson from among its members.”

A Chairperson of the Dzongkhag Tshogdu shall be elected from among its members. This process extends democratic procedures to local governance. A Chairperson must enjoy confidence of its members. No election will be required to fill the vacancy so created by the election of the Chairperson. Replacing Dzongdas by elected Chairpersons was a bold decision.

Article 22
Section 12

“The Dzongkhag Tshogdu shall meet at least twice a year while the Gewog Tshogde and the Thromde Tshogde shall assemble at least three times a year.”

The specific requirement of a minimum number of meetings ensures that Local Governments meet regularly to discuss the pressing issues of the community. Without having fixed such minimum number, there may be chances that the Local Governments may not meet at all and avoid any opposition.742

His Majesty Jigme Khesar Namgyel Wangchuck explained:

There is no fixed number of meetings to be convened in a year but there is the minimum number of meetings to be convened per year. We do not have to worry about the number of meetings because the number of meetings will depend upon the workload.743

Article 22
Section 13

“The presence of not less than two-thirds of the total number of members shall be required to constitute a quorum for a sitting of a Local Government.”

Quorum is necessary to counter any misuse of the process. No meeting can be held to take decisions without the presence of a fixed number of members. Therefore, the presence of not less than two-thirds of the total number of members shall be required to constitute a quorum for a sitting of a Local Government.

742 Chairman of the Drafting Committee’s explanation during public Consultation in Bumthang, 21st May 2006.
Article 22
Section 14

“When the office of a member of the Local Government becomes vacant for any reason other than the expiration of term, an election of a member to fill the vacancy shall be held within thirty days as from the date of the vacancy.”

When the office of a member of the Local Government becomes vacant, an election of a member to fill the vacancy has to be held within thirty days from the date of vacancy. This will ensure continuity and facilitate retaining a quorum.

Article 22
Section 15

“The members of Local Governments shall take an Oath or Affirmation of Office, as provided for in the Third Schedule of this Constitution, before assuming their responsibilities”.

The members of Local Governments, before assuming their responsibilities, must take the Oath or Affirmation of Office to faithfully uphold the sovereignty and integrity of Bhutan and to discharge their duties without fear or favour. Taking Oath is important for creating moral responsibility and duty and it has a binding force.

Article 22
Section 16

“The election of the members of Local Governments shall be conducted in accordance with the provisions of the Electoral Laws.”

The election of the members of Local Governments will be conducted in accordance with the provisions of the Electoral laws. Detailed procedures are not enshrined in the Constitution. Procedures need amendment with change in time. Therefore, the election procedures for the members of Local Governments are to be detailed under the Electoral Laws enacted by the Parliament.

Denmark observed:

“The article on Local Governments (Art 22) is clear and comprehensive. It intends to render the possibility of a very genuine local democracy which according to the experience is important for democracy in any country. It is especially commendable that Art. 22 Section 16 makes it practically possible to initiate such a democratic structure. The litra. b according to which the Local Government shall be entitled to levy, collect and appropriate taxes, duties, tolls and fees in accordance with such procedure and subject to limitations as may be provided by the Parliament by law is an example of a possibility created for a genuine democracy. I recommend that this system of Local
Government be taken very seriously and initiated as soon as possible after the adoption of the Constitution.”

Article 22
Section 17

“A candidate to or a member of the Local Governments shall not belong to any political party.”

His Majesty Jigme Singye Wangchuck said that people should have the power and option to choose their own candidates directly and freely. The choice of candidates should be based on their knowledge and confidence. A candidate or a member of the Local Government should not belong to any political party. Political Parties should not be allowed to divide local community and create dissension.

Article 22
Section 18 (a)

“Local Governments shall be:

(a) Supported by the Government in the development of administrative, technical and managerial capacities and structures which are responsive, transparent, and accountable;”

The Government should support the Local Governments in the development of administrative, technical and managerial capacities and structures by providing civil servants. Since civil servants are apolitical, they would provide continuity and stability to public service. They would also be accountable and responsible. Civil servants provides continuity, non-partisan and long term plan. Their performance is continually assessed for its utility and service.

Article 22
Section 18 (b)

“(b) Entitled to levy, collect, and appropriate taxes, duties, tolls, and fees in accordance with such procedure and subject to limitations as may be provided for by Parliament by law;”

This provision empowers the Local Governments to levy, collect and appropriate taxes, duties, tolls and fees in accordance with such procedures and subject to limitations as may be provided by Parliament. This is one of the facets which strengthens the identity and power of the Local Government.

His Majesty Jigme Singye Wangchuck also suggested that rural tax should be retained by the respective gewogs and be added to the gewog development budget. Even though the rural tax is

\textsuperscript{344} Supra, n.133.
nominal, the people use the money so collected for their own development deriving a greater sense of satisfaction.\footnote{Kuensel dated 17th June 2003.}

**Article 22**  
**Section 18 (c)**

“(c) Entitled to adequate financial resources from the Government in the form of annual grants;”

As an elected sphere of government, Local Government must be free to exercise its own powers and apply relevant laws in a manner which reflects local needs and circumstances. To this end, its revenue base should be enhanced by the Government. Powers and responsibilities without adequate financial resources are irrelevant and can weaken popular belief in local democratic governance. Resource provision must be adequate and be provided without bias or discrimination. It should create fraternal and cordial relationship through this mutual dependence and unite to work towards the national goal of balanced development.\footnote{National Assembly Resolutions, 19-22, 52-2, 65, 18(d).} Annual grant will promote amiable relationship between the Centre and the Local Governments. Cohesive society and a united nation will strengthen the security and sovereignty of Bhutan.

**Article 22**  
**Section 18 (d)**

“(d) Allocated a proportion of national revenue to ensure self-reliant and self-sustaining units of local self-government;”

This is the second provision enforcing equal treatment and balanced development. The allocation of fund guaranteed under this section cannot be based on the majority, importance or favoured representations in the National Assembly. Every Local Government should receive equal treatment in their joint aspiration towards the national goal. Local Government should encourage non-discriminatory participation of all citizens in building democratic communities, which share power, and ensure a more equitable allocation of community resources. Without this provision, the myth of budget is an illusion. Allocated proportion of national revenue will be a perennial source and flexible fund. The government cannot curtail and manipulate funds but must eliminate disparity.

**Article 22**  
**Section 18 (e)**

“(e) Supported by the Government to promote holistic and integrated area-based development planning;” and

This sub-section enunciates developmental policies and guidelines for observance. It will promote holistic approach, and not piece meal action. It must be an integrated and not a sectoral approach.
Local Government must provide or ensure the provisions of, programs and services required to meet local community needs. For this, the Government must provide requisite support within reason and its capacity. These resources must be delivered equitably, efficiently and effectively. Local revenues and resources must be supplemented by external resources, including government grants.

**Article 22**  
**Section 18 (f)**

“(f) Entitled to own assets and incur liabilities by borrowing on their own account subject to such limitations as may be provided for by Parliament by law.”

This provision authorizes the Local Governments to own assets and incur liabilities through direct borrowing. It is intended to make the Local Governments more self-sufficient. However, asset ownership and lending should be within the limits set by Parliament.

**Article 22**  
**Section 19**

“Local Governments shall be supported by administrative machinery staffed by civil servants.”

The Government is required to provide permanent civil servants for the better functioning of Local Governments. Civil service facilitates merit based recruitment and transfer. Civil service is an institution with institutional memories governed by the Rules and Regulations.

**Article 22**  
**Section 20**

“A Dzongkhag shall have a Dzongdag as the chief executive supported by civil servants. The Dzongdag shall have no political affiliation and shall discharge his or her responsibilities as the chief executive in the interests of the people and the country.”

This provision provides that the administrative power of the Dzongkhag will remain with the Dzongda. Dzongdas replaced Dzongpons by the enacted Thrimzhung Chhenmo. Dzongpons had very important historical roles.

His Majesty Jigme Singye Wangchuck said:

The Constitution provides that the Dzongdag would still be the chief executive officer in the Dzongkhag and would have no political affiliation with any parties. As you all know that it was only in the year 2002 that we have passed the Dzongkhag Yargay Tshogdue Chathrim and accordingly decentralized administrative and financial powers to the people.747

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As a non-political and chief Executive, the Dzongda should work for the best interests of the people for good governance cannot be compromised. The Chief Executive officer is a father figure, who should be impartial, compassionate and unbiased. Only a non-partisan could be fair and impartial demonstrating them both subjectively and objectively. His Majesty said:

*Our Dzongdags should not be allowed to participate in the politics at all.*

**Article 22**

Section 21

“The Dzongkhag Tshogdu, the Gewog Tshogde and the Thromde Tshogde, unless sooner dissolved, shall continue for five years from the date of the first sitting of the respective bodies.”

Under this provision, the Dzongkhag Tshogdu, the Gewog Tshogde and the Thromde Tshogde should continue for five years from the date of the first sitting. Their responsibilities will cease from the day they are dissolved. No Local Government can continue for a single day more after its term or dissolution.

**Article 22**

Section 22

“The powers and functions of the Dzongdag and the Local Governments shall be in accordance with the laws made by Parliament.”

The existing Local Governments are governed by the DYT and GYT Chathrim. In line with the change in the new democratic set up under the Constitution, the National Assembly enacted the Local Governments Act in 2007 superseding the DYT and GYT Chathrims. Therefore, the powers and functions of the Dzongda and the Local Governments are to be governed by the Local Governments Act.

**Article 23**

Elections

If the noble view of the rights of men is to flourish it must be rooted in democracy and the most basic right of all is the right to choose your own leaders. Every Bhutanese citizen must have an equal right to vote. There is no duty which weighs more heavily on the government than the duty to ensure that right to the people. Article 23 of the Bhutanese Constitution guarantees this inviolable right to the people of Bhutan.

The concept of elections through voting was not a new concept for Bhutan. The Buddhist concept of “*Tsa Trampa*”

749 was synonymous to the modern concept of election. Historical records show that not only clay tablets were used for voting, but also sticks were used for voting by putting them in a ballot box. The counting and the declaration of the results of such voting were done and displayed before the public for transparency and fairness.

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748 Public Consultation in Wangduephodrang, 7th Dec. 2005.
749 Tsa Trampa is one of the “seven things for appeasing a quarrel” under Kanjur Sutra Dodey Nyapa.
There were different forms of voting practiced in Bhutan. One of them was invoking divine Ta Drilni whereby, different names were written and rolled in a small ball of dough and prayers were chanted as they rotated the flour dough in a plate until one of them went out of the plate. The dough with whose name was flung out of the plate is the winner. The second practice in the rural areas was by throwing a dice. Whoever got the agreed category was declared as the winner. The third practice was sortition, which was drawing of lots in case of disagreements. The fourth system was through expression of consensus and the fifth system was placing a number of empty boxes with the photographs of candidates and the voters casting their votes by putting their vote in the box of the candidate of their choice.

According to a recent United Nations General Assembly resolutions, it recognizes:

“...that there is no single political system or electoral method that is equally suited to all nations and their people and that the efforts of the international community to enhance the effectiveness of the principle of periodic and genuine elections should not call into question each State’s sovereign right, in accordance with the will of its people, freely to choose and develop its political, social, economic and cultural systems, whether or not they conform to the preferences of other States."\(^750\)

“Moreover, ‘political systems and electoral processes are subject to historical, political, cultural and religious factors’.\(^751\) Whether a State adopts a majoritarian voting system or one or other system of proportional representation is thus a classic issue falling within the reserved domain of domestic jurisdiction."\(^752\)

Political justice is the absence of any unreasonable or arbitrary distinction among the people in political matters. It includes single electorate and adult franchise. Every citizen is entitled to contest in elections and participate in voting irrespective of their status. Adult franchise is people’s sovereignty.

According to the principle of people’s sovereignty, all State power comes from the people. This means that all power exercised by the State has to be legitimized by the people. The principle of people's sovereignty does not demand that citizens take part directly in all decisions of the State (as in a referendum). It does, however, demand that all those exercising State power hold office as a result of the will of the people; this means the election of representatives either indirectly (e.g. members of parliament) or directly (e.g. in a parliamentary democracy or civil servants appointed by it). People’s sovereignty is also known as political sovereignty. John Locke provides the principle that political sovereignty comes only from the consent of the governed.\(^753\) His Majesty Jigme Khesar Namgyel Wangchuck said:

*To meet the aspiration of our country, the democratic system of government and other new political changes must be instituted well and it must also work well. During the time*


\(^751\) See, UNGA res. 46/130, ‘Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes,’ 17 Dec. 1991.


\(^753\) Supra, n.107.
of election, there will be number of political parties contesting in the election. However, as I mentioned earlier, during the election, the power is in the hands of the people. The power is not in the hands of one or two people but it is with all the people of 20 Dzongkhags. The most important thing to keep in mind is to elect the best among the best whether it is individual people or political party. Our people must be able to differentiate between those people or party who will be able to work for the benefit and well being of our people and country and those who will not. The people in the political parties have the power to work for the benefit of the country. However they can also misuse the power and adversely affect the country. Therefore, it is very important for our people to study and elect the right parties. During election our people must be able to sacrifice our temporary and individual interest and think wisely for our long term common interest of building a strong government. The provision in our Constitution regarding election is very clear and strict. The constitutions of other countries have been studied very well.\textsuperscript{754}

The Constitution Drafting Committee found that about 28 countries in the world had compulsory voting at one or other level.\textsuperscript{755} However, Bhutan did not want to make voting compulsory, in order to protect the rights of the people. Each Bhutanese citizen is given the fundamental right to vote. While citizens may choose to exercise their rights (freedom of speech and right to vote) they need not necessarily avail those rights, if they do not wish to do so. It is also the right of the citizens not to exercise their rights. Therefore, compulsory voting can be seen as a serious infringement on the basic freedom of the citizens.

Electoral roll was considered but it was a duplication of the Citizenship Card. Moreover, it can be manipulated. The System should minimize, if not eliminate litigation.

Bhutan did not adopt open voting system, and in the similar way, the Committee also abandoned the consensus method. There is often the fear of retribution in such systems. Therefore, secret ballot is necessary. It will ensure that the voter records a sincere choice. It forestalls attempts to influence the voter by intimidation or bribery. It is a means of achieving political privacy and gives power to the voter. A secret vote is an essential integrity safeguard as it allows voters to cast their ballot with full independence. If a vote is not secret or can be identified during vote counting, some people might be intimidated into not voting as they had intended. Secrecy makes intimidation or bribery less effective. It is the vision of the Constitution to ensure that elections are conducted through secret ballot so that elections are held in a free, fair, inexpensive and fearless manner. Secret ballot is the doctrine of Santio who advocated that elections should be conducted without fear and retribution.

According to Dr. Benjamin Reilly wrote:

\begin{quote}
“\textit{The draft Constitution provides for a system of single-member electorates, each directly electing a representative to the Parliament, but leaves open the question of which electoral system will be used... These provisions mean that, whatever electoral system is employed, parliamentarians in Bhutan will be chosen from relatively small single-member electoral districts each encompassing about 8,000 people for National Assembly
}\end{quote}

\textsuperscript{754} Public Consultation in Sarpang, 11\textsuperscript{th} Feb 2006.
\textsuperscript{755} France (by the Electoral College for the Senate only); Nauru; Peru (until age 70); Argentina; Belgium; Ecuador; Italy; Philippines; Singapore; Turkey; Egypt (compulsory for men); Australia; Costa Rica; Democratic People’s Republic of Korea; Dominican Republic; Greece (for those under 70) and others.
Elections are primary tools for political openings and encourage political participation. It is the principal vehicle of democracy. Elections offer political parties an opportunity to share alternative platforms with the public.

His Majesty Jigme Singye Wangchuck said:

The people of Bhutan have contributed to the vision and clarity of the Constitution through comprehensive discourse and debate. They accepted ownership of and responsibility for the Constitution through their involvement and participation just as they have acknowledged that democracy is a better alternative for the future and voted in a government of their choice.

Elections have to be free and fair to ensure full transparency in the political debate. Free and fair elections are indispensable to every democracy. Although other elements of democracy can develop before competitive elections are held, a country cannot be truly democratic until its citizens have the opportunity to choose their representatives.

His Majesty Jigme Singye Wangchuck explained:

For democracy to function well in our country, it is of paramount importance to have good election process ensuring free and fair elections, facilitating selection of good and capable candidates for representing the greater interest of the nation and common interest of its people.

The necessary conditions for free and fair elections are:

(a) Impartial administration, to ensure that enrollment is open to all eligible voters and that casting of a vote is a reasonably accessible process.
(b) Universal adult suffrage, so that all citizens are able to participate.
(c) Freedom from coercion, so that voters are not coerced into making their choices.
(d) Freedom of expression and association, so that participants can participate in electoral debates.
(e) A system, which ensures that the votes are counted fairly and accurately.

Before the first national election, Bhutan conducted a mock election in April 2007, where 28% of the total eligible voters voted. They voted the Druk (“Thunder Dragon”) or the Yellow colour from the four fictitious parties represented by four colours.

756 Supra, n.435.
Kuensel reported that:

“His Majesty the King will personally usher in the first ever parliamentary exercise of the nation when His Majesty meets and encourages 568 eligible voters from the 24 villages of Kurtoe gewog. The voters are set to participate in the mock election on April 21, in Dungkhar, Lhuentse. Of great symbolism is the fact that the polling station is located in the primary school on the lawns of Dungkhar dzong, the ancestral home of Jigme Namgyel, the father of the first King of Bhutan. It is the duty of all Bhutanese to ensure a successful transition to democracy. In carrying out this sacred duty there is no room for failure – failure is not an option.” 757

The mock election was succeeded by the familiarization programme, whereby many notable, innovative and reformative initiatives were taken by the political parties. A few of them explained the deeper meanings and noble intentions of democracy to the people echoing Their Majesties to choose the right parties and capable candidates. There were debates between the candidates.

Kuensel reported on 3rd November, 2007:

“Educating the voters – One observer pointed out that the “familiarization tour” has done much of the Election Commission’s work in educating the voters. With both parties pausing to brief people about the introduction of democracy, their responsibility, and the ‘preciousness’ of their vote, the electorate is much wiser now, said a businessman in Trashigang town.”

The first democratic elections were conducted smoothly and effectively with voter turnout reaching 79% for the National Assembly elections, in March 2008. The elected members reflect a broad and inclusive representation of society in terms of age, gender and other backgrounds.

His Majesty Jigme Khesar Namgyel Wangchuck said:

The provision in our Constitution regarding election is very clear and strict. The constitutions of other countries have been studied very well. Moreover, we have closely studied both the good and the bad experience of other countries. Comprehensive provision has been made in the Constitution to especially avoid the bad practices of other countries. While we have existing laws, from now onwards as we introduce democratic system of Government and new political system, all the necessary acts and legal instruments are drafted and put in place. However, whether we want to work according to the laws and provisions of the Constitution is entirely in the hands of our people. Therefore, whatever work our people do, they must take responsibility and abide by the rule of law so that our legal provisions and the Constitution do not remain only on paper. As long as we abide by the rule of law, we need not worry at all.758

The success of democracy will be determined by the ability of the people to elect the best political party that would provide good governance and fulfill the aspirations of the people. The

757 Kuensel dated 22 April, 2007.
important responsibility to elect the right people, therefore, lies in the hands of the people said His Majesty.\textsuperscript{759}

Similarly, Frank Dane reminded:

\textit{“one should never vote for the best candidate, vote for the one who will do the least harm.”}\textsuperscript{760}

Election has historical, spiritual and social basis. Under the Constitution, the electoral process must be free, fair, periodical and through secret vote. Any recrimination or violation of the promised process is a violation of the principle of secret vote and the philosophy of the Constitution. The Constitution promises freedom, liberty, justice and happiness under the law of our own making.

The Constitution of the Kingdom of Bhutan draws from the experiences of many democracies in the world while being shaped by the Vision of Bhutan’s Enlightened Monarchs and the aspirations of our People. Even as we have embraced the best practices and wisdom gained from long years of experiences in democracies around the world, we have been mindful of our own context and realities. The last five years of Bhutan’s experience as a parliamentary democracy are encouraging signs of evolution as a democracy, setting down deep and enduring roots. This would not have been possible without Bhutan’s close watch on the vast and varied experiences of our neighbors.

Democracy throws up many complex and wide ranging challenges in front of us, from ensuring religion to be kept above politics to prevent divisiveness and infraction of the social fabric by partisan politics; from encouraging women to stand for elective offices to being dynamism to harness the waves of rapid technological changes of this digital media age; and from raising awareness on civic rights and responsibilities to firming the understanding of the rule of law, doctrine of legitimacy propounded by Dicey\textsuperscript{761} and inclusive democracy.

The general will of the people must be the basis of the Government and it must be constantly nurtured through right policies and positive actions. Elections are primary tools to help force political openings and expand people’s participation. It is the principal vehicle of participatory democracy. It offers political parties an opportunity to share alternative platforms with the public.

Therefore, as Horowitz said:

\textit{“Election is a passive translation of individual wishes into a collective choice.”}\textsuperscript{762}

His Majesty Jigme Singye Wangchuck explained that for democracy to function well, it is of paramount importance to have good election process ensuring free and fair elections, facilitating selection of good and capable candidates for representing the greater interest of the nation and common interest of its people. Constitutional governments and constitutional order can avert the

\textsuperscript{759} Kuensel dated Saturday, 5\textsuperscript{th} November 2005.
\textsuperscript{760} Amonnon Louis, \textit{Dejava, the Collapse of Haiti: The Warning to World Leader}, 2011, p.46.
\textsuperscript{761} Supra, n.440.
painful three cycle of government by Polybius\textsuperscript{763} by taking cognizance of Aristotle’s remedial measures. Electoral democracy is one of the measures.

The Election Commissioners are the instrument of democracy with fidelity to the Constitution professed through the Oath of Office. Philosophically, future of the people is moulded through national values inculcated in his or her speech, and democracies advances in his or her actions. With advancing technology, creative minds and yearning for democracy, convergence of galaxy of intellectuals and practitioners with diverge knowledge and experiences can unlock greater future for free, fair and periodic elections so that the nations can strengthen their sovereignty, secure the blessings of liberty, ensure justice and tranquility and enhance the unity, happiness and well-being of the people for all time.

It has also been argued that election campaign should also be considered as a pre-condition for free and fair elections. Because an election is a contest for power and influence, the competitors always seek an advantage. As with other contests, the goal is to establish a system of regulated competition that encourages participation for political parties, candidates and citizens, and ensures fairness in the competitive arena of election discourse.

As the electoral law specialist Graeme Orr mentioned:

\begin{quote}
\textit{``the quest ... is for rules that promote political equality and deliberation over the law of the political jungle.''}\textsuperscript{764}
\end{quote}

\textbf{Article 23}

\textbf{Section 1}

\textit{``Under this Constitution, the general will of the people shall be the basis of government and it shall be expressed through periodic elections.''}

This section confirms that the ultimate power rests in the people of Bhutan. That consent must be the general will of the people expressed through periodic and regular elections. The Bhutanese political philosophy is to uphold the general will of the people, as the basis of government, which shall be expressed through periodic elections. No government can govern without the consent of the people.

Election bestows responsibility of one’s choice. Genuine democratic elections are an expression of sovereignty, which belongs to the people. The free expression of the people through periodic elections will provide the basis for the authority and legitimacy of a government.

Election provides competition for informed choice. It promotes political legitimacy and yields one’s choice to collective decision. Therefore, after the election, different choices between the voters must end. Perpetuating one’s choice negates the principle of general will.

Election is a public mandate for a period specified by the Constitution. It cannot be too frequent as the elected government must have mandated time to formulate policies and implement them. Frequent elections manifest instability, and the people may get tired and apathetic. Moreover, the

\textsuperscript{763} Donald J. Wilcox, \textit{The Measures of Times Past}, 1987,p.85.

\textsuperscript{764} Graeme Orr, \textit{``Government advertising: Informational or Promotional''}, Democratic Audit of Australia, 2006, p. 2.
regular machinery of government may be interrupted and the vested interest of the person may creep into the process of election.

Hugh Williamson of North Carolina mentioned that:

“The expense will be considerable and ought not to be unnecessarily repeated. If the Elections are too frequent, the best men will not undertake the service and those of an inferior character will be liable to be corrupted.”

Without change and prospect of change, autocracy of the ruling party will grow and public disillusionment will soar. Growing autocracy and soaring disillusionment will undermine security, peace and prosperity. Therefore, periodic elections are curative, preventive and nourishment of hope to prevent violence and civil unrests. The rights of citizens to vote and to be elected at periodic elections are indispensable to the Democratic Constitutional Monarchy.

Periodic elections serve to solve the competition for political power within a country peacefully. It helps to maintain peace and stability by establishing legitimacy. Where governments are legitimized through periodic elections, the scope for non-democratic challenges to power is reduced. Therefore, regular and periodic elections of representative bodies such as Parliament and Local Governments are essential for the promotion of unity, legitimacy and change, if necessary.

His Majesty Jigme Singye Wangchuck reminded:

“Election is the power of a citizen to select a party to form the Government, who can either do good or bad to the people and the country. Therefore, be careful in casting your vote.”

Article 23
Section 2(a)

“A person shall have the right to vote by direct adult suffrage through secret ballot at an election if the person is:

“(a) A Bhutanese citizen as evidenced by a Citizenship Card;”

This Section enumerates the eligibility criteria for the people to participate in elections. The provision of this Article enunciates the sacred right of adult franchise by direct suffrage through secret ballot. No power on earth should penalize, take punitive action and marginalize the exercise of a citizen’s secret vote. The Constitution protects a citizen’s right to vote. The right to vote plays both a substantive and a confidence building role. His Majesty Jhesar Namgyel Wangchuck said that one of the rights of our people is the right to cast votes.

Adult franchise is a constitutional right for the citizens of Bhutan. It must be evidenced by a Citizenship Card. It is specified because the politicians manipulate the evidence. Therefore, this

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766 Kuensel dated Wednesday, 15th February 2006.
section excludes any other evidence. The voter should vote directly as other systems can be manipulated, rigged or can result in vote stuffing.

Article 23
Section 2(b)

“(b)  *Not less than eighteen years of age;*”

Eighteen years is the basis of adult franchise. The minimum age of voting has been fixed as 18, which is universal. We had a legal provision of 18 years of age for a male and 16 for a female in the *Thrimzhung Chhenmo*\(^{768}\) (the Supreme Law of Bhutan) enacted in 1953.\(^{769}\) It is now fixed as 18 years and it is common to both male and female. Similarly, the entry age to a civil service is also 18 years.

His Majesty Jigme Khesar Namgyel Wangchuck explained:

*The rights of the people are to cast votes. Anybody above the age of 18 years can vote. If anyone wants to join Constitutional Offices then the minimum age limit is 25 years and the maximum is 65 years.*\(^{770}\)

Article 23
Section 2(c)

“(c)  *Registered in the civil registry of that constituency for not less than one year, prior to the date of the election;*” and

A person shall have the right to vote by direct adult suffrage through secret ballot at an election if the person is registered in the civil registry of that constituency for not less than one year, prior to the date of the election. This requirement is intended to prevent fraud and gerrymandering. Bhutan does not want a group of people migrating just for the sake of election and forgetting their sacred duty to serve the community, people and the Country.

In some countries, such prescriptions are made to check the unrealistic increase of population or migration for election. Such crises have been riddled in our neighbouring countries. Bhutan has porous border with its neighbours who are largely populated. Therefore, Bhutan cannot allow the right to vote based on residence or permanent residence, except after a period of a year of residence. The requirement of a voter having to register one year ahead of an election is not an excessive period of time.

Answering the motion of the first Parliament\(^{771}\) that this provision contradicts with a citizen’s right to vote, it was submitted that every right has to be exercised according to its processes, one of which is that its exercise is subject to reasonable restrictions as enshrined under section 22 of Article 7. It is in the interest of peace and is a universal practice. Right does not legitimize wrong motives and political gains. This provision is to prevent the movement of voters from one

\(^{768}\) Section Ba 1-1 of the Thrimzhung Chhenmo.
\(^{769}\) Chairman of the Drafting Committee’s explanation during public Consultation in Zhemgang, 30\(^{th}\) April 2006.
\(^{770}\) Public Consultation in Gasa, 13\(^{th}\) May 2005.
\(^{771}\) The presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee, 9\(^{th}\) May 2008.
constituency to another to vote and elect certain candidates by disturbing the balance in that particular constituency. The right to vote is not absolute. It is subject to reasonable restrictions. Most of the countries lay down the requirements of citizenship, age and residency. Therefore, under the Constitution, the right to vote is available only to Bhutanese citizens as evidenced by the Citizenship Card.

Article 23
Section 2(d)

“(d) Not otherwise disqualified from voting under any law in force in Bhutan.”

Citizenship is an individual right and a security issue. Individual right must be balanced by security. Lack of security is self-annihilation. Therefore, reasonable restrictions are necessary, which are legally adopted and lawfully executed. This provision is to respond to that unseen situation. A government in power should not be given the chance to misuse the disqualification of the voters for its own benefit. No institution should be a political tool in the hands of any agency. Therefore, only the law should determine whether a voter should be disqualified or not.

Article 23
Section 3(a)

“A candidate for an elective office under this Constitution shall:”

(a) Be a Bhutanese citizen;”

A Bhutanese has a right to take part in the conduct of public affairs, directly or through freely chosen representatives. However, it is imperative that a candidate for an elective office has to be a Bhutanese citizen. The concept of citizenship is to give national identity and unity to fellow citizens while protecting from foreign incursion and preventing loyalty to a foreign nation. Although any Bhutanese citizen can be a candidate for an elective office, there are certain exceptions such as the Royal Family, civil servants and religious personnel, who cannot be a candidate for an elective office.

During the Public Consultations, His Majesty Jigme Khesar Namgyel Wangchuck clarified:

(a) It is mentioned in the Election Act that the Royal Family will not be permitted to stand for elections or to join politics. However, if they wish to participate in the politics then they have to renounce their status as Royal Family. So, only after surrendering their status as Royal Family, they will be allowed to participate in politics. If I think properly it is not only the King who is solely responsible to look after the people and the country but it is the collective obligations to cater to the country and the people. The members of the Royal Family are in fact very fortunate to be considered as Royal Family because of His Majesty’s unfailing service to the people and the country. So, the Royal Family is indeed lucky to be part of His Majesty’s family. Being part of the Royal Family is not as easy as it seems because there are many responsibilities associated with it. The Royal Family has the duty to support and serve His Majesty with constant loyalty. Secondly, the duty to serve the country and people did not fall on the King alone but also on the members of
the Royal Family as well. For these reasons, the Royal Family will not be permitted to stand for elections.

(b) With regard to the civil servants, it has been clearly stated in the Election Act that they will not be allowed to join politics as the Royal Family. But, the civil servants may, if they feel that they could better serve the country, choose to resign from the civil service and join political parties so as to participate in politics. Otherwise no civil servants will be allowed to join politics while they are still members of the government bureaucracy and institutions.

(c) Religious personnel also have big responsibilities to carry out in the country. Till now, whenever there was a security problem in the country, or in times of epidemic and famine, or whenever there was a difficult time, they had performed prayers and offerings to our deities. These prayers and offerings had been conducted for the well being and interest of our king, our country and the people. Such prayers and offerings are still being continually performed by our abbots and our lay monks. They have played an important role in ensuring the peace and security of our country and in the future also, I know they will serve our country well. But when it comes to joining politics, our religious personalities will not be allowed to take part in it.

Members of the Royal Family, Religious personalities and Civil servants are not permitted to stand for elections or to join politics other than fulfilling their duty as citizens by voting. In the case of Royal Family members His Majesty said that they would be required to renounce their status as Royal Family members if they chose to participate in politics. His Majesty added that religious personalities played a pivotal role in ensuring the peace and well-being of a nation steeped in spirituality and culture. Such personalities occupied a special and sacred place in the nation's life and would be unbecoming for them to participate in politics. It would tantamount to unfair advantage and misuse of their status.

**Article 23**

**Section 3(b)**

“(b) Be registered voter of that constituency;”

The object of this sub-section is to secure an attachment to, and a just representation of, the interest of the constituency in the representative bodies. An inhabitant or a registered voter would have a deeper concern, and possess a more enlightened view of the various interests of his constituency than a stranger. People of a particular constituency must know their candidate. Roving candidates without an adequate opportunity to familiarize him or herself with that particular constituency is an encouragement of dispensing favours to favourite candidate, taking advantage of ignorance and deceiving the people. Without this provision, politicians can take advantage of safe constituencies to force unknown candidates and select candidates to counter with a strong candidate. It would be a mockery of democracy and manipulation of the people. Bhutan chose to be fair and, to bestow a system of informed choice. The candidate must be known, accountable and responsible to his/her constituency

772 Public Consultation in Dagana, 5th Feb. 2006.
773 Refer Kuensel dated Wednesday, 8th February 2006.
Article 23
Section 3(c)

“(c) Be a minimum of twenty-five years and maximum of sixty-five years of age at the time of filing the nomination;”

The qualifying age for an elective post has been prescribed at twenty-five years. This will give the young and educated youth a chance, not only to participate in the democratic process, but to govern the country. There were two opinions in the Drafting Committee meeting. One group felt that the Constitution should not prescribe the minimum age as His Majesty Jigme Singye Wangchuck ascended the Golden Throne at the age of sixteen. They quoted the Bhutanese saying:

“Capability of a person will be evidenced from childhood, whilst a horse can be seen later”.

However, exception is not a rule. Whilst the voters would be wise, the Constitution is a pious document. A minimum age of twenty-five was prescribed. The responsibility requires 25 years as the minimum age as the person must be matured and acceptable to the people. When it comes to government service, 18 is the minimum age at which a person enters into a job and there is difference between the people’s representative and government employment. In any kind of government job, a person shall be kept under probation for one year and afterwards there will be many seniors who would correct the mistake, guide and grant permission. But in case of the people’s representative, one has to be able to take the responsibility of the general public with the support of the trusted ones either in Parliament or Dzongkhag Yargay Tshogdu and Geog Yargay Tshogchung. That is why the age limit has been fixed at 25. 774

Conversely, other group in the committee argued for a higher age. The Constitution had to strike a balance. Twenty-five was the balanced decision. Bhutan needs the bubbling energy of youth and the wisdom of age.

The Constitution fixed maximum of sixty-five years of age at the time of filing the nomination. Timidity and excessive caution of age must be limited. Leaders with lust for power, money and self-preservation will be a disservice to the nation. 775

His Majesty Jigme Khesar Namgyel Wangchuck said:

The age limit is fixed at 65 in our draft Constitution. I think that our people should feel happy about this. If we look at other countries, there is no age limit at all. Whether he or she is 70 or 80 years old they still participate in the politics. We can still see that there are ministers who are 70 to 80 years old. In Bhutan, His Majesty the King has wisely fixed the age limit at 65 years. You have submitted that if we could reduce the age limit to 60 then the younger generation will get opportunity to serve the country and people in future. I would agree with you on this point. 776

774 Chairman of the Drafting Committee’s explanation during public Consultation in Zhemgang, 30th April 2006 and Gasa, 13th May 2005.


Upper age limit of 65 years deserves to be retained. It is wisdom exemplified by His Majesty, which amazed the world. Productive and active age is required for public service. A prolonged public life is exposed to known maladies and suffocates expectation. It creates coterie and sycophants. It creates leadership vacuum and dependency. Fresh ideas, creative imaginations and physical energy are required for the continuation of nation building. 777

A minimum of twenty-five years and maximum of sixty-five years of age at the time of filing the nomination is an appropriate age and it is a correction on the historical errors.

**Article 23**  
**Section 3(d)**

“(d) Not receive money or any assistance from foreign sources, be it governmental, non-governmental, private organizations or from private parties or individuals;” and

In order to protect the national interest, this provision states that a candidate for an elective post shall not receive money or any assistance from foreign sources, be it governmental, non-governmental, private organizations, parties or individuals. Receiving money or any assistance from foreign sources may be morally bankrupt, spiritually sterilized and politically a traitor. With money, follows dependence or undue influence. If an individual is dependant, the vices of partiality and favouritism will creep in, and national interest and interest of the people of Bhutan could suffer. Public office must not receive divided attention and be a refuge for personal interests under pseudo public interest. This provision is a hope and barricade to free our politicians from hostages of foreign and money power.

Thomas Jefferson cautioned us that “Merchants have no country”, 778 which caution holds good till date.

**Article 23**  
**Section 3(e)**

“(e) Fulfill the necessary educational and other qualifications prescribed in the Electoral Laws.”

The members of Parliament are individuals, who steer the lives and destinies of the Bhutanese people. It is not enough that a member comes to the task with an upright intention and sound judgment. He/she must have a competent degree of knowledge of all subjects, on which he/she is called to legislate. Therefore, an educational qualification is necessary. A Member of Parliament requires educational qualification, intellectual capacity to take a balanced view of things, to act independently, to have character and above all to be true to the fundamental values of life. The political parties must select persons of knowledge, vision and character for parliamentary elections. They must give Bhutan the type of government it deserves, which is strong without being authoritarian and humane without being weak.

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777 Chairman of the Drafting Committee’s explanation during public Consultation in Chhukha, 25th March 2006, Bumthang 21st June 2006.  
Article 23
Section 4

“A person shall be disqualified as a candidate or a member holding an elective office under this Constitution, if the person:”

Bhutan must seize this historic opportunity to elect the right persons without tainted character. It is a pious hope with determined dedication, to ensure good governance, that the Constitution prevents wrong candidates from entering the electoral fray. Candidates with tainted records have no right to contest elections. Parliament is the edifice of hope and a public watchdog, and it must not be desecrated by unworthy persons with tainted records. Such persons will have no legitimacy or moral authority to safeguard the interests of the nation and fulfill the aspirations of the people.

His Majesty Jigme Singye Wangchuck said:

*The Constitution must establish a dynamic system of governance which would uphold the true principles of democracy. The Constitution must go beyond mere words and become the golden pillar which will support and enable the political system to safeguard the sovereignty of the country and the rights of the people.*

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Chairman of the Drafting Committee’s explanation during public Consultation in Trashigang, 24th Dec. 2005.

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Article 23
Section 4(c)

“(c) Is convicted for any criminal offence and sentenced to imprisonment;”

The office of an elective post should not be allowed to be held by criminals. The sanctity of the elective offices should be preserved. It is the responsibility of every citizen, as voters, to ensure that criminals and corrupt individuals do not penetrate into fledgling political system. The electorate must play an important role in cleansing the political system to preserve the sanctity of all elective offices including Parliament, otherwise, as Justice L. D. Brandeis mentioned:

“Crime is contagious. If a government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself.”

There must be certain length of imprisonment but many were against it. Therefore, it was felt that there was no need to specify the length of imprisonment. This provision is to protect the public from tainted candidates and not to eliminate an opposition. It is said that the spot of a leopard never changes. Hence, the convicted person should be barred from holding any elective office. However, it is important that this provision is not misused. Political vendetta is miscarriage of justice. When a person is imprisoned wrongly, he has the opportunity to appeal to a higher Court and get his conviction quashed and be acquitted.

Article 23
Section 4(d)

“(d) Is in arrears of taxes or other dues to the Government;”

It is the duty, as a citizen to pay tax to the Government. Therefore, a candidate or a member of an elective post should be disqualified if the person is in arrears of taxes or other dues to the government.

Justice Holmes said:

“Taxes are what we pay for civilized society, including the chance to insure.”

However, this section should not be a political weapon in the hands of the Ruling Party to preempt opponents by not issuing clearance certificates. Nonetheless, let the candidates for elective office be law-abiding citizens. It is a utilitarian philosophy that rightly advocates taxes are just if they do contribute to the greatest long run happiness.

Article 23
Section 4(e)

“(e) Has failed to lodge accounts of election expenses within the time and in the manner required by law without good reason or justification;”

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782 The presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee, 9th May 2008.
784 Companica General De Tabacos De Filipinas v. Collector of Internal Revenue, 275 U.S. 87 (1927).
Law is neither inactive nor oblivious to infringement of it. Result does not provide immunity to those who infringe this section. Laws must be obeyed in all circumstances. “Uncompromised respect for law,” is the dictum of His Majesty the Druk Gyalpo. The candidate or holders of an elective post must lodge accounts of election expenses within the time and in the manner required by election laws and other laws.

**Article 23**

**Section 4(f)**

“(f) **Holds any office of profit under the Government, public companies or corporations as prescribed in the Electoral Laws;**” or

The object of the provision is to ensure the independence of persons holding elective posts and to safeguard the high standard of character the Constitution requires of elected officials, inclusive of undue influence of the Executive. In other words, the provision has been made in order to eliminate or reduce the risk of conflict between duty and self-interest. This provision is thus designed to protect the democratic fabric of the country from being corrupted by executive patronage and also to secure the independence of the members holding elective posts from the influence of the Government, so that they discharge their functions without fear or favour.

Although, office of profit would mean a position that brings to the person holding it some financial gain, advantage or benefit, the expression has not been defined in the Constitution. It is for the Courts to explain the meaning and significance of this concept in the context of specific factual situations. Under section 5 of this Article, the final interpretation and decision whether a person is disqualified or not rests with the Courts.

**Article 23**

**Section 4(g)**

“(g) **Is disqualified under any law made by Parliament.**”

Parliament possessing legislative power should enact good and best laws protecting the interest of the people and the country. Therefore, this provision grants Parliament to enact good electoral laws to elect the best candidate to Parliament. Guarding future with good motive is better than inaction of imagined abuse. We have the duty to prevent and supplement the Constitution. Everything cannot be enshrined in the Constitution. Hence, a person can be disqualified as a candidate or a member holding an elective office under this Constitution, if the law made by Parliament enshrines any such disqualification. This umbrella clause enables Parliament to continue to define elements of qualification to serve as an elected public official in accordance with the evolution of Bhutan’s democracy.

**Article 23**

**Section 5**

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785 Kuensel, “His Majesty the King’s Address to the Graduates of 2007”, 24th October 2007.
“Any disqualification under section 4 of this Article shall be adjudicated by the High Court on an election petition filed pursuant to a law made by Parliament under section 7 of this Article.”

This section creates another exception that any disqualification under section 4 of this Article shall be adjudicated by the High Court on an election petition filed pursuant to a law made by Parliament under section 7 of this Article. Disqualifications under section 4 are not dictums. The Appellate Court can adjudicate on mala-fide intentions for bona-fide results. Misuse and abuse are within the parameter of the Courts. However, a law will be made by Parliament.

Article 23
Section 6(a)

“In order to provide for informed choice by the voter, a candidate for an elective office shall file, along with his or her nomination, an affidavit, declaring:

(a) The income and assets of the candidate, spouse and dependent children;”

A constituency has the right to know about the income and assets of its future leaders, their spouse and dependent children. This information forms part of the public record in Bhutan consistent with the high transparency standard expected of elected officials. Without informed choice, public cannot make considered and conscious decision. Transparency and information facilitates better decision and informed choice. With choice, the Constitution must make sure that the best candidates are elected to serve the people of Bhutan.

A law making body must have moral and financial integrity. According to Justice J.S Verma this provision is one of the political moralities. 786 No elective office should be to legitimize and camouflage illegal and unlawful income and assets.

Article 23
Section 6(b)

“(b) His or her bio-data and educational qualifications;”

During an election campaign, the public has a right to information about candidates in order to make an informed choice from amongst the various political parties and candidates. A candidate’s bio-data and educational qualifications are part of the public record. A candidate must be proud to declare his bio-data and educational qualifications and demonstrate to his constituency that they have a right and good candidate to represent them. The candidate should be able to demonstrate that he is equipped to represent the constituency and that he has the necessary education, experience and moral integrity to serve and represent the people. Education is one of the keys to unlock freedom and progressive discovery of empowerment.

Article 23
Section 6(c)

786 Supra, n.134.
“(c) Records of criminal convictions, if any;” and

The candidate must be a law-abiding citizen, capable of upholding and protecting the law, so that people would be happy living under the law. Without law, peace, security and happiness will evaporate. Simultaneously, let no sinner dare to invade the exalted place of a saint.

The character and effectiveness of Parliament will depend on the kind of candidates that political parties have filed for election and the kind of men and women the people elect as their representatives. The holder of elective office should be a role model, which the nation seeks to emulate. If political parties give tickets to criminals, it is the responsibility of the electorate to ensure that criminals are not elected. Most of the political parties will not deny tickets to criminals, if they can win some votes for them. Coming to power or retaining power is key to political parties’ essential ambitions. Therefore, this provision will deter criminals and parties, which may consider fielding them for seeking elective offices.

The first Parliament motioned that a person prosecuted and imprisoned under the law of the country should be considered as having paid his dues and hence, be considered a normal citizen. However, it is to be noted that the office of an elective post should not be allowed to be held by criminals. The sanctity of the elective offices should be preserved. It is the responsibility of every citizen, as voters to ensure that these criminals do not permeate into the young and fluid political system. The electorate must play an important role in cleansing the political system to preserve the sanctity of elective offices and the highest lawmaking body.

Article 23
Section 6(d)

“(d) Whether the candidate is accused in a pending case for an offence punishable with imprisonment for more than one year and in which charges are framed or cognizance is taken by a court of law prior to the date of filing of such a nomination.”

John Locke’s precept to deter and provide redress for crimes and injuries to people’s liberties is a fundamental precept of this clause. In order to enable informed choice by the voter, a candidate for an elective office is required to file, along with his nomination, an affidavit, declaring whether he/she is accused in a pending case for an offence punishable with imprisonment for more than one year and in which charges are framed or cognizance is taken by a Court of law prior to the date of filing of such a nomination. This provision will ensure full disclosure to the people noting that if the person is found guilty, he will be unable to hold public office. A potential candidate would have every motivation to quickly resolve the pending matter or defer his/her candidacy until a subsequent election in order to ensure the public trust and that he/she is seeking public office in full conformity with the prevailing law.

Article 23
Section 7

787 Supra, n.107.
“Parliament shall, by law, make provisions for all matters relating to, or in connection with, elections including the filing of election petitions challenging elections to Parliament and Local Governments, and the Code of Conduct for the political parties and the conduct of the election campaign as well as all other matters necessary for the due Constitution of the Houses of Parliament and the Local Governments.”

Parliament has a constitutional duty and responsibility to enact laws for all matters relating to elections. Free and fair process must exist for all matters relating to or in connection with elections, including the filing of election petitions challenging elections to Parliament and Local Governments. It must promote virtues and truth to triumph without miscarriage of justice.

The Code of Conduct for the political parties and the conduct of the election campaign, as well as all other matters necessary for the due constitution of Parliament and the Local Governments, must be there to guide the candidates and to save the public from physical and emotional anguish.

The laws enacted by Parliament should take into account the fact that an open and fair competition among political candidates and the informed choice of citizens is the premise of political accountability.

Article 24
Election Commission

The Process of elections is one of the facets of selfless devolution of power initiated by His Majesty Jigme Singye Wangchuck, to enable every Bhutanese to participate in collective decision-making, by electing representatives of their choice through a free and fair election.

In order to ensure free and fair elections, there has to be an autonomous body to supervise and control the election process. A Royal Decree of His Majesty in January 2006 gave birth to the sacred institution of the Election Commission. Through this institution, if a mistake of choice is made, it can be corrected in the next election. This institution is the prophet of hope of many for the best and saviour of change for better. As the institution treads further, its mechanisms must be prepared.

People have an inherent duty to elect their representatives through informed selection of candidates to serve the interest of Bhutan. In the new Democratic Constitutional Monarchy, the sovereign power will rest with the people of Bhutan, and this sovereign power shall be expressed through periodic and regular elections and referendums in a free and fair manner.

The Commission conducted the Bhutan Electoral Education and Training Strategy in 2006. The key objective of this strategy is organizing the Training of Trainers workshop which will enable them to educate the voters, candidates and members of political parties. This will ensure that elections are conducted in a free, fair and efficient manner. Voter’s education and providing them with the opportunity of informed choice is truly the empowerment of the people. People must be the masters of situation through proper choice to select the right representatives.
The Election Commission must accept the mandate of the Constitution to circumvent corrupt electoral practices, electoral offences, use of money and muscle power, and misuse of public authority and machinery. The enforcement of these ceremonious expressions of good faith is conferred to an impartial constitutional office. The Commission has requisite power to ensure that enrollment is open to all eligible voters and that casting of a vote is a reasonably accessible process. The Constitution confers universal adult suffrage, so that each and every qualified citizen is able to participate in forming the Government of their choice. No person should be permitted to use coercion and intimidation or deny freedom of the voters in making their choices. Finally, there has to be a system and stipulated time to ensure that votes are counted fairly and accurately.

Therefore, His Majesty Jigme Singye Wangchuck decreed:

“The office of the Election Commission is a very important Constitutional post and it is imperative to build a strong foundation for implementing the functions of this post while we are in the process of establishing democratic practices and norms in our country. The Chief Election Commissioner must carry out his responsibilities with the highest level of loyalty and dedication to the Government and the people without any distinction or discrimination between regions, Dzongkhags and Gewogs, and establish a strong electoral system for the present and future interest of the country.”

The Chief Election Commissioner is the key instrument of democratic sustainability and must owe allegiance to the Constitution professed through his Oath of Office. His actions and philosophy should be democratic and he must be the keeper of public confidence. His power starts with the dissolution of the Government and ends with the installation of the new Government.

Election is a passive translation of individual wishes into a collective choice, which provides an opportunity for change and official endorsement by the public. The Bhutanese political philosophy is based on the principle of “general will of the people as the basis of government” expressed through periodic elections on the basis of “informed choice by the voter”. It translates to the rule by the majority, but it does not degrade a few to exalt many.

Democracy is anchored on free, fair, impartial and periodic elections to be conducted by independent and impartial electoral machinery. Election encompasses people’s sovereignty or Political sovereignty as advanced by John Locke entailing the consent of the governed. It enunciates non-partisan democracy and political freedom with a system of representative government that allows the right to elect and the right to participate in political process to represent the will of the people in the government.

According to Jack Balkin, an American legal scholar:

“... a democratic culture is a system in which individuals have a fair opportunity to participate with individual liberty in the forms of collective self-governance”.

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789 Supra, n.107.
According to Edmund Burke, election is a periodic performance evaluation with the dominant message from the electorate. Freedom of choice and human nature will produce rational and good choice. People must have power and right to elect or reject a party or replace a candidate. Therefore, every Member of Parliament must have direct link with their constituent to have ‘geographic accountability’. It is the paramount duty of the Election Commission to oversee and regulate elections so that they are truly fair and free.

Article 24
Section 1

“There shall be an Election Commission which shall be responsible for the preparation, maintenance, and periodical updating of electoral rolls, the election schedule, and the supervision, direction, control, and conduct of elections to Parliament and Local Governments, as well as holding of National Referendums, in a free and fair manner.”

This Section clearly enumerates the responsibilities of the Election Commission to prepare, maintain, and up-date electoral rolls and election schedule periodically. These functions are important to avoid inflated voters, inaccuracy and manipulation. It controls illegal immigration and is necessary for proper planning. In its absence, many countries are confronted with political problems. Many ethnic, social and political problems have engulfed many nations in its absence.

The Election Commission has important roles of supervision, direction, control and conduct of elections to Parliament and Local Governments, as well as the holding of the National Referendums, in a free and fair manner. Being an autonomous institution, the Commission can devote to research, development and specialization to regulate its functioning. It can focus on its objective, mission and operation to conduct elections in a free and fair manner. Proactive actions and strategic plans will ensure progress, peace and tranquility.

Under the Constitution, the electoral process must be free, fair, periodical and through secret vote. It is secret and not open ballot favoured by Stuart Mill. Secrecy implies the constitutional principle of anonymity to annul fear and retribution.

Any recrimination or violation of the promised process is a breach of the principle of secret vote and desecration of the philosophy of the Constitution. The Constitution promises freedom, liberty, justice and happiness under the law. Election is the foundation of Democracy in Bhutan and democracy will depend upon the Election Commission’s impartial administration in allowing the people to express their general will.

Article 24
Section 2

“The Election Commission shall be independent and shall consist of a Chief Election Commissioner and two Election Commissioners, appointed by the Druk Gyalpo from a list of names recommended jointly by the Prime Minister, the Chief Justice of Bhutan,

"the Speaker, the Chairperson of the National Council and the Leader of the Opposition Party."

This section incorporates the structure of an independent Election Commission. As a constitutional office, it must be impartial, brave and just in discharging its constitutional mandates and fulfill the aspirations of the people. It must ensure triumph of the general will of the people and peaceful transfer of power entrusted by them.

The Commission is one of the Constitutional Offices, which provides horizontal checks and balances and ensures the discharge of national functions in public interest in a non-partisan manner. Political bickering and changing political parties must not affect the Commission.

The Election Commission shall consist of a Chief Election Commissioner and two Election Commissioners. The Commission is necessary to avoid unilateral decision and concentration of power in one person. It must build broad consensus to gain public confidence.

His Majesty Jigme Singye Wangchuck expressed the view that, the selection and appointment of persons to constitutional posts is very important, therefore such a system is more reliable and credible which would help to ensure a fair selection of the constitutional office holders, who must be independent and should maintain the highest standard of integrity in upholding the Constitution and serving the people.792

In most other countries such appointments as Auditor General, Chief Election Commissioner, and Chairperson of the Anti-Corruption Commission are made by the heads of governments, resulting in nepotism and political use of these institutions for unfair advantage. In Bhutan, members of Election Commission are appointed by the Druk Gyalpo from a list of names recommended jointly by the Prime Minister, the Chief Justice of Bhutan, the Speaker, the Chairperson of the National Council and the Leader of the Opposition Party. This not only ensures a fairer system, but also improves effectiveness as the appointments would have overall support. The inclusion of the leader of the opposition is again, unique in Bhutan's Constitution.793

Responding to the inclusion of the Chief Justice of Bhutan, it was explained that if the authority or responsibility to recommend the list of names for constitutional posts is left to the three politicians, namely, the Prime Minister, the Speaker and the Leader of Opposition, it may be difficult to achieve the objective of having independent and apolitical constitutional office holders. There may be a risk of inherent bargaining to compromise the candidates assuming important posts. Therefore, the Chief Justice of Bhutan has been included as one of the recommending authorities. He is the only member, who is under professional obligation and oath. Moreover, he is not a politician. His presence will have a positive impact and should contribute towards the selection of the best candidate.

**Article 24**

Section 3

"The term of office of the Chief Election Commissioner and Election Commissioners shall be five years or until they attain the age of sixty-five years, whichever is earlier."
Under the Constitution, the term of office of the constitutional post holders has been fixed at five years or until attaining sixty-five years of age, whichever is earlier. If it is fixed for five years without any qualification upon it, then attaining the age of sixty-five years may become redundant, or at the worst would conflict with each other. Therefore, the requirement of the condition, “whichever is earlier”, so that the term comes to an end at the age of sixty-five even if the five-year term is not complete. Conversely, the term would also end on the completion of five years, even though the person has not attained the age of sixty-five.  

No one should be allowed to build personal and entrenched base during the course of discharging his or her functions.

The reason for this provision is that, the constitutional post holders should be capable, dedicated, apolitical, and intellectually sound. We should be able to select from the civil servants as well as from amongst the retired civil servants, if deemed fit. If we are to select from serving civil servants, then the age limit is not necessary, since they are required to resign before sixty-five years. The age limit of sixty-five years is kept so as to enable the selection from amongst retired civil servants as well as the active ones.

The Chief Election Commissioner should not be re-appointed but the Commissioners may be re-appointed or be elevated to the post of Chief Election Commissioner. If the Chief Election Commissioner is eligible for re-appointment, his independence will not be absolute for he may compromise the independence in the hope of obtaining the second term.

Article 24
Section 4

“The Election Commission shall be responsible for the delimitation of constituencies for election of the members of Parliament and Local Governments.”

Delimitation literally means setting boundaries of territorial constituencies for elections to Parliament or Local Governments. It is also referred to as “districting”. Constituency delimitation raises many considerations with respect to purpose, intent and effect.

‘Representation by population’ is as central to the concept of democracy as is the notion of equal voting power. The legal framework for elections should seek to ensure that the boundaries of electoral units are drawn in such a way as to achieve the objective of according equal weight to each vote, to the greatest degree possible, to ensure effective representation. The legal framework needs to address the issue of how constituencies or the electoral units being represented (sometimes also called voting districts) are to be defined and drawn.

Different sets of electoral district boundaries can produce different election outcomes, even if the underlying voting pattern remains the same. Electoral abuses such as mal-apportioned districts (districts that vary substantially in population) or districts that have been “gerrymandered” (districts intentionally drawn to the advantage of one political party at the expense of others) can have major consequences not only for the legislators, who represent the districts, but also for the individual voters and community constituents of the districts. Ultimately, election outcomes and
the composition of the legislature can be affected by the manipulation of electoral district boundaries. Therefore, producing electoral district boundaries that are perceived as fair and impartial is essential, if the election process is to be considered legitimate by all stakeholders.

In most countries today, Parliament plays only a limited role or no role at all in the delimitation process. The authority to carry out the delimitation plan and process is given to independent commissions and not to Parliament because the members of Parliament are the ones who are potentially affected from the delimitation plan. Therefore, in Bhutan too, the responsibility for the delimitation of constituencies has been given to the Election Commission. The Election Commission must carry out the responsibilities in a non-partisan manner. The Commission should not be influenced by political parties. Rather, the Election Commission must strive to translate the will of the people into representative government.

**Article 24**

**Section 5**

“Parliament shall, by law, ensure that the Election Commission holds elections so that the National Assembly and Local Governments are re-constituted within ninety days after its dissolution.”

“Provided that in the case of the National Council, elections shall be held so that it is re-constituted on the date of expiry of the term. In the case of the Dzongkhag Tshogdu, the Gewog Tshogde and the Thromde Tshogde being dissolved prematurely, it shall be re-constituted within ninety days after its dissolution.”

This is an important provision to ensure that elections are conducted timely and within specified periods. It avoids prolonging tenure and creation of trouble.

The Election Commission is constitutionally mandated to hold elections so that the National Assembly is re-constituted within ninety days after its dissolution. This will provide a safeguard against indefinite rule by the executive branch without legislative oversight. Similarly, the Dzongkhag Tshogdu, the Gewog Tshogde and the Thromde Tshogde, if dissolved prematurely, should be re-constituted within ninety days after dissolution.

In the case of the National Council, timely elections should be held so that it is re-constituted on the date of expiry of the term. The Drafting Committee extensively deliberated on the issues whether the members holding office can participate in the election and if so will there be conflict of interest. In many countries, the second chamber is a permanent body with only a few members resigning at a time. This model has not been adopted by the Constitution of Bhutan. The Constitution requires all the members of the National Council to retire at the same time, after the expiry of the term. However, following the universal norm of permanency of the second chamber, and in order for there to be continuity of the National Council, section 189 of the Election Act has mandated the Election Commission to hold elections to the National Council not later than ninety days before the date of expiration of the National Council. Therefore, the Constitution and the Election laws have been drafted in accordance with the universal norm. The members, while in office can contest or take part in the elections. However, they will not be allowed to use government machinery, but will have to contest like any other candidate. They
will not be able to influence the voters as it is their performance that counts and not their authority.

**Article 24**
**Section 6**

“The Election Commission shall function in accordance with the Electoral Laws.”

Bhutan is evolving and so are its people. Our communities are changing and we are changing. Thus it follows that institutions and the way people participate in those institutions must also evolve. With our proud history and democratic traditions, Bhutan should be at the vanguard of free and fair elections and the Election Commission must function in accordance with electoral laws.

First-past-the-post system tends to lead to a strong government, usually one party rule at any given moment, which has been a tradition mostly in Britain. But proportional representation has the advantage in Parliament having more diverse parties, more diverse views and more diverse ideology represented.

The Election Commission should have flexibility and dynamism to respond to the changing situations while conducting elections either through first past the post system

795, preferential voting, alternative voting

796 or any other voting systems. Delegation of this power to the Election Commission will facilitate the Bhutanese electoral system to respond progressively to changing and unforeseen situations in the future.

**Article 25**
**The Royal Audit Authority**

The proposal to establish an Audit was made during the 16th National Assembly in 1961. However, it was established in 1969 during the 31st Session of the National Assembly. Subsequently, a Royal Kasho appointed Auditors and defined and authorized the jurisdiction of the Royal Audit Department in 1970. Royal Audit was made an autonomous authority divesting de-facto power of the Finance Minister in 1986.

The Royal Audit Authority is the guardian of the exchequer and has to ensure that no farthing is spent without authority of Parliament. It is his primary duty to secure the accountability of the Executive to Parliament in the field of financial administration.

The Royal Audit Authority is the pillar of checks and balances and the guardian of public conscience in checking the wasteful expenditure and chronic corruption. Recognizing the growing importance of an Audit Authority in ensuring economy, efficiency and effectiveness in

795 The First Past the Post (FPTP) system is the simplest form of plurality/majority system, using single-member districts and candidate-centred voting. The voter is presented with a list of candidates and votes by choosing one, and only one, of them. The winning candidate is simply the person who wins most votes. Most FPTP systems are found in countries historically influenced by Britain. Along with the UK, the cases most often analysed are Canada, India and the United States. FPTP is also used by a number of Caribbean countries; in Latin America by Belize, Bangladesh, Burma, India, Malaysia and Nepal; and by many of the small island countries of the South Pacific, etc.

796 The Alternative voting system enables the voters to express their preferences between candidates rather than simply their first choice. For this reason, it is often known as ‘preferential voting’ in the countries which use it. Alternative voting is used in Australia, Fiji and Papua New Guinea, and for presidential elections in the Republic of Ireland and a number of sub-national jurisdictions in Europe and North America.
the use of public resources, the Constitution has enshrined the Royal Audit Authority as a constitutional office.

His Majesty Jigme Singye Wangchuck informed:

\[I \text{ would like to tell you that they are the bodies that shoulder major responsibility and the authority who can work for the benefit of the country.}\]^{797}

Similarly, His Majesty Jigme Khesar Namgyel Wangchuck mentioned that:

\[I \text{t is very important from the beginning and not only now but any time, even during our children’s time to eradicate the system of offering and accepting bribe.}\]^{798}

Through the functions of the Royal Audit Authority, the Government is held accountable to taxpayers, in the management of public funds and services. It must ensure that funds are properly raised, protected from loss and spent with maximum efficiency and effectiveness, for the purposes approved by Parliament. Government programs should be managed in a manner, which represents value of money for the taxing community.

His Majesty Jigme Singye Wangchuck informed:

\[”\text{The Auditor General must carry out his responsibilities with utmost loyalty and dedication in the interest of the Government and the people, unaffected by any consideration for those in position of power and influence, and showing no discrimination whatsoever, in the line of his work. The Royal Audit Authority must carry out its responsibilities by conducting proper and timely audits of public funds utilized by the ministries, departments, corporations and other organizations of the Royal Government. In order to stop corruption and check the misuse and wastage of public funds to ensure their proper utilization for the benefit of the public, the Auditor General is authorized to audit any person in Bhutan, regardless of status or position, in the course of discharging his important responsibilities.”}\]^{799}

Every citizen must play one’s part in the realization of a true democracy with a corruption free society. The Royal Audit Authority is mandated “to audit and report on the economy, efficiency, and effectiveness in the use of public resources” by the Constitution. Parliament should take cognizance of the reports of the Royal Audit Authority. Challenges beckon innovation to work ceaselessly towards the new approaches to auditing and harnessing evolving technology.

With power and authority being decentralized and devolved to an elected Government under the Constitution, the Royal Audit Authority must shepherd the public authorities and bodies to comply with the audit requirements. Creation of awareness through dissemination of information and watchful eyes of the Royal Audit Authority will ensure confidence of the people in their elected leaders and complement the vision of His Majesty to repose trust in the people.

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^{797} Public Consultation in Zhemgang, 30th April 2006.
^{799} Royal Decree dated 31st December, 2005.
The Constitution mandates the institution to protect and render professional service to the nation without fear or favour. The Audit Act symbolizes the aspiration and expectation of the people. However, the Royal Audit Authority must make the reports reliable, professional, independent and fair. Let conscience be a witness while rendering service to the people in ensuring that every cheltrum of public fund is audited timely and reported accurately and fairly. The reports should abide by the principles of code of ethics, independence, integrity, objectivity and client confidentiality. The auditors are the watchdogs of the Government expenditures. Integrity and good management are assuming greater role and importance in the society. The society has imposed heavy burden on the auditors. They must discharge these responsibilities with utmost dedication, determination and enthusiasm.

The Royal Audit Authority is long considered as one of the core institutions of good governance. Good governance is central to the vision of Gross National Happiness. Indeed, the Auditor General is the custodian of legitimate expenditure of public funds. Every cheltrum must have maximum benefits and coverage as the Nation owns it.

**Article 25**

**Section 1**

“There shall be a Royal Audit Authority to audit and report on the economy, efficiency, and effectiveness in the use of public resources.”

This provision articulates legal establishment and the responsibilities of the Royal Audit Authority with clear mandate to audit and report on the economy, efficiency, and effectiveness in the use of public resources. The role of the Royal Audit Authority is to maintain the integrity of the government.

The Royal Audit Authority issues audit reports after inspections, pursuant to the concept of accountability for public resources. Legislators and the public would want to know the management of the public resources and their utilization in compliance with laws and regulations. The public has an inherent right to know that the programs achieved their objectives and desired outcomes through an independent institution. It is the responsibility of the executing agencies to ensure that services are being provided efficiently, economically and effectively. Thus, the executive branch of the Government is accountable to Parliament and the public. The auditing of these programs will enhance the credibility, integrity and effectiveness of the Government.

**Article 25**

**Section 2**

“The Royal Audit Authority shall be an independent authority headed by the Auditor General who shall be appointed by the Druk Gyalpo from a list of eminent persons recommended jointly by the Prime Minister, the Chief Justice of Bhutan, the Speaker, the Chairperson of the National Council and the Leader of the Opposition Party.”

The role of the Auditor General is critical to maintain the integrity of the government. The Auditor General ensures that Parliament has access to independent audit information as a part of the framework of accountability and scrutiny of the executive branch of government. Therefore,
this section guarantees the independence of the Royal Audit Authority and the Auditor General. To carry out its constitutional mandates in the most effective manner, the Audit Authority must be fully independent and free from political bias. The Auditor General must be free to act without direction or interference. For these reasons, the Auditor General is to be appointed by His Majesty from a list of eminent persons recommended jointly by the Prime Minister, the Chief Justice of Bhutan, the Speaker, the Chairperson of the National Council and the Leader of the Opposition Party.

If the recommending committee is composed of one or two persons, there is a risk of manipulation and favouritism. Therefore, five members forming the committee have been provided. In other countries, it is the discretion of the Prime Minister and he or she can appoint anyone as he or she wishes.800

Article 25
Section 3

“The term of office of the Auditor General shall be five years or until attaining the age of sixty-five years, whichever is earlier.”

Self-aggrandizement and perpetuated rule destroy initiative and growth. John Adams said:

“The only maxim of a free government ought to be to trust no man living with power to endanger the public liberty.”801

The System is equally important to personalities. Age limit is a necessary provision in the Constitution. A Constitutional post is a very important post for checks and balances in the system have to be maintained. The philosophy of the age is same for all the holders of the constitutional posts.

Article 25
Section 4

“The Royal Audit Authority shall, without fear, favour, or prejudice, audit the accounts of all departments and offices of the Government including all offices in the Legislature and the Judiciary, all public authorities and bodies administering public funds, the police and the defence forces as well as the revenues, public and other monies received and the advances and reserves of Bhutan.”

While carrying out the constitutional and statutory responsibilities, the Royal Audit Authority is required to operate its responsibilities without fear, favour or prejudice. In short, it has to be performed within stringent professional and ethical values. This provision will remind the recommending authorities to select an Auditor General, who is fearless, competent and impartial.

This section enshrines the specific functions, duties, responsibilities and powers to achieve the tasks of auditing and reporting of the Royal Audit Authority. The Authority is mandated to audit the accounts of all departments and offices of the Government including all offices in the

800 Chairman of the Drafting Committee’s explanation during public Consultation in Samtse, 27th March 2006.
801 Supra, n.390, p.2.
Legislature and the Judiciary, all public authorities and bodies administering public funds, the police and the defence forces as well as the revenues, public and other monies received, and the advances and reserves of Bhutan. No organization should escape and be exempted from the jurisdiction of the Audit.

Regarding the auditing of the constitutional offices as motioned by the members of Parliament during the first sitting of Parliament, it was resolved that the phrase “... all departments and offices of the government...” is inclusive of constitutional office.

The term “audit the accounts” as used in this section would include regular audit and performance audit including the consideration of economy, efficiency and effectiveness. They may enlarge their human resources and seek alternative methods for effective auditing.

**Article 25**

**Section 5**

*“The Auditor General shall submit an Annual Audit Report to the Druk Gyalpo, the Prime Minister and Parliament.”*

The Auditor General must submit an Annual Audit Report to the Druk Gyalpo, the Prime Minister and Parliament. The Report should highlight issues of importance and contain suggestions to improve the management of public sector organizations and increase their operational effectiveness in order to eliminate irregularities, create savings and increase efficiency and operational improvements. Reporting imposes accountability and public knowledge deters crimes and enhances justice.

**Article 25**

**Section 6**

*“Parliament shall appoint a five member Public Accounts Committee, comprising members of Parliament who are reputed for their integrity, to review and report on the Annual Audit Report to Parliament for its consideration or on any other report presented by the Auditor General.”*

In a parliamentary democracy, committees play an important role. Much of the work is done in committees which are sometimes referred to as “workshops” of Parliament. An important function of committee is to scrutinize government activity, including legislation, the conduct of public administration and policy issues. Committees may also oversee the expenditure of public money and they may call the Government or the public service to account for their actions, and ask them to explain or justify administrative decisions.

Parliament is responsible for overseeing the performance of the executive branch of government. Parliament must scrutinize governmental performance by directly examining Ministers or officials, or by asking that certain information be presented to it. This scrutiny by Parliament is to ensure that governmental activities are carried out in a manner consistent with Parliament’s intentions, and are effective, efficient and economical. To fulfill this role effectively, Parliament
needs access to reliable and accurate information. The information needs to be examined by a suitably qualified and independent person to provide an assurance that it is accurate and complete.

Under section 11 of Article 10, Parliament is empowered to appoint Committees to carry out the business of Parliament. Section 6 of this Article mandates the appointment of a five member Public Accounts Committee, comprising members of Parliament, who are reputed for their integrity, to review and report on the Annual Audit Report to Parliament for its consideration or on any other report presented by the Auditor General.

Answering the motion of Parliament that the number of Public Accounts Committee members should be left open instead of being fixed at five as specified, it was submitted that the ceiling was necessary to avoid accommodating more members and diluting the effectiveness of the existing number of members. The open membership would cause many political problems and political manipulations.

Parliament, having voted and approved large sums of public money, will expect in due course a detailed account of how the monies have been spent. Parliament must be satisfied that the monies so approved were directed to the intended purpose and were spent prudently and economically. The Auditor General will examine the yearly accounts of the Government and after scrutiny, certify the accounts, subject to such reservations as he chooses to make, and submit the reports to the Druk Gyalpo, Prime Minister and Parliament. It will be difficult, if not impossible, for Parliament to examine in detail the accounts, which are complex and technical. Further, it cannot spare the time required for such examination. It is for these reasons that Parliament will appoint a Public Accounts Committee to review the reports of the Auditor General. The Public Accounts Committee will submit its reports or findings to Parliament for further action.

**Article 25**
**Section 7**

_The Royal Audit Authority shall function in accordance with the Audit Act._

The Royal Audit Act has been enacted to give them authority. The National Assembly has enacted the Audit Act, 2006. The Act was enacted in 2006 for the reason that the existing National Assembly did not have political affiliation and the country had excellent political leaders. Democracy must unveil with necessary tools of law based on pure thought and good intention for greater public interest.

**Article 26**
**The Royal Civil Service Commission**

Historically, Bhutan had various forms of civil servants. It was classified as “Pangkola”, “Zingarp”, “Chhandap”, “Chhangarp” and different officials in the Palace, regional and local governments. The highest-ranking officers were Chilas or Penlops in the regions and under them there were Dzonpons, Dronyer, Zimpon and Tapons.
The erstwhile Royal Civil Service Commission supported by a non-elitist civil service under the guidance and direction of the hereditary Monarchs had been successful and effective because it was accountable directly to His Majesty.

Professional and apolitical civil servants are indispensable as His Majesty Jigme Khesar Namgyel Wangchuck said:

*The civil servants are very important. If the civil servants are efficient, the government will be strong and efficient. With regard to the parties some members may be efficient some may not. The most important is the civil servants. For that we should have a strong civil service Act. It is very important to make the Royal Civil Service Commission strong and efficient. In future the civil servant must shoulder a huge responsibility. With the start of the new democratic government system, I expect that our civil servants will serve the government with sincerity, dedication and honesty. Good thoughts are not enough, we need capable and competent people in the civil service and if this happens then they will be able to serve the country well.*

With the advent of democracy, civil service has greater and more important role. It is important that the small, compact, professional, and independent bureaucracy established by His Majesty be maintained and strengthened.

His Majesty Jigme Singye Wangchuck said:

*Everybody knows the importance with the coming of democracy the Royal Civil Service Act is very important. If the civil service Act is weak there is a danger that civil servants may be influenced to work for the political parties. Otherwise with the commencement of the democratic form of government, it is important that we prevent these kinds of problems from creeping in, for which the Royal Civil Service Commission should be an independent body.*

Throughout the world, civil servants are operating in a very challenging and fast changing environment. The public has higher expectations than before and is far more demanding. Public accountability of individual civil servants is increasing steadily. Advances in Information Technology have brought new challenges and vulnerabilities. The information revolution is creating the ability to transform bureaucratic Government to E-Government. E-Government has the power to reduce the cost of Government, increase citizen input and improve official decision-making. All this is taking place in an increasingly complex global environment where national borders are becoming less significant and multinational companies are becoming dominant. Political problems are becoming more complex and less predictable. Any attempt to address a problem is subject to the competing advice and opinions of special interest groups, advisory bodies and think-tanks. All these factors challenge the traditional process of policy making and its implementation and delivery, and have implications for the competencies, skills and experience that civil servants need to exhibit. Therefore, the creation of a professional and apolitical civil service is a very vital component of any State.

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Bhutan has recognized that an apolitical civil service is necessary for effective democratic governance. Failure to develop a cadre of civil servants to provide stability is one of the impediments that many young democracies face. Civil servants have to advise elected officials without constraint. They must provide stability and continuance of Government services ignoring the political winds that will occur in democratic Bhutan. An apolitical civil service must ensure that governmental services are provided without regard to political affiliation. The Constitution seeks to have an effective and efficient civil service well respected by the public.

Bhutan retained the title Civil Service rather than changing it to Public Service. Civil servants are those in the administrative branches of a Government, who are recruited through open competition and selective examinations, promoted on merit and held accountable through performance evaluations. They are career employees, recruited and promoted on the basis of their administrative skill and technical expertise. The civil service consists of those who are appointed and governed by the Civil Service Act and Acts governing employees of public statutory authorities, whose salaries and entitlements are paid by the Royal Government of Bhutan from the public fund.

The Royal Civil Service Commission and its civil servants are mandated to be efficient. This means that they have to render decisions without delay, be transparent, accountable and responsible.

The members of the Royal Civil Service Commission are not appointed randomly. The Constitution dictates that Commission members must be eminent in their respective fields and without any political affiliation. Politicians or Ministers may come and go but not the Secretaries, Directors, and other functionaries. In fact, they are the ones, who maintain the continuity of our system in the governance of the country.

James Burnham advocated a theory of bureaucratic revolution. Human Resource Development is enunciated as a top priority in Bhutan. Bhutan has built a system of educated and professional civil servants.

To quote the words of His Majesty, “Bhutan needs a small, efficient and compact administrative service”. The development of effective human resources has been recognised as national objective, not only to support the developmental process, but also as an important objective in itself.

Bhutan had advocated for dedicated and professional civil servants, who will serve the nation best and its people par excellence. Public administration and personal management is based on meritocracy. Through merit, a person can achieve what one’s mind can perceive. Truly, Eric Hoffer said of becoming a leader that “in a time of drastic change, it is the learners who inherit the future.” His Majesty trained and accorded the highest priority in human resource development to the development of the best and the brightest civil servants.

Development, good governance, clean environment and access to justice must flourish in Bhutan. Serving the Nation is not doing a favour. To seek a reward for performing a duty and the propensity to claim credit is the sterilization of national character. As Shakespeare said, it is “too
little payment for so great a debt." 807 It is a duty that the country has thrust upon the civil servants as responsible public servants. Dereliction of that duty is the breach of that sacred trust and moral bankruptcy. Bhutan deserves the best of many and the civil servants should be one of them.

**Article 26**  
**Section 1**

"There shall be a Royal Civil Service Commission, which shall promote and ensure an independent and apolitical civil service that will discharge its public duties in an efficient, transparent and accountable manner."

The Constitution enshrines the establishment of the Royal Civil Service Commission as a constitutional office. A separate organization should facilitate specification, which leads to improved efficiency through various methods of functioning in administrative operations. The Commission should facilitate development of talents in civil servants. It is the parent organization of all the civil servants.

The Commission is not self-serving or a body where power is concentrated. It must develop discipline, public service orientation, specialization and dedication of the civil servants. Being a parent organization, it should unequivocally develop their professional, moral and technical competencies and protect them from injustices. It should not be biased, partial and demeaning to the civil servants.

One of the constitutionally mandated responsibilities of the Commission is to promote and ensure an independent and apolitical civil service to save the people. The neutrality of civil servants, especially at the highest levels of policy-making and programme formulation, is important to maintain integrity and confidence. 808 Bureaucratic continuity is a necessity, though it may become a mechanism for creating a privileged and self-oriented group within the State. However, neutrality does not mean that high-ranking civil servants cannot or should not be involved in articulating public policy. Indeed, senior officials are professionally and morally obliged to provide their political leaders with policy alternatives based on sound arguments, relevant precedents, and sustainability in the context of changing political environments. It is essential that they do so, however, from a non-partisan position.

It would be refreshing, as it will elicit public confidence to believe and trust that the civil servants are independent and apolitical in the midst of political partisanship, internal rivalry and intra bickering. Therefore, Bhutan, very consciously, chose to disallow political involvement in the appointment of civil servants by establishing the Royal Civil Service Commission as a constitutional office. If Ministers are given the right to choose a particular civil servant, who

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808 In the U.K. civil servants are not allowed to meet or engage in direct discussions with the backbenchers in the ruling party. More exactly, civil servants in the UK are not meant to have direct contact with Members of Parliament (MPs) of whatever political party without the express agreement of their ministers. The “Directory of Civil Service Guidance” issued by the Cabinet Office in the U.K. government stipulates “It is an established principle set out in the Civil Service Code that civil servants should not engage in activities likely to call into question their political impartiality, or to give rise to criticism that people paid public funds are being used for party political purposes.” So “Civil Servants in their official capacity are prohibited from attending conferences convened by, or under the aegis of, party political organizations,” although with some exceptions. In terms of written briefing materials, “Material provided by civil servants for Ministers may be distributed to backbench MPs provided that it is of a kind that would be released to any bona fide enquirer, and that MPs of all parties can have access to it.
works for them, the delivery of public services could be affected. It could seriously reduce the objectivity and thus, the effectiveness of the organization.

Appointing all senior civil servants on terms related to the duration of a particular administration may result in a Civil Service which is less attractive to talented individuals, who are committed to a professional career in public service and able to help the Civil Service respond to the fundamental challenges it faces. It would do little to build the capacity of the organisation in terms of skills, experience and institutional memory. It may also have impact on the quality of prospective candidates at more junior levels, since some may view a politically appointed senior civil servant as politically motivated and unprofessional.

The Commission must also promote and ensure that civil servants discharge their public duties in an efficient, transparent and accountable manner. Civil servants, especially those operating at the heart of Government, inhabit a profoundly political world. The Ministers are politicians and their policies are usually politically driven. Speeches, replies to letters or Parliamentary Questions, etc, are often intrinsically political, reflecting the political philosophy of the current Government. Therefore, it is very important that the civil servants discharge their duties in a transparent, non-partisan and accountable manner. Inefficiency scuttles progress, causes wasteful expenditure and perverts public confidence. Civil servants must be accountable as accountability is an implied contract between a civil servant and the people of Bhutan.

It is the constitutional duty of the civil servants to serve the duly elected government and not the politicians. The civil service is an instrument of Government and not of party-politics. Democracy entails the voice of people through their elected representatives. The Constitution reminds a politically disinterested and permanent Civil Service with core values of integrity, propriety, objectivity and ability to transfer its loyalty and expertise from one elected government to the next.

His Majesty Jigme Khesar Namgyel Wangchuck said:

> With regard to the civil servants, it has been clearly stated in the Election Act that they will not be allowed to join politics similar to the Royal Family. However, the civil servants may, if they feel that they could better serve the country, choose to resign from the civil service and join political parties so as to participate in politics. Otherwise no civil servants will join politics while they are still members of the government bureaucracy and institutions.  

**Article 26**

**Section 2**

“The Commission shall consist of a Chairperson and four other members appointed by the Druk Gyalpo from among eminent persons having such qualifications and experience as would enhance the performance of the Commission, from a list of names recommended jointly by the Prime Minister, the Chief Justice of Bhutan, the Speaker, the Chairperson of the National Council and the Leader of the Opposition Party.”

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<br>809 Public Consultation in Dagana, 5th Feb. 2006.
The Commission consists of a Chairperson and four other members. With regard to the number of members in the Royal Civil Service Commission, the Constitution has fixed the number as adding and removing a member would cause an imbalance in the checks and balances during the decision making of the Commission. The membership should be of a workable group.

The civil service being extremely important and Royal Civil Service Commission being an important body, it requires permanent and adequate number of members. Ad hoc and part time membership has devastating and divided attention. If the number is small, it is easier to unite and be dominated by the influential member. Moreover, a small number does not incorporate broader base membership thereby, neglecting and marginalizing certain organizational representation, which causes disparity and erosion of civil service morale.\(^8_{10}\)

Members of the Commission are appointed by the Druk Gyalpo on the joint recommendation of the Prime Minister, the Chief Justice of Bhutan, the Speaker, the Chairperson of the National Council and the Leader of the Opposition Party.

Under this section, the members should be from among eminent persons having such qualifications and experience as would enhance the performance of the Commission. Qualification is an indication of acquiring education which moulds that person. Concurrently, experience is necessary. An experienced person possesses sharpened judgment and he can make decisions with the desired speed. Often the mind needs to be conditioned by experiences and study. With experience, a person has skills to deal with uncertain and ambiguous situations. There are renewed wonders of this progress with experience. The Royal Civil Service Commission is not a testing ground to judge and decide on qualified civil servants. It needs experienced and qualified people. The other function is to integrate all these streams of knowledge, expertise and experiences. The Commission must have the insight to understand the relevance of every bit of specialized knowledge to the objectives of the *Tsa Wa-Sum*.

**Article 26**

**Section 3**

*“The term of office of the Chairperson and members of the Commission shall be five years or until they attain the age of sixty-five years, whichever is earlier.”*

Tenure and age bar are required for active service and not to riddle the institution with entrenched and vested interest of the person. The Royal Civil Service Commission, being the highest governing body of all the civil servants, no member should occupy the office for too long to establish roots and perpetuate status quo. Tenure and limitation may facilitate in developing new skills and disseminate new ideas and knowledge to strengthen the motivation for achievement. Change reflects soaring spirit of Bhutan and its eternal identity. Changes are necessary to create a sustainable nation that favours both growth and stability. Bhutan must anticipate change forced upon her. This provision facilitates change and renews hope. Therefore, the term of office of the Chairperson and the members of the Commission is fixed at five years or until they attain the age of sixty-five years, whichever is earlier.

\(^8_{10}\) The presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee, 9th May 2008.
Article 26
Section 4

“The Commission shall endeavour to ensure that civil servants render professional service, guided by the highest standards of ethics and integrity to promote good governance and social justice, in implementing the policies and programmes of the Government.”

This provision directs the Commission to ensure that civil servants render professional service. Professional service has important meaning. It cannot be achieved by anyone. A person must have some forms of special training, a high level of education, skills and experiences.

Professional service must be guided by the highest standards of ethics and integrity of the quality of being honest and having strong moral principles. Civil Servants have to bring a new orientation to the rules, by which everyday conduct of public affairs has to be regulated. Civil servants have to contribute to the shaping, and not just implementation of the policy.

Professional service must promote good governance for “the Constitution should lay a strong foundation for good governance.” It must promote social justice and conform to moral and legal principles as enunciated under this Article. All people are equal. Social justice is synonymous to personal justice.

The section prescribes responsibility and accountability of the civil servants in promoting good governance and social justice, in implementing the policies and programmes of the Government. Democratic government, under a system of laws, requires that laws and rules are administered without prejudice and without showing undue favor to anyone. There should not be any partisan application of laws, rules or policies. For that reason, the Constitution provides for a strong civil service which is apolitical and accountable to the law, for its application, and for their impartial functioning.

The realisation of the vital role that is played by the civil servants in building the image of the Government has led to a paradigm shift, with most governments in the world, now adopting approaches that place civil servants at the epicenter. This is the new role of the “New Civil Servant” who should, at all times, be conscious of this noble mandate placed on them. The civil servants, must constantly remind themselves of the nobility of their calling, reinforce their role in articulating public interests against the excesses of private concerns, and encourage leaders to conform to the constitutional principles in their everyday activities.

Civil Servants as the implementer of Government policy, should carry out their duties in a way that enhances and maintains a positive image for the Government in the eyes of the public. The civil servants must implement the voice of the people through the policies of the Government. Values of integrity, propriety, impartiality and objectivity are the hallmark of the “New Civil Servant” as enshrined in the Constitution.

Article 26
Section 5

811 Kuensel dated 27th November 2004.
“The Commission shall, in the interest of promoting merit, productivity and equity, ensure that uniform rules and regulations on recruitment, appointment, staffing, training, transfers and promotion prevail throughout the civil service.”

The Constitution mandates the Commission to ensure that uniform rules and regulations on recruitment, appointment, staffing, training, transfers and promotion, prevail throughout the civil service. All these encompass personnel management and personnel administration.

Under personnel management, the Royal Civil Service Commission must ensure that organizations get the best from the people who work for them. Therefore, the Commission has the responsibility of selecting, recruiting, and appointing the right person and developing the best practices for promotion, training and transfer.

With the responsibility of personnel administration, the Commission must manage and ensure the management of the people in working organizations. It involves employer and employee relations and manpower management, including the management of human resources.

While implementing the personnel management and personnel administration policies, the Commission must promote merit, productivity and equity. Equity is necessary to avoid disparity, nepotism, regionalism and favouritism. The Civil Service of Bhutan is not based on spoils system.812 One of the formal means to execute the mandated responsibilities is through fair and consistently followed rules and regulations. It is the responsibility of the Commission to inculcate in the civil service, the respect for democracy and the rule of law.

The Commission must not be directly involved in the execution of work. It must trust the organizations and its staff. However, the Commission must be involved in making policies, planning and reviewing personal management, personal administration, system analyzing, etc. It should have a clear objective to deliver the service efficiently. The Commission must constantly modernize human resource management in pursuit of greater efficiencies. The ministries, departments and agencies should be given greater flexibility in tailoring their staffing and recruitment systems to their special needs and circumstances.

The Constitution has given the Royal Civil Service Commission a mandate to provide independent oversight to ensure that the civil service is competent, non-partisan and objective. At the heart of the mandate is the protection and promotion of the principles of meritocracy, productivity and equity in the appointment and recruitment of the civil service. It is the duty of the Commission to make the staffing procedures fast, cost-effective and flexible, while at the same time, it should maintain and ensure that they are open, transparent and fair. If the process is plagued by favouritism and political patronage, inefficiency, disorganization and incompetency will creep into the civil service. A bureaucracy, free of political patronage, will provide stability through changes in government. The Commission has to be the champion of the meritocracy principle and foster greater accountability within the civil service and the government.

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812 Spoils System is also known as a ‘Patronage system’. It is a practice where a political party after winning an election gives government jobs to its supporters, friends and relatives as a reward for working towards victory and as an incentive to keep working for the party.
Access to justice redresses miscarriage of justice and deters people from the commission of offence. Therefore, an aggrieved civil servant must have recourse to an Administrative Tribunal. The Constitution has mandated the establishment of an Administrative Tribunal to facilitate and enhance Administrative Law and to protect the rights of the civil servants. Professional, fair and just decisions by the Tribunal will maximize the greater good for the nation. However, if the civil servants are not happy with the decision rendered by the Tribunals, they can appeal to the High Court under section 14 of Article 21. Administrative authority is not absolute. It must be under the purview of the Judiciary so that the people of Bhutan live happily under the unfailing justice system. In His Majesty Jigme Singye Wangchuck’s words, there should not be two laws in Bhutan.

Article 26
Section 7

“Every civil servant who has been adversely affected by an administrative action shall have the right of access to the Commission.”

The Royal Civil Service Commission should be accessible to any civil servant, who has been adversely affected by administrative decisions. Accessibility is one of the important parts of justice to provide just and fair remedies. Denial of access by the Commission will be abdication of its responsibility. It must follow the process.

Article 26
Section 8

“The Commission shall meet regularly and shall be supported by a permanent Secretariat, which shall function as the central personnel agency of the Government.”

This provision was inserted to avoid encroachment by political appointees. Civil servants must protect the interest of the Civil Service and preserve it as an apolitical organization. However, the staff of the Secretariat must not be permanent to avoid entrenchment. The Royal Civil Service Commission is the central personal agency of the Government but it cannot violate the principle of separation of powers. As the central agency, it must frame rules and regulations, and ensure compliance of the rules and policies. It must also confirm to natural justice, whereby, it cannot combine formulation of policies, rule making, execution of rules and punishing the offenders. Under the democratic system, policies are within the domain of the Legislature, execution of the policies is under the Executive and settlement of disputes is under the Judiciary. Further, under the management principle, there should be separation in framing policies, execution of the policies, supervision and operation autonomy, to ensure checks and balances.
**Article 26**  
**Section 9**

“The Commission shall submit an Annual Report on its policies and performances to the Druk Gyalpo and to the Prime Minister.”

Bhutan is a Democratic Constitutional Monarchy. Its values are inter-alia equality, accountability and responsibility. These values are translated and nurtured by review authorities. Hence, the Constitution mandates the Commission to submit an Annual Report on its policies and performance to His Majesty the Druk Gyalpo and the Prime Minister. Report in general appeals to the public. Public gaze imposes self-discipline. It increases accountability and builds confidence. As James Madison said,

“It acquires efficacy as time sanctifies and incorporates it with public sentiment not in terms of judicial protection but of protection through public sentiment.”\(^{813}\)

The Prime Minister has a public mandate and accountability to deliver services to the nation. Therefore, it is imperative that implementing agencies of the civil service should be under the guidance of the Prime Minister. However, he should not interfere directly with recruitment, appointment, promotion and/or transfer of civil servants.

The reason to submit the reports to the Druk Gyalpo and to the Prime Minister are that the Druk Gyalpo is the Head of State and the Prime Minister is the Head of Executive. The Prime Minister is responsible to Parliament and the people through ministerial responsibility in Parliament and periodic assessment by the electorate. Moreover, the Prime Minister must obey the public opinion.

In the words of Montesquieu:

“Governments are adapted to the dispositions of their people and their environment.”\(^{814}\)

**Article 26**  
**Section 10**

“The Royal Civil Service Commission shall function in accordance with the Civil Service Act.”

A democratic system of government should respond to the changing demands of a society in the form of effective performance through civil servants in general. The civil servants must truly be servants. They are neither their own masters nor servants of a few. They must function under the Civil Service Act. Obedience to law must be exemplified by the civil servants to gain public confidence.

The Act must ensure that civil servants carry out the policies of the government, while at the same time protecting them from political interference. It must do away with ministerial authority in the appointment, promotion, termination and salary determination of civil servants. The

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\(^{814}\) Supra, n.308.
Commission must, in the Act, embed the merit system into the civil service. All the rules and procedures for appointment, recruitment and transfer, must be defined in the Act. The Civil Service Act must be drafted in accordance with the Constitution and it must give recognition and respect to the democratic principles of equality and separation of powers.

Article 27
The Anti-Corruption Commission

Corruption is the cancer that is eating into the vitals of the society. Unfortunately, it has become endemic in almost all countries in varying degrees. It is also age-less. Corruption is spiritual sterilisation, moral bankruptcy and legally criminal. It includes activities like bribery and embezzlement. Aristotle and Cicero were the first to use the term corruption and bribes as abandonment of good habits. Similarly, Zhabdrung Rimpochhe’s Kathrim of 1651 proclaimed:

“The beneficial, enchanted lake of the state laws has been stirred into turbidity by many evil deeds not consonant with the doctrines, such as plain trickery, including bribery, on the part of a few wealthy and important people who include among them (village) counselors and messengers (who do this) while speaking sweet... Regarding law-suits, honest statements which do not contradict each other and which clearly distinguish truth from falsity are to be submitted without being swayed by bribes and great haughtiness.”

Corruption results in the violation of several basic rights of the people. It stifles economic growth, inflates cost for government, negates progress, denies prosperity and increases cynicism towards politics. For the timeless and omnipresent nature of corruption, retributive and punitive measures are not the solution. Laws above cannot curl or eradicate corruption. The fight has to begin from within, namely, at the doorstep of each household with members of the family resolving to cleanse themselves of this epidemic with dogged determination. The theoretical and academic approach of the earliest definitional debates between the “moralists”, “revisionists” and the “functionalist” require deeper analysis. The situation is aggravated by the twin challenges of democratization and economic reform with diminished accountability of delay in prosecution and judicial process. The privatization of state-owned corporations has enriched individuals and nationalized problems. Progressive degeneration of social fabric and economy would contribute to scams and scandals.

Edward Banfield said that:

“A moral familism... one who follows the rule without morality ... corruption, which resulted from a lack of moral behavior, held societies back from development.”

Heidenheimer talked about “routine” and “aggravated” corruption and about gift-giving, nepotism, patron intervention, kickbacks which are complicity in crime. Conversely, Robinson talked about incidental, institutional and systematic corruption and the illegal use of public office for private gain.

According to Nathaniel Leff:

“Corruption is an extra-legal institution used by individuals or groups to gain influence over the action of the bureaucracy.”

Corruption is a new form of crime challenging social, legal and constitutional institutions. Amidst the exponential growth of awareness and public condemnation, conventional crimes have metamorphosed into mathematical growth and the minimalist view of misuse of the Government property beacons greater knowledge, updated technique and enhanced skills to deal with menacing corruption.

Andreski said:

“The practice of using the power of office for making gain is in breach of laws and regulations nominally in force.”

Corruption is a silent public enemy. It is a chronic virus that produces poverty, inequality and endangers civil society. Corruption will undermine democracy, impede socio-economic development and contribute to instability. It is an unrelenting assault against the very foundation of democratic institutions, which hijacks electoral processes, emasculating the rule of law and creating bureaucratic labyrinth for the solicitation of bribes. It is one of the root causes of under-development and poverty. It is the antithesis of good governance. It also causes social polarization, lack of respect for Human Rights, undemocratic practices and the diversion of funds intended for development and essential services. The diversion of scarce resources affects the Government's ability to provide basic services to its citizens and to encourage sustainable economic, social and political development. The preventive action is in power of the people.

His Majesty Jigme Khesar Namgyal Wangchuck said:

One of the causes for downfall of the Government and unrest of the people is the practice of corruption. Such bad practice of corruption is like a dreadful disease and if it comes in the country it is very difficult to cure it. And such is not only in our country it is there in the world. It is the cause of problem even in our neighboring country and the world. It is very important to prevent such practices from its inception. The responsibility to stop such practice lies not only to one individual but all the citizens of the country has the responsibilities to prevent corruption. If it creeps in once then it is difficult to erase it. In our country if we fail to stop corruption, then it is the one, which will cause all problems. Firstly, we must identify the corrupt person and then must be given corresponding punishment with mercy. Being a religious country we tend to show mercy and compassion. If we arrest the corrupt person we must not extend compassion to such person but must be meted severe punishment. They are the ones who will cause problems to our country. It is important to punish him severely in accordance with the law. If we can comply with the laws I am sure we can stop corruption. You must not leave this responsibility of eradicating corruption only to His Majesty or Anti Corruption Commission or Royal Audit Authority and the civil servants, but it falls equally to all the individuals of a country. We must make corruption free country so that we do not repent in future.

818 Public Consultation in Gasa, 13th May 2005.
Interest in anti-corruption effort is historical and an ongoing war against the individual morality and collective negligence. It is cross-systemic, cross temporal and cross-cultural phenomenon. It is a phenomenon, which is difficult to tackle and at the same time a problem we cannot afford to ignore.

His Majesty said:

The role of the individual is far more important in deciding whether Bhutan will be a country that embraces the values of integrity and honesty or one that accepts corruption and dishonesty. It is not enough to be honest. There is no substitute to living by a simple rule that ‘I will not be corrupt and I will not tolerate corruption in others.

The Constitution confers duty to acknowledge corruption as an evil and it is a fundamental duty of the people to uphold Justice and to act against Corruption. Corruption impedes socio-economic development and contributes to instability in future. If the virus of corruption afflicts public bodies like legislatures, governments and other institutions, it will herald the beginning of the end of civilized society. What is unfortunate is that this disease is a “self-invited” guest!

The Anti-Corruption Commission in the performance of its mandate should have sufficient and credible evidence to support any case of corruption. There is the need for the Commission to ensure that its integrity is maintained at all time. Every effort should be made to ensure that allegations of corruption are supported by provable evidential material before it is brought to the Court. It is also most important that the Commission should avoid creating inadvertently or otherwise, any impression or perception of any witch-hunting of individuals or class of individuals. Corruption and those guilty of corrupt practices jeopardize the nation’s very stability and progress. There should be fair investigation, prompt prosecution and just dispensation in accordance with law.

Punishment for corruption may gratify many law-abiding citizens and petrify those violating the laws. Coordination and cooperation among the law enforcement would deter the perpetrators with the legal bounds in the interest of justice. Justice is not an encouragement of crime to harvest the fruits of unlawful proceeds.

His Majesty Jigme Singye Wangchuck warned the nation in 1985:

Without restitution, the perpetrators will enjoy the fruits of corruption after serving penal sentences.

Further, the Commission should promote the effective management of public affairs and public property, fairness, responsibility, and equality before law. It should also safeguard integrity and foster a culture of intolerance for corruption.

His Majesty Jigme Khesar Namgyal Wangchuck said:

Giving and taking of bribery is common in most countries and this evil might become common in Bhutan also. I have heard that this kind of evil practice has crept into our system. I feel very sad and concerned to hear this, so it is important to ensure that such
kind of evil do not take hold in Bhutan. Therefore, the duty and responsibility to curb corruption is not only by the king alone or by the anti-corruption commission or by the government but it should be carried out equally by all the people of Bhutan. The main cause for country's problem and people’s unrest is the corrupt practices. People will rely less on the government if the government is not able to fulfill their aspirations. So, it is important to curb corruption as much as possible.  

Corruption is my greatest concern. Till now, whenever I got a chance to meet with the people, I talked about the threat and problems of corruption. In many other countries, the main problem and the greatest threat is corruption. In fact, corruption has become a global issue. Corruption has become the root cause of suffering of the people and has even destroyed governments. Not only in one or two countries but also in many countries, be it big or small, the major form of corruption is through taking and giving bribe. Once the bad system of corruption gets into the country, it is very difficult to get rid of it. Like any dangerous disease, if we do not take precaution, then it is very difficult to cure such disease.

Bhutanese people being compassionate by nature, tend to forgive others very easily. So, we should never forgive those who are guilty of giving or taking of bribery. Those guilty of corruption must be punished according to the law, without fear or favor, and unhampered by misplaced piety.

The corrupt practice is like a disease. Once it intrudes the country it is very hard to eradicate it. Therefore, it is very important to stop such practices in our country.

My greatest worry is that once Bhutan embraces Parliamentary democracy, corrupt practices of bribery may creep in. Today, the world over, corruption is one of the biggest problems and such practices have led to downfall of many countries. We do not need to take examples from other countries. I have heard that bribery in small way is already prevalent in our country. To hear this it is of grave concern and sadness to all of us. Therefore, it is the duty of all Bhutanese that we look at the problems faced by other countries and make sure such problems do not creep into our system.

The first and the foremost thing is to get hold of people who indulge in such corrupt practices. We have different place for sympathy. If such people are caught, then they should not be treated sympathetically. In fact, it is very important to deal such people with the laws very strictly. From the very beginning, we should neither accept bribe nor bribe others. So, it is very important for all of us to shoulder the responsibility to fully eradicate corrupt practices from our country later on. Our king has handed over our country in a very stable and in good form. And if we indulge in bribery and corrupt practices, then we will definitely regret later on.

These days in Bhutan, there have been rumors that a bad practice of giving and taking

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819 Public Consultation in Dagana, 5th Feb. 2006.
821 Public Consultation in Dagana, 5th Feb. 2006.
822 Public Consultation in Tsirang, 8th Feb. 2006.
bribes has started. When such bad things are heard, I feel very sad. When we are going through a time where many important works and duties have to be executed and if such bad practices, which would have a great negative impact on our country is adopted then we shall not be able to serve our country to our best. It is not only in our country, it thrives in other countries of the world. The major root cause of problem is corruption. Be it in a small country or in a big country, the cause of downfall of government and untold sufferings to the people are because of corruption. In order to protect our country from the evil of corruption, it is the duty of our people of 20 Dzongkhags to carefully work and serve the country.

Daniel Webster has said that the unvarying tendency of the mad strife of politics “is to belittle greatness and corrupt goodness”. The situation has become so bad that John Dewey’s words ring loud and clear “while saints are engaged in introspection, burly sinners run the world.

Article 27
Section 1

“There shall be an Anti-Corruption Commission, headed by a Chairperson and comprising two members, which shall be an independent authority and shall take necessary steps to prevent and combat corruption in the Kingdom.”

This section on Anti-Corruption is unique and does not feature in any Constitution of other countries. It is an exemplary provision, incorporated in the Constitution according to His Majesty’s vision of preventing and combating corruption in the Kingdom.

It seeks to realize the philosophy of Gross National Happiness, that is responsive to people’s aspirations and needs that enhance transparency, accountability of governance and political morality.

His Majesty decreed:

“With the rapid pace of economic development in our country, there have been changes in the thinking of the people with the influence of self-interest leading to corrupt practices taking place in both the Government and the private sector. If appropriate steps are not taken now to stop this trend, it will lead to very serious problems in the future, for both the Government and the people, in our country with a very small population. In this regard, it is the responsibility of every Bhutanese to act against corruption in our country.

“At a time when we are establishing parliamentary democracy in the country, it is very important to curb and root out corruption from the very beginning. Therefore, it is imperative to establish the Office of the Anti-Corruption Commission before the adoption of the Constitution and build a strong foundation for the Commission to effectively carry out its functions and responsibilities.

“The Chairperson of the Anti-Corruption Commission must discharge his or her
responsibilities with utmost loyalty and dedication to the Government and the people, unaffected by any consideration for those in positions of power and influence, showing full transparency and no discrimination whatsoever in the line of her work. The Anti-Corruption Commission must fulfill its responsibility of curbing and rooting out corruption through timely and effective checking on private utilization of public funds and persons engaged in unauthorized use of public resources. Towards this end, the Chairperson of the Anti-Corruption Commission is authorized to carry out investigations on any person in Bhutan, regardless of status or position, in the course of discharging her important responsibilities.”

This section establishes an independent Anti-Corruption Commission headed by a Chairperson and comprising two members. The Commission comprises three members for internal checks and balances.

Similar to the other constitutional bodies, the Anti-Corruption Commission is an independent body shielded from any political or other influences. Independence is the *sine qua non* to discharge its duty without fear or favour as subordination is servitude.

The Commission has full authority to act against all forms of corruption. This provision empowers the Commission to take necessary steps to prevent and combat corruption. Crime should be prevented and tackled.

Commenting on the Article, Justice J.S. Verma said:

“One particular office which impresses me is the Anti-corruption commission. So not only you should in your Constitution by making provision to that effect that corruption free governance is human rights, you also take steps to ensure that it is not merely lip service. And you give it a constitutional status to Anti-corruption commission.”

It is a great power with great responsibility that requires protection and support of the Constitution to furnish independently.

His Majesty said:

*The biggest challenges facing Bhutan at the moment are complacency and corruption. We cannot achieve anything without hard work and honesty. Corruption is indignity and disobedience to laws."

**Article 27**

**Section 2**

“The Chairperson and members of the Commission shall be appointed by the Druk Gyalpo from a list of names recommended jointly by the Prime Minister, the Chief Justice of Bhutan, the Speaker, the Chairperson of the National Council and the Leader of the Opposition Party.”

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828 Supra, n.134.
The Chairperson and members of the Commission are appointed by the Druk Gyalpo from a list of names recommended jointly by the Prime Minister, the Chief Justice of Bhutan, the Speaker and the Chairperson of the National Council and the Leader of the Opposition Party. This system ensures that the leader of the Ruling Party will not have exclusive and arbitrary power of making recommendation for appointments. Further, it ensures that the best person are selected and they would have the necessary independence from politics and the Government, as well as accountability to the people.

Article 27
Section 3

“The term of office of the Chairperson and members of the Commission shall be five years or until attaining the age of sixty-five years, whichever is earlier.”

The term of office of the Chairperson and the members of the Commission is five years or until attaining the age of sixty-five years, whichever is earlier. Many administrative and constitutional reforms advocate a tenure system to ensure stability for longer vision. The Constitution has the term of the Chairman and members of the Commission as five years or until attaining the age of sixty-five, whichever is earlier which augurs well for the system.

Article 27
Section 4

“The Commission shall submit an Annual Report on its policies and performances to the Druk Gyalpo, the Prime Minister and Parliament.”

The Anti-Corruption Commission has been given enormous powers under the Constitution to make Bhutan corruption free. However, it is equally important that it is also accountable and that there are proper checks and balances in order to ensure that the powers are not misused. Independence and authority are critical but equally critical are the countervailing checks and balances. The Anti-Corruption Commission must have the authority to be effective but it must be made accountable while it exercises the authority. Misuse of power and authority will be counter productive.

This section is one such check whereby, the Commission is required to submit an Annual Report on its policies and performances to the Druk Gyalpo, the Prime Minister and Parliament. The Report ensures performance, compliance and timely information to address the commission and omission of offences, misuse and non-feasance.

Article 27
Section 5

“Prosecution of individuals, parties or organizations on the basis of the findings of the Commission shall be undertaken expeditiously by the Office of the Attorney General for adjudication by the courts.”

The Commission is endowed with the responsibility of leading the fight against corruption. The Commission must by conducting timely inquiries and investigations, and through regular reporting mount a sustained campaign against corruption. No institution can combine in itself the powers of inspection, investigation and prosecution. Therefore, the Office of the Attorney
General has been mandated to prosecute cases to be adjudicated by the Courts. Division of labour creates efficiency and ensures free and fair system. Crimes must be investigated, prosecuted and convicted in accordance with the Rule of Law and justice.

Commenting on the Article, Justice J.S. Verma said:

“... duty of the Attorney General to vigorously pursue the prosecution recommended by the Anti-corruption commission... I said the constitutional obligation is imposed on the Attorney General, the highest law officer of the country to expedite vigorous prosecution. So corruption free governance is not only a human right, but how to ensure your main provisions. Corruption ultimately results in the violation of several basic human rights of the people.”

This section imposes a duty to set in motion an efficient and effective system ensuring complete investigation. It must have the highest ratio of investigations completed against cases reported, prosecuted and trials completed by the courts for protection of the highest level of safety of life and property. Timely action has the greatest impact. Concomitantly, the Anti-Corruption Commission must avoid prosecuting frivolous cases, which hampers routine judicial work.

**Article 27**

**Section 6**

“The Anti-Corruption Commission shall function in accordance with the Anti-Corruption Act.”

Every person or organization must function in accordance with the law. The National Assembly enacted the Anti-Corruption Act, which sets out, in detail, the duties and responsibilities of the Anti-Corruption Commission. The Commission should function in accordance with the Act. The Anti-Corruption Commission is under law derived from the Constitution and not under its power. It is not necessary to include every detail regarding the Anti-corruption Commission in the Constitution. Only the main and the important provisions are included in the Constitution. Other details and provisions should be incorporated in the Act. It can even lead to more problems and complexities to implement them. The main and the important provisions with principles, execution of the laws would be easier and better. Therefore, the details have to be covered by the concerned Acts.

**Article 28**

**Defence**

A standing army is a symbol of sovereignty. Pazap, a form of militia was a part of Bhutan’s heritage. In the past, Bhutan has successfully repelled successive invasions from Tibet and by the British from India. The Duar wars were fought valiantly led by Gongsa Jigme Namgyel himself. Since then Bhutan’s armed forces have heroically defended it’s sovereignty from time to time. The Army of Bhutan transitioned to a modern army from 1927 by sending two educated boys for training in India under the Second King.

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829 Supra, n.134.
Bhutan gained confidence and adulation from outside. In 2003, His Majesty Jigme Singye Wangchuck applied minimum military force to maximum tactical and strategic effect and conducted an immensely successful campaign in southern Bhutan when the security of the nation faced a grave danger. Military strategies and civilities of the Bhutanese Army were recorded and demonstrated.

His Majesty Jigme Khesar Namgyal Wangchuck commanded:

> Today, we look back and see that the army has served the nation at all times in our history. In times of peace, there have been threats to the lives and property of our people from floods, fires and other natural disasters. In such circumstances the people have looked towards the army and the armed forces have served the people. When there were threats to nation’s security and sovereignty - for example, in 2003, when we faced the greatest threat in our history - His Majesty Jigme Singye Wangchuck led our Armed Forces and defended our very sovereignty... This sacred duty to preserve our security and sovereignty falls on all of us as Bhutanese, yet it is most important that the armed forces above all must serve without failure ... To be a true soldier, one must live according to the following principle: I will live a life of honesty and integrity. Courage, loyalty and strength shall be my true weapons. I shall defend with my body - even my life - the security and sovereignty of my country and people. My one and only duty - my sacred duty - is to serve the Tsa-wa-sum. I am a soldier of the Pelden Drukpa.

The military exhibits higher and noble human spirit. Their unquestioning obedience, burning patriotism, fearless courage and sacrifice are as described by Napoleon Bonaparte as “the army is the true nobility of our country.” Military is not only for the defence of its people. It’s history and impact have shaped the nation and its social, cultural, political and geo-political spheres. Its indirect benefits are the logistics, leadership, management, technology, strategy, tactics and management to alleviate human sufferings and scientific, technological advancement and information revolution. The defense forces are the strengths of Bhutan to preserve and protect peace and the rule of law.

**Article 28**
**Section 1**

> “The Druk Gyalpo shall be the Supreme Commander in Chief of the Armed Forces and the Militia.”

It is normal and a necessary constitutional provision for the Head of State to be the Supreme Commander of the Armed Forces and Militia. As enshrined in the Constitution, the Armed Forces remain as an apolitical body. Therefore, apolitical institution cannot be under a political institution. Politicians can misuse their authority not against the enemy but against their political opposition.

**Article 28**
**Section 2**

> “The Royal Body Guards shall be responsible for the security of the Druk Gyalpo while

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the Royal Bhutan Army shall serve as a professional standing army and both forces shall form the core of Bhutan’s defence against security threats.”

This provision ensures the security of His Majesty by having a separate Royal Body Guard whilst the Royal Bhutan Army shall be a professional standing army to defend the territorial integrity and sovereignty of Bhutan. Both wings must be well equipped with modern military equipment and defend the Nation from many sinister security threats.

Article 28
Section 3

“The Royal Bhutan Police shall, as a trained uniform force under the Ministry of Home Affairs, be primarily responsible for maintaining law and order and prevention of crime, and shall also be considered an important part of the nation’s security force.”

The Royal Bhutan Police is a trained uniform force and are an important part of the nation’s security force. Police is primarily responsible for maintaining law and order and the prevention of crime. As the responsibility for the maintenance of law and order falls under the Ministry of Home Affairs, the Royal Bhutan Police is placed under the Ministry.832

The wheel of justice starts turning in the Kingdom of Bhutan with the Royal Bhutan Police. When police are seen to respect, uphold and defend rights, and protect the weak, it gains public confidence. Police contributes to peaceful resolution of conflicts and complaints, which contribute to a fair administration of Justice. It has an important role to play for peace, justice and tranquility of our society. Therefore, on September 1, 1965, His Late Majesty Jigme Dorji Wangchuck commissioned the police organization and named it “Royal Bhutan Police”. Thereafter, regular recruitment and training started at Dradul Makhang in Thimphu from 1966. The Dradul Makhang is now changed to Zhilen Namgyelling.

The Royal Bhutan Police must have professional pre and in-service training. With ongoing professional knowledge, technical competence, operational skill, the Police must continue the work to protect and preserve peace, tranquility and for a just and lasting peace among the citizens through honesty and hard work and be impartial, honest, fair, polite, fearless and imbued with spirit of service.

Article 28
Section 4

“Parliament may, by law, require compulsory militia service for adult citizens to strengthen the defence of the country.”

Bhutan is a small country requiring the reintroduction of the traditional Pazap system to defend the country. A standing army is expensive; militia is a substitute.

Therefore, His Majesty strategized:

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832 The presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee, 9th May 2008.
Today, Royal Bhutan Army has more than ten thousand soldiers. Henceforth, like traditional Pazap in the past, we will keep around twenty thousand militia forces after providing training. For example in 2003, when the country was under a threat, we faced lots of problem of inadequate soldiers. With ten thousand soldiers, it becomes very difficult, when there is threat of security. Now two years later, i.e. today, there is no threat to security. Ten thousand soldiers are in excess. Therefore, if we keep the number of army at same level, then the Government will face acute financial problems. If problem arises, we will be in difficult situation with the reduced army. During our time, we faced security threats twice. So, our country being small and landlocked, there is no need for a large standing army. We cannot win a war as commented by many, even the public, officials and foreigners. Such things are not at all true. Thus, it is very important and it is the duty of every one to maintain our independence and security of our nation in all times to come. So, this is the main purpose for stressing the need of militia force in our Constitution. 

Hereafter, we will reintroduce Pazaps as in the past. If possible, we could train as many as 20,000 people. When I say good I don’t mean to keep this 20,000 people on a full time duty. They will be trained for at least one month to one and a half month in combat and will be given arms. Thereafter, they will be sent back to their respective places. For those who are studying, they will have to complete 18 years and they will be trained in the winter during their holiday. For the business community and the civil servants, and the people from the villages they will be trained whenever, it is convenient. The military training to the people would be highly beneficial to the country.

For Pazap, Parliament may enact laws requiring compulsory militia service for adult citizens if deemed necessary for the defence of the nation. Peace, after all is a part of the product of strength.

**Article 28**

**Section 5**

“The State shall be responsible for the maintenance of the Armed Forces to safeguard the security of the country and the well-being of the nation.”

This provision enshrines the responsibility of the State to maintain the Armed Forces, so as to safeguard the security of the country and the well-being of the nation. This includes ensuring adequate resources required for the purpose.

His Majesty emphasized:

*If we did not have standing army in our country in 1990 and 2003, the country was in great danger. Even though Bhutan is a very small and landlocked country, sandwiched between the two giant nations, the responsibility to safeguard the security and sovereignty of their country lies in the hands of all citizens of Bhutan. Each and every citizen is required to take the responsibility of safeguarding the security of the country,*

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833Public Consultation in Punakha
both in words and action. Therefore, it is felt that some training is required to make people effective and efficient.835

Article 28
Section 6

“Bhutan shall not use military force against a foreign State except in self-defence or for the purpose of maintaining its security, territorial integrity and sovereignty.”

The Royal Bhutan Army is a small force. It would be unwise for Bhutan to participate and be a part to any war. Neutrality is a positive diplomatic policy and tenet of Buddhist principle. Chandrashekaran wrote:

“Under Defence in Article 28, the state solemnly states that it will not use military force against a foreign State except in self defence or for the purpose of maintaining its security, territorial integrity and sovereignty. It is a laudable declaration.”836

Article 29
The Attorney General

This Article pertains to the Attorney General and the responsibilities of the Attorney General’s office. In most common law jurisdictions, the Attorney General is the primary legal advisor to the government and as such has to render legal advice to the government. The term was originally used to refer to any person who holds a general power of attorney to represent a principal in all matters. In common law tradition, anyone who represents the State is an attorney. Although a government may designate some official as the permanent Attorney General, anyone who comes to represent the State in the same way may, in the past, be referred to as such, even if only for a particular case. Today, however, in most jurisdictions the term is largely reserved as a title of the permanently appointed Attorney General of the nation. Civil jurisdictions have similar offices, who is called procurator, advocates general or public attorney.

The predecessor of the Attorney General’s Office in Bhutan was the Office of Legal Affairs. The Office of the Attorney General has inherited the functions and duties of the Office of Legal Affairs. The Attorney General’s Office was set up in August 2006. It has to carry out the responsibilities arising within the domain and authority of the Government and such other legal matters as may be entrusted to the Office. This autonomous and professional office reaffirms the ideal of protection of the innocent and bringing the errant to Justice. Timely detection and credible prosecution will exalt the majesty of justice, prevent clandestine transgressions and terrify the wrong doers. People want timely action. Delay demonizes the system, frustrates the people and camouflages the evil. Delay cannot be condoned. The Attorney General should lead the Office to fulfill His Majesty’s vision and affirm the fundamental importance of the institution in sustaining the whole edifice of society so that right may be done to all people according to law. The Attorney General must represent the Prime Minister and represent him in legal domain so that the Prime Minister of Bhutan will obey the laws that his Parliament has enacted and ensure that the people are happy under the laws that as on the occasion of Lord Denning’s retirement in 1982, Young wrote:

“To anyone who believes the law should liberate, not enslave, he is a beacon.”

The Prime Minister should have a trust worthy person to investigate and litigate the case. For that reason, the Prime Minister can nominate the candidate without consulting any one for the post of the Attorney General. If a case is being filed against the Prime Minister or any Minister, and if the Attorney General is being independently appointed by others and not by the Prime Minister, then the Attorney General may deny going to the court to represent either the Prime Minister or any other Minister. However, the Attorney General Office must not represent the individual private case of the Prime Minister or other ministers. The Attorney General must represent the Government to ensure that justice prevails. Political vendetta is venomous and personal vengeance is not in public interest.

Article 29
Section 1

“There shall be an Office of the Attorney General, which shall be autonomous, to carry out the responsibilities within the domain and authority of the Government and such other legal matters as may be entrusted to the office.”

The Constitution mandates that there shall be an Attorney General of Bhutan to advise the Royal Government upon all legal matters and to prosecute and defend the cause of the State and to discharge other functions under the Constitution and the laws in the interest of justice. The Attorney General will be a political appointee of the Prime Minister. He will serve at the pleasure of the Prime Minister. However, the Office of the Attorney General is conferred an autonomous status to ensure professionalism and not be an agent to haunt a citizen with political vendetta and prosecute for personal bias.

Article 29
Section 2

“The Druk Gyalpo shall, by warrant under His hand and seal, appoint an eminent jurist as the Attorney General on the recommendation of the Prime Minister.”

It is a common practice for Attorney General to serve at the pleasure of Prime Minister. The Prime Minister is a popularly elected official, who is responsible and accountable to the Druk Gyalpo, the People and Parliament. The Attorney General has to play an important role in maintaining the rule of law and in advising the Government. Therefore, the Prime Minister must choose a person of his trust and confidence, who is capable of carrying out the Constitutional mandates impartially and without prejudice. He should be able to protect the provisions of the Constitution and fulfill the mandates of the people.

Article 29
Section 3

“The Attorney General as the chief legal officer shall be the legal advisor to and legal
The Attorney General is the Chief Legal Officer of the Government. As the Chief Legal Officer, the Attorney General is the guardian of the rule of law. The Attorney General must advise the Government to ensure that the rule of law is maintained and that Government actions are legally and constitutionally valid.

The Attorney General has broad responsibilities associated with Government legislation. These responsibilities can be categorized into two. First the Attorney General must ascertain that all legislative enactments are in accordance with the principles of natural justice and civil rights. Secondly, the Attorney General must advise on the constitutionality and legality of all legislation.

**Article 29**
**Section 4**

*“In the performance of his or her duties, the Attorney General shall have the right to appear before all courts.”*

The Attorney General as the legal representative of the Government shall have the right to appear before all courts in Bhutan, to enable him to represent and protect the interest of the Government.

**Article 29**
**Section 5**

*“The Attorney General shall have the power to institute, initiate, or withdraw any case in accordance with the law.”*

The Attorney General is constitutionally enabled to carry out the responsibilities of civil and criminal prosecutions and related investigations and proceeding independent of Cabinet influence or any partisan political pressures. The Attorney General’s responsibility for individual criminal prosecutions must be undertaken and seen to be undertaken on strictly objective and legal criteria, free of any political considerations. Whether to initiate or stay a criminal proceeding is not an issue of government policy. This responsibility has been characterized as a matter of the Attorney General acting as the Government’s Attorney. An important part of the Attorney General’s responsibility in conducting criminal prosecutions is to represent the public interest, which includes not only the community as a whole and the victim, but also the accused. The Attorney General has a distinct responsibility to the court to present all the credible evidences available including exculpatory evidence, in order to present the case fairly. This is a fundamental precept of criminal law. One of the Attorney General's responsibilities in fostering public respect for the rule of law is to assist the public in understanding the nature and limits of the prosecutorial function. The Attorney General has the power to institute or withdraw any case according to law, in the interest of the government and welfare of the people.

**Article 29**
**Section 6**

*“The Attorney General shall have the right to appear and express opinions on any legal question in Parliament.”*
Whenever necessary, the Attorney General has the right to appear and express his legal opinion in Parliament. However, he is not an officer of the Parliament.

**Article 29**  
**Section 7**

“The Attorney General shall submit an Annual Report to the Druk Gyalpo and to the Prime Minister.”

The Attorney General has to submit an Annual report to the Druk Gyalpo and to the Prime Minister. Such a report will induce accountability, responsibility and performance.

**Article 29**  
**Section 8**

“The Attorney General’s Office shall function in accordance with the Office of the Attorney General’s Act.”

The Attorney General must function in accordance with the Office of Attorney General’s Act. Every person, agency and institution must follow the law. No action should be unlawful and intrusive. Parliament has framed the office of the Attorney General Act of Bhutan, 2006.

**Article 30**  
**The Pay Commission**

The Pay Commission is important for ensuring uniformity and parity in the structure of the salaries, benefits and other emoluments among different organizations of the Government with due regard to the economy of the Kingdom. Without the Commission, vested interest may create disparity among the organizations. No organization is more important than the other. Biased action and entrenched interest in certain organizations may deteriorate the morale of the civil servants. Subsequently, Bhutan must have appropriate salary structure and system to promote high moral, ethical values, productivity and progress of administrative, technical and professional knowledge without mismatch of job and unemployment. Therefore, the Pay Commission was created with a view that disparities in pay and allowances will be removed and every person will be paid equally for equal work done.

A public organization or an individual should not enrich oneself from public and tax fund. It negates the basic objective of public service. To misuse one’s dominant position, office and authority is bankruptcy of morality, offensive to conscience and sterilization of spirituality. Hence, an independent pay commission was enshrined in the Constitution with a broad base and consultation at a macro-level. Parliament was not given the recommending power to change the salaries, benefits and other emoluments structure because the approving authority must not be a member of a recommending commission, as there will be a conflict of interest.

**Article 30**  
**Section 1**
“There shall be a Pay Commission, headed by a Chairperson, which shall be autonomous and shall be constituted, from time to time, on the recommendation of the Prime Minister.”

His Majesty the King will constitute the Commission on the recommendation of the Prime Minister. The membership must be broad based with clear expertise in the areas of contemporary concern. The Pay Commission is not a permanent body but rather will be convened as and when required upon the recommendation of the Prime Minister. It is constituted from time to time, so that it does not have institutional and personal interests. Self-interest is not national interest. Parliament should not be involved directly and participate in the areas of execution that may negate the independence and impartial views of the exalted House. Direct involvement and participation would deprive the principle of approving and processing authority.

**Article 30**
**Section 2**

“The Pay Commission shall recommend to the Government revisions in the structure of the salary, allowances, benefits, and other emoluments of the Royal Civil Service, the Judiciary, the members of Parliament and Local Governments, the holders and the members of constitutional offices and all other public servants with due regard to the economy of the Kingdom and other provisions of this Constitution.”

This provision empowers the Pay Commission to recommend revisions in the pay structure to promote greater uniformity among the different organizations of the government including the local government and the Dratshang and to eliminate political or personal influences on setting salary levels. It further entails the homogeneous and unvarying salary structure and other emoluments with regard to the economy of the Kingdom. Revision of pay structure is to eliminate anomalies, disparities and unjustified emoluments for the few privileged at the cost of many in the Kingdom.

**Article 30**
**Section 3**

“The recommendations of the Commission shall be implemented only on the approval of the Lhengye Zhungtshog and subject to such conditions and modifications as may be made by Parliament.”

It has been a consistent effort by the Government to introduce parity among the civil servants based on the principle of equal pay for equal work. Historically, powerful individuals had introduced additional benefits to their own organizations, which were viewed as favouritism and disparity. Thus, this provision was incorporated so that the overall interest and parity would be maintained in order that weak and insignificant organizations will get equal justice from the public funds.

According to this section, the Commission will submit recommendations to the Lhengye Zhungtshog. It means that the Lhengye Zhungtshog and Parliament cannot take *suo moto* action without being proposed by the Commission. No one can enrich oneself by exploiting the dominant position or taking advantage of the powerful institution. Public fund is not for private
interests.

Article 31
Holders of Constitutional Offices

Democracy has enduring values of preserving liberty, preventing tyranny and strengthening sovereignty. Election per se will not endure democratic values. Leibniz said that pluralism is same as liberal and representative democracy with several centres of power. Consequently, independent bodies are different centres of power. They are established to perform sensitive and critical functions to ensure an open political and administrative system. Professionals, who are independent of party politics should occupy constitutional offices.839

The Election Commission is responsible for all aspects of the conduct of elections, the Royal Civil Service Commission is to prevent improper favouritism in recruitment. The Auditor General is responsible for investigating whether Government expenditure is properly authorized and spent for achieving proper objectives and the Anti-Corruption Commission is responsible to detect and prevent fraud and misuse. Justices of the Supreme Court and the High Court are to ensure that justice is done and liberty and freedom is protected.

Constitutional posts are therefore, extremely important and owe their origin to the Constitution. Constitutional Office holders must be stalwarts against political or personal pressure and set an example by the virtue of their competence, wisdom and dedication. The constitutional office holders should not bend to the popular cry, drown themselves in whirlpool of vociferous voices and adjust themselves to the power scrambles. They have to be fair and function without fear or favour. They are eminent persons recommended by high level recommending authority with educational qualification, performance records, and moral and ethical standards. For these sterling qualities, they have to be tested and examined based on their track record.

His Majesty Jigme Khesar Namgyal Wangchuck informed:

*Holdes of the constitutional Offices have to shoulder huge responsibilities. These officers while serving the country should be able to do great deal of constructive work that would be very beneficial. On the other hand, if they do not discharge their functions properly, there is every risk of causing great harm to our country. Therefore, it is very important for us to select the best among the best candidates to be the holders of the constitutional Offices. These few persons can do things that can be of immense help or can do things, which can be of great harm to the country. They would be holding very important posts and as such we must have the best persons in these offices. In other countries, the Prime Minister selects the candidates for the Constitutional Offices. In case of regency, the regent selects the candidates for the Constitutional Offices. If we leave this power in the hands of one or two persons, we cannot say what kind of candidates they would select for such a sacred post. They may select the candidate who is known to them or they may select the candidate who is not capable or they may select their relatives, we would never know. Therefore, in our case five persons will sit and discuss and then select the best candidate. Five members consist of the Prime Minister, the Chief Justice of Bhutan, the Speaker, the Opposition Party Leader and the Chairperson of National Council. They will*  

sit and discuss and unanimously select the best-suited person from the list of candidates. It is a very good system and it will immensely benefit our country. One or two persons cannot remove the Constitutional Office Holders. The Prime Minister cannot remove them. It means that even His Majesty the Druk Gyalpo has no power to remove them. It is clearly mentioned in our Draft Constitution that only Parliament can impeach them. The system of impeachment is introduced in the Constitution. When we say that only Parliament has the power to impeach the constitutional Office Holders, it means we are giving the power to our people. The power to judge or check the functions of these constitutional office holders is given to the members of Parliament. If we could function in accordance with this noble system, then it would instead of harming our country will always benefit our country.

Inclusion of the leader of the Opposition Leader in the Committee will facilitate discussion and selection of the best of the best as the holders of constitutional posts. In some countries constitutional posts are theoretically given independent power and full responsibility to carry out their duties but in practice it normally does not happen. This will not occur here in our country, as our system is much better than that of other countries.

We have incorporated the appointment of constitutional post holders by these five persons deliberately. It would not be possible to appoint a person whom they like. If the power lies only with one person to appoint, then there would be problems of choosing the ones they like. The holders of Constitutional Offices are very important and they have the duty and the responsibility to be the guardian of our Constitution. They should be able to work independently and impartially. Our provision on the appointment of the constitutional post holder is different from other countries but at the same time, it is a strong provision.

Constitutional office holders will be independent of party politics.

Justice Patrick Devlin wrote:

‘The reputation for independence and impartiality is a national asset of such richness that one Government after another tries to plunder it.’

Constitutional office holders must be faithful to the oath to the Constitution. A Lawless constitutional office is no different from tyranny of a Government. They are the bastion of hope and refuge of democracy for happiness under the Constitution.

Article 31
Section 1(a)

“No person shall hold a constitutional office or post under this Constitution unless the person is:

(a) A natural born citizen of Bhutan;” and

841 Public Consultation in Haa, 2nd Nov. 2005.
Loyalty and patriotism are indispensable ingredients of citizenship. Bhutan has suffered from disloyal acts by people who were not natural born. Taking into account past history and similar practices in other countries, the Founding Fathers have acted in the best interest of the nation by imposing this restriction.

**Article 31**  
**Section 1(b)**

“**(b) Not married to a person who is not a citizen of Bhutan.”**

Citizenship is the basic right of a person.

His Majesty Jigme Singye Wangchuck said:

“the basic purpose of the Constitution must be to ensure the sovereignty and security of the nation.”

To ensure security and sovereignty, this Article mandates the holders of the Constitutional Offices to be natural born citizens of Bhutan. Ethnic and religious roots play an important role. Therefore, a person holding a Constitutional Office or post must not be a person married to a person, who is not a citizen of Bhutan.

A person is disqualified from holding an elective office under this Constitution if he is married to a foreigner, and if he marries during the tenure of his elective office he will have to resign.

**Article 31**  
**Section 2(a) to 2(f)**

“The holders of constitutional offices under this Constitution shall be:

(a) The Chief Justice of Bhutan and the Drangpons of the Supreme Court;  
(b) The Chief Justice and the Drangpons of the High Court;  
(c) The Chief Election Commissioner;  
(d) The Auditor General;  
(e) The Chairperson of the Royal Civil Service Commission; and  
(f) The Chairperson of the Anti-Corruption Commission.”

Constitutional Offices is one of the horizontal checks and balances to ensure compliance of the Constitution to solemnly pledge to secure the blessings of liberty, ensure justice and tranquility as enshrined in the Preamble of the Constitution. It is very important to have a clear provision to avoid confusion and uncertainty. The Constitution specifically enumerates the holders of Constitutional Offices so that none can change according to the changing mood of the authorities. Authorities should neither increase the post holders to accommodate their interest nor decrease them to marginalize them.

**Article 31**
Section 3

“The holders of the constitutional offices shall have no political affiliation.”

It is imperative that the holders of constitutional offices have no political affiliation so that their reports and actions are impartial and objective. Impartiality and being just and fair have moral influence and legal standing. It is the constitutional office holders’ moral, ethical and legal stature that must detract the wrongdoers. They are the articles of faith and confidence to the fractured societies and ideological fissures.

Article 31
Section 4

“The holders of the constitutional offices shall not be eligible for re-appointment.”

This provision states that the holders of the Constitutional Offices will not be eligible for re-appointment. However, the Commission members may be reappointed or be elevated to the post of Chairperson. Security of tenure ensures independence. Re-appointment of holders of the constitutional offices is allurement and bribery. Moreover, the possibility of re-appointment could drive a constitutional office holder to take actions clouded by hope of furthering their chances for re-appointment. It will weaken and erode personal independence. This could compromise their independence, sacrifice their integrity and defeat their objectivity.

His Majesty Jigme Singye Wangchuck explained during the Public Consultation meetings that the tenure of Constitutional posts is limited to five-year terms and they will not be eligible for re-appointment. The holders of Constitutional posts would have to resign on the completion of their term of five years or when they reached the age of 65 years, whichever is earlier. However, in the case of the Supreme Court and the High Court Drangpons, the term is fixed for ten years or sixty-five/sixty years, whichever is earlier.

Article 31
Section 5

“Parliament may, by law, prescribe necessary educational and other qualifications for the holders of constitutional offices.”

In preparation for the adoption of the Constitution and the installation of Democratic Constitutional Monarchy, the National Assembly has enacted specific laws and regulations pertaining to the constitutional offices and necessary qualifications. Likewise, Parliament may make laws prescribing the necessary educational and other qualifications for the holders of constitutional offices. Enactment of laws is within Parliament’s domain, and laws should reflect the popular opinion of the people, ensure justice and tranquility and enhance happiness and well-being of the people for all time.

Article 31
Section 6
“The holders of constitutional offices shall take an Oath or Affirmation of Office, as provided for in the Third Schedule of this Constitution, before assuming office.”

Taking an Oath or Affirmation is important, when one assumes a responsible public office as it is a legal means to pledge one’s commitment to the Constitution and it is the fundamental importance in sustaining the whole edifice of democratic Bhutan. Given the high posts that these persons will occupy, an Oath of Office is a pledge and guarantee that right may be done for the good of all people according to law.

Article 31
Section 7

“The salary, tenure, discipline and other conditions of service of the holders of constitutional offices shall be as prescribed by law, provided that the salary and benefits of the holders of constitutional offices shall not be varied to their disadvantage after appointment.”

The important measure to protect the personal independence of constitutional office holders is the guarantee of tenure in office. Tenure insulates them from the apprehension of political reaction to their decisions. Consequently, fixed tenure has been guaranteed until a mandatory retirement age or the expiry of the term of office.

They must be disciplined to carry out their heavy responsibilities and should gain confidence with their moral authority. Violation of discipline would be subjected to law as Justice Miller said in *United States v. Lee*, that no man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in the system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.

Financial autonomy is essential to the independence of the constitutional office holders. The salaries and other conditions of their service should enable them to have a decent income, proportionate with the dignity of their office and adequate to meet their financial needs, so that their immediate wants are not contradictory to their independence. No law of the land should allow any authority to reduce or withhold salary and benefits to the disadvantage of the constitutional office holders.

No politician and government should harass and intimidate the holders of constitutional offices to subvert the constitutional functions and responsibilities. Thus, the Constitution provides security and independence to check the wrong and prevent their results for the security and safety of the people and nation. His Majesty Jigme Khesar Namgyel Wangchuck said that Bhutan must lay a firm foundation for democracy and strengthen the capabilities of our constitutional bodies while ensuring good governance.844

Article 32
Impeachment

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844 Royal address by His Majesty to the Judges and Lawyers during the 21st Annual Judicial Conference at the Supreme Court, 3rd July 2014.
Bhutan established a vibrant Constitution to ensure the freedom and rights of the Bhutanese people based on natural justice and the rule of law. His Majesty Jigme Singye Wangchuck emphasized the need for a Constitution is to establish a dynamic system of governance, which would uphold the true principles of democracy. To translate this vision, besides the empowerment of people through political process, the holders of the constitutional offices have been given vast powers under the Constitution. They are free in their thought and can be independent in their judgment to execute the constitutional mandates. Constitutional offices are the pinnacles of public trust, accountability and honour. However, checks and balances is system required. The holders of constitutional offices have to be accountable and should not abuse their powers. The constitutional offices are offices of trust and honour. Therefore, if the holders of constitutional offices abrogate their oath and transgress the laws, Parliament has a responsibility to defend the Constitution and the rule of law. Impeachment is an essential security for the good behavior of the holders of constitutional offices and punitive action for misdeeds. The Constitution has vested the power of impeachment in Parliament.

His Majesty said that the constitutional office holders being independent should carry out their duties well. We cannot predict how individuals will behave once the authority is given to them. Therefore, if they contravene the Constitution and the Oath, they should be impeached by Parliament as only Parliament has the authority to do so. Impeachment of constitutional office holder requires two-thirds of majority of Parliament.

His Majesty said:

*If the holders of the constitutional offices either resort to criminal activities or in conflicts with any laws, not in accordance with the powers and privileges they are mandated, then they would be impeached from the offices by not less than two-thirds of the total number of members of Parliament. Parliament has the sole power to impeach the holders of the constitutional offices, and no other persons including the King and the Prime Minister. If there are no such restraints imposed on those holders of the constitutional offices, they would not function well. Therefore, it is felt that such provisions should be in place to maintain check and balance. The holders of the constitutional offices should be given adequate powers and responsibilities to enable them to function independently without fear or favor. If they do not have powers, but only responsibilities then they would not serve the country well. The holders of the constitutional offices are answerable only to the Parliament, which has the sole power to impeach them on proven grounds of misbehavior or criminal acts*.  

The constitutional offices are very important and conscience keepers of morality, legality and constitutionality public standards. Therefore, they should not misuse their powers.

Errors may occur and the mistake of selection or appointment is not a license. Therefore, the Constitution has provided remedies. Buddha said:

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845 Chairman of the Constitution Drafting Committee interview to the Kuensel dated 19th Oct. 2002.
“Power abused is not all gain, Power is often folly’s bane”\textsuperscript{848}.

Vote of confidence, no confidence motion and impeachment are necessary for self-restraint. It is expedient to remember what Thomas Fuller has said:

“Be ye never so high, the law is above you.”\textsuperscript{849}

Bhutan established a vibrant Constitution to ensure the freedom and rights of the Bhutanese people based on natural justice and the rule of law. His Majesty Jigme Singye Wangchuck emphasized that the need for a Constitution is to establish a dynamic system of governance, which would uphold the true principles of democracy.\textsuperscript{850} To translate this vision, besides the empowerment of people through political process, the holders of the constitutional offices have been given vast powers under the Constitution. They are free in their thought and can be independent in their judgment to execute the constitutional mandates. At the same time, they have to bear in mind that they are accountable and subject to the might of the impeachment power.

\textbf{Article 32}

\textbf{Section 1}

\textit{“The holders of constitutional offices shall be removed only by way of impeachment by Parliament.”}

Impeachment is the power of a legislative body over an individual who cannot be removed in any other way. His Majesty Jigme Singye Wangchuck said that the holders of constitutional offices have the duty and the responsibility to be the protector of Constitution. They should be able to work independently and impartially.

His Majesty Jigme Singye Wangchuck said:

\begin{quote}
\textit{The constitutional office holders being independent should carry out their duties well. We cannot predict how individuals will behave once the authority is given to them. Therefore, if they contravene the Constitution and the oath, they should be impeached by Parliament as only Parliament has the authority to do so. Impeachment of constitutional office holder requires two-thirds of majority of Parliament.}\textsuperscript{851}
\end{quote}

The holders of constitutional offices should not be removed easily or otherwise they will not be able to perform their duties independently. The office is public, not private, and when private considerations move the incumbent, they lack legitimacy. For this reason, the power to remove them has been vested exclusively in the members of Parliament. Parliament has the sole power to impeach the holders of Constitutional Offices.

In cases the constitutional post holders do not perform their duties properly or anything against the law, should they be investigated and eventually removed from their posts. Parliament will have the sole authority to impeach them with support of two-third majority.\textsuperscript{852}

\textsuperscript{848} H.T Francis, EJ Thomas, Jataka Tales(eds).p.249.
\textsuperscript{849} 17th Century English Writer cited by Lord Denning in Gouriet v Union of Post Office Workers (1978).
\textsuperscript{850} Kuensel dated 30\textsuperscript{th} November 2001.
\textsuperscript{851} Public Consultation in Punakha, 27\textsuperscript{th} Nov. 2005.
\textsuperscript{852} Public Consultation in Thimphu, 26\textsuperscript{th} Oct. 2005.
His Majesty Jigme Khesar Namgyal Wangchuck said:

The system of impeachment is introduced in the Constitution. When we say that only Parliament has the power to impeach the Constitutional Office Holders, it means that we are giving the power to our people. The power to judge or check the functions of these Constitutional Office Holders is given to the members of Parliament. If we could function in accordance with this noble system then instead of harming our country, it would always benefit our country.\textsuperscript{853}

**Article 32**

**Section 2**

“A holder of constitutional office shall be liable to be impeached only on the ground of incapacity, incompetency or serious misconduct with the concurrence of not less than two-thirds of the total number of members of Parliament.”

If the holders of the Constitutional Offices either resort to criminal activities or are in conflict with any law, or not in accordance with the powers and privileges that they are mandated, then they should be impeached from the office by not less than two-thirds of the total number of members of Parliament. If there are no such restraints imposed in case of removal of the Constitutional Office holders, they will not be able to function well. Therefore, it is felt that such provisions should be in place to maintain checks and balances.

The term “misconduct” may be vague and imprecise. And it must be so. Parliament may respond to redress the situation. It would include violation of the Constitutional duties or commission of offences of felony.

President Gerald Ford of the USA said:

“An impeachable offense is whatever a majority of the House of Representatives considers it to be.”\textsuperscript{854}

Nonetheless, a holder of constitutional office shall be liable to be impeached only with the concurrence of not less than two-thirds of the total number of members of Parliament.

**Article 32**

**Section 3**

“The Chief Justice of Bhutan shall preside over all impeachment proceedings and, in the case of the impeachment of the Chief Justice of Bhutan, the senior most Drangpon of the Supreme Court shall preside.”

Impeachment of the constitutional office holder shall be carried out by Parliament and the Chief Justice of Bhutan should preside over such impeachment proceeding. Many people objected to the Chief Justice of Bhutan presiding over the impeachment motion. However, the Chief Justice

\textsuperscript{853} Public Consultation in Bumthang, 21\textsuperscript{st} May 2006.

\textsuperscript{854} Thomas Lundmark, Power and Rights in US Constitutional Law, 2008, p. 67.
of Bhutan is by profession a neutral person, free of political biasness and is conversant with the principles of natural justice. Parties in the House must have faith in him. The Chief Justice of Bhutan, being a legal luminary, knows about the procedural justice, natural justice, adjudication and fairness. It would add prestige and credibility to preside over the proceedings of the impeachment. It is a universal practice for the Chief Justice of a country to preside over all impeachment proceedings.  

In the case of impeachment of the Chief Justice of Bhutan, the senior most Drangpon of the Supreme Court shall preside, contrary to the suggestion that the Speaker should preside over it as the Drangpon of the Supreme Court presiding would result in the conflict of interest. It was noted that the senior most Drangpon of the Supreme Court should preside over the impeachment proceedings as he is a neutral person without bias and someone who is conversant with the principles of natural justice, adjudication process and fairness. It is a universal practice for the senior most Drangpon of the Supreme Court of a country to preside over all impeachment proceedings in the absence of the Chief Justice. Moreover, the Speaker is elected on party ticket and it is a cardinal principle not to combine prosecution, defence and judging.

Article 32  
Section 4  

“The Attorney General shall submit a written report on the Articles of impeachment to the Speaker.”

The Attorney General shall submit a written report on the Articles of impeachment after investigation and inquiry. The report will be submitted to the Speaker. Parliament cannot conduct proceedings of suo moto. It must follow the process of receiving a written report on the Articles of impeachment. Procedural justice is necessary to ensure and secure rights.

Article 32  
Section 5  

“The procedure for impeachment, incorporating the principles of natural justice, shall be as laid down by law made by Parliament”.

Impeachment involves protecting public interest and incorporating a public law element. It is a process initiated by the government, or some branch thereof, against a person who may have harmed the government or the community.

855 Chairman of the Drafting Committee’s explanation during public Consultation in Samtse, 27th March 2006.
856 During the presentation of the Draft Constitution to Parliament by the Chairman of the Constitution Drafting Committee on 9th May 2008, the Chairman explained that for the impeachment of the Chief Justice, on the behalf of the government, Prime Minister must give order. The Attorney General is appointed by Prime Minister and the Speaker is from a political party, therefore, if they are to preside over the impeachment of the Chief Justice, it violates the Natural Justice. Therefore, Speaker may not be appropriate. Thirdly, it is very important to carry out the proceedings in accordance with the procedures. Drangpon is aware of the system and the court procedures and for this reason, a senior most Drangpon is appropriate. It is true that Chief Justice of Bhutan is higher-ranking to the senior most Drangpon, but all the decision is not given by the Drangpon and there is system in the world and we also have in Bhutan. All the people think that as he is the Chief Justice, all the Drangpon will take his side but it is not true, in the proceeding, it will depend upon majority of the members of the Parliament. Drangpon is aware of laws, he is familiar with the procedures of the proceedings and after selection only he is in the Supreme Court. Therefore, a senior Drangpon is very suitable.
It is the responsibility of Parliament to enact the procedural law for impeachment based on natural justice. The law made by Parliament must incorporate detailed provisions regarding impeachment proceedings to ensure fairness and sustainability.

**Article 33**

**Emergency**

The exercise of emergency powers had long been a concern of the classical political theorists for common good and greatest interests. This concept of common good originated in the writings of Plato, Aristotle, Cicero, Augustine and Thomas Aquinas. The contemporary ethicist, John Rawls defined the common good as:

>“Certain general conditions that are ... equally to everyone’s advantage.”<sup>857</sup>

English philosopher John Locke argued for a pre-eminent exponent of a government of laws and not of men. However, occasions may arise when the executive must exert a broad discretion in meeting special exigencies or “emergencies” for which the legislative power provided no relief or existing laws granted no necessary remedy. He did not regard this prerogative as limited to wartime, or even to situations of great urgency. It was sufficient if the “public good” would be advanced by its exercise. An emergency is an unforeseen combination of circumstances or the resulting state that calls for immediate action.

Corwin indicated emergency as:

>“Connotes the existence of conditions suddenly intensifying the degree of existing danger to life or well-being beyond that which is accepted as normal.”<sup>858</sup>

Declaration of emergency needs to be made in the rarest of rare cases and with a great deal of prudence and rectitude. It requires the use of discretion with wisdom. Proclamation of emergency gives extensive powers to the Government. Many ruling parties may misuse this power for political gains and to punish the oppositions. To prevent such situations and misuse of power, His Majesty incorporated an elaborate procedure and conferred authority to Parliament to exercise the power with great deal of caution. Further, the Prime Minister will have to submit a written advice to His Majesty who will examine the proclamation for the Royal Assent. The declaration cannot be for more than 21 days. After 21 days, Parliament has the authority to extend and if the motion to extend emergency is defeated, emergency will eclipse automatically. Grave circumstances may compel use of the emergency power but it is not an absolute power. Necessary safeguard for liberty, freedom and fundamental rights are indispensable.<sup>859</sup>

Proclamation of emergency is unfortunate, but at times the nation can be hostage of unseen exigencies and be subject to any individual avarice. Under extraordinary and extreme situations, extraordinary measures are warranted. Extreme situations warrant extreme measures. Sovereignty, security and, law and order are necessary for peace, prosperity and progress.  

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859 Chairman of the Drafting Committee’s explanation during public Consultation in Gasa (13th May 2005), Zhemgang (30th April 2006), Bumthang (21st May 2006.), and Trongsa (24th May 2006).
government should be impotent as a weak government cannot control law and order; and terrorism.

Alfred North Whitehead said:

_The art of progress is to preserve order amid change, and to preserve change amid order._


**Article 33**

**Section 1**

_The Druk Gyalpo may, on the written advice of the Prime Minister, proclaim an emergency if the sovereignty, security, and territorial integrity of Bhutan or any part thereof is threatened by an act of external aggression or armed rebellion._

An emergency could be proclaimed when the country is heavily affected by natural disasters or political crisis affecting the security and sovereignty of the nation. The provisions defining the circumstances for declaring an emergency are very clear. The Constitution incorporates three types of emergencies, which are national, territorial and financial.

His Majesty Jigme Singye Wangchuck said:

_An emergency would be proclaimed when the country is affected tremendously by natural disasters like earthquake, floods, epidemics, political crisis affecting security and sovereignty of the nation. The provisions are very clear and we have included these provisions because if such situations arise in future we can implement these provisions..._

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Emergency measures derogating from this Constitution that are taken during a public emergency or calamity, which threatens or affects the nation as a whole, are only permissible to the extent strictly required by the exigencies of the situation. This provision refers exclusively to emergencies whereby the sovereignty, security, and territorial integrity of Bhutan or any part thereof are threatened by an act of external aggression or internal armed rebellion. This measure has to be used as survival of Bhutan is pre- eminent.

When countries face external aggression, internal disputes or problems pertaining to natural calamities, emergency is generally declared. It is declared to improve the situation and restore law and order. Sovereignty and public safety supersede any interest (*Salus republicae est suprema lex*). The safety of the State is the supreme law. Safety of the state is restricted to the sovereignty, security and territorial integrity of Bhutan or any part thereof threatened by external threat or armed rebellion.

A pre-condition of such declaration is the written advice of the Prime Minister. Thus, a written recommendation is required. Thereafter, His Majesty may proclaim an emergency. The word “may” denotes that His Majesty has the ultimate discretion to decide whether to declare emergency even if the Prime Minister advises to do so. It is the prerogative of His Majesty to

judge exigencies of the situations and take a decision. This provision is incorporated to maintain law and order, and to prevent misuse and abuse of power for political and personal interests.

Article 33
Section 2

“The Druk Gyalpo may, on the written advice of the Prime Minister, proclaim that a public emergency or calamity, which threatens or affects the nation as a whole or part thereof, exists in which case the Government may take measures to the extent strictly required by the exigencies of the situation.”

This provision refers to a public emergency or calamity, which threatens or affects the nation as a whole or part thereof. Similar to section 1 of this Article, section 2 delineates the stages of review prior to the declaration of a state of emergency. The Druk Gyalpo is an approving authority to proclaim a public emergency. His Majesty may accept it on the written advice of the Prime Minister to proclaim that a public emergency exists. This two-step process helps to avoid an imprudent or rash decision or unlawful invocation of a state of emergency. The approving authority will have time to reflect on the recommendation impartially, objectively and independently. This is for the benefit of the people as well as to prevent abuse of people through force or tyranny.

His Majesty Jigme Singye Wangchuck said:

If there is no serious threat in our country, the Government will not declare an emergency. Even if so declared, our Parliament has to approve it within 21 days.863

Article 33
Section 3

“The Proclamation of Emergency under section 1 or 2 of this Article shall remain in force for a period of not more than twenty-one days from the date of the Proclamation unless Parliament, in a joint sitting, resolves by not less than two-thirds of the total number of members of Parliament to extend it within the said period.”

This section is to prevent misuse and abuse of power for political and personal interests. It mandates that the emergency shall not remain in force for a period of more than twenty-one days until and unless it is extended through a resolution of not less than two-thirds of the total number of members of Parliament in a joint sitting. The decision of the joint sitting to extend the period has to be taken within twenty-one days. With the inbuilt safety measures, the power to proclaim emergency may not be misused. To maintain law and order, Bhutan has and must have power to deal with the situation. It is a great power. Therefore, it must be used prudently and sparingly. This power is not to silence the critics and gratify personal interest.

His Majesty Jigme Singye Wangchuck said:

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An emergency would not be proclaimed in our country unless there is a great national crisis affecting the country. Even if such emergency is proclaimed in the country it would be in force not more than twenty-one days from the date of the proclamation.864

Article 33
Section 4

“Not less than one-fourth of the total number of members of the National Assembly may move a resolution to disapprove such a Proclamation of Emergency or disapprove the continuance in force of such Proclamation by writing to the Druk Gyalpo if the House is not in session and to the Speaker if the House is in session.”

This provision is an additional safeguard against the inappropriate invocation of the proclamation of emergency. One-fourth of the total members of the National Assembly may move a resolution to disapprove such a proclamation by writing to the Druk Gyalpo if the House is not in session and to the Speaker if the House is in session. None can misuse the lawful authority to curtail the security and liberty of the people and the sovereignty of the nation bestowed by the Constitution. The watchful eyes of Parliamentarians and powerful public opinion and public sentiment are self-restraints as Gandhiji said:

“Public opinion alone can keep a society pure and healthy”865.

Moreover, democracy is the rule of public opinion. This is a healthy provision to re-think on the declaration.

Article 33
Section 5

“A joint sitting shall be held at the earliest date within twenty-one days from the day on which the motion is received by the Speaker or, as the case may be, by the Druk Gyalpo, failing which the Proclamation of Emergency shall lapse.”

This provision requires a timely response to the call of the representatives for a proclamation of emergency. Failure to act within the designated twenty-one days time frame automatically extinguishes the motion for the Proclamation of Emergency. This provision requires a timely response to the call of the representatives and spell out an automatic demise of the Proclamation of Emergency for inaction and nonchalance to summon the deliberative Parliament. Proclamation of emergency is an executive action. Validity and justification of emergency is the sole authority of Parliament. Any extension without approval from Parliament will cease to have effect after a specific date, unless further legislative action is taken to extend the law. This sunset section provides natural death and effect thereof.

Article 33
Section 6

“Where a Proclamation of Emergency is in operation, the Government shall be
empowered to give appropriate directions to the concerned Local Government.”

During a state of emergency, the Government can give only appropriate directions to local governments, which must reflect a measured, constitutionally acceptable response to the emergency at hand.

Justice Davis declared:

“The Constitution...is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men at all times, and under all circumstances.”

**Article 33**

**Section 7**

“Where a Proclamation of Emergency is in operation, the enforcement of the rights conferred by this Constitution under sections 2, 3, 5, 12 and 19 of Article 7 may be suspended.”

When a proclamation of emergency is in operation, the rights conferred by the Constitution under section 2, 3, 5, 12 and 19 of Article 7 may be suspended. However, unlike many other constitutions, the right to approach courts under section 23 of Article 7 is not suspended or affected by emergency provisions. In the U.S Constitution, section 9 of Article 1 provides:

“The privileges of the writ of habeas corpus shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it”.

In the United Kingdom, the Executive has no power to suspend the writ of habeas corpus, but Parliament can take away this right directly or authorize the Executive to do so whenever necessary. Under the Republican Weimar Constitution of Germany, the President of the Reich could, in the interest of public security and order, abrogate the fundamental rights secured under the Constitution. In Ireland, during the existence of a state of war or armed rebellion the personal rights of citizens secured under the Constitution cannot be construed as to prohibit, control or interfere with any act of the defence forces. Under the Indian Constitution, the right to approach courts is suspended during emergency. Under the Constitution of Bhutan, only those rights enumerated under this section will require to be suspended. The fundamental right to approach the courts for the enforcement of fundamental rights is guaranteed even during emergency. Access to justice is the fundamental constitutional rights and the ouster jurisdiction of a court is a flagrant violation of embedded values of the Constitution. Silence of a court is a death knell of a nation.

**Article 33**

**Section 8**

“That Druk Gyalpo may, on the written advice of the Prime Minister, proclaim a Financial Emergency if His Majesty is satisfied that a situation has arisen whereby the

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financial stability or credit of Bhutan is threatened. Such a Proclamation shall be laid before each House within a period of twenty-one days after such Proclamation unless Parliament, in a joint sitting, resolves by not less than two-thirds of the total number of members of Parliament to extend it within the said period.”

This Article defines and provides for a financial emergency as in the case of proclamation of public emergency. A financial emergency may be declared by His Majesty on the written advice of the Prime Minister. His Majesty, as the constitutional head must be satisfied that the circumstance warrants proclamation of emergency.

This section provides a separate recommendation, review and approval of authorities for check and balance. Calvin Coolidge said:

Calvin Coolidge said:

“Governments are necessarily continuing concerns. They have to keep going in good times and in bad. They therefore need a wide margin of safety.”

Further, the Proclamation shall be laid before each House within a period of twenty-one days unless Parliament, in a joint sitting, resolves by not less than two-thirds of the total number of members of Parliament to extend it within the said period.

His Majesty Jigme Singye Wangchuck said:

If there is no serious threat in our country, the Government will not declare an emergency. Even if so declared, our Parliament has to approve it within 21 days.

Article 33
Section 9

“The Constitution shall not be amended during a state of emergency.”

This section is the very essence of Article 33 as it protects the sanctity of the Constitution. While section 1 of Article 35 allows Parliament to amend the provisions of the Constitution, this section does not empower Parliament to amend the Constitution during a state of Emergency. Hence, this provision is very important to ensure the survival of any part of the Constitution during a state of emergency.

Justice J.S. Verma said:

“Article 33 of Bhutan’s Constitution provides that the Constitution shall not be amended during emergency, and the constitutional remedy for enforcement of the non-derogable civil liberties cannot be suspended. Section 17 of Article 7 guarantees protection against

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torture etc... Section 18 of Article 7 abolishes the capital punishment. These are progressive guarantees of inalienable human rights.  

Liberties and freedoms guaranteed by the Constitution cannot be eliminated or curbed due to unpredictable exigencies. It is an innovative provision and an attempt to immortalize rights, liberty and freedom with corresponding duties to the society and the nation.

Dr. S. Chandrasekharan said:

“There are provisions for a referendum which is an innovation and for declaring emergencies by the King with a welcome feature that the Constitution shall not be amended during the state of emergency”.  

Voice of the Constitution is never mute and the rights of the people have to be preserved.

**Article 34**  
**National Referendum**

Referendum is grass root democracy or direct democracy. It is a practical manifestation of popular sovereignty. Rousseau mentioned general-will is through direct democracy. A referendum is a decision taken by the people (the electorate) rather than Parliament on a particular issue. However, it is neither evasion nor shirking of responsibility from taking decisions that are unpopular but for the national interest.

The term ‘referendum’ has its origin in mid-nineteenth century and is derived from the Latin term refero, and has the meaning ‘bringing back,’ that is, bringing the question back to the people. The Oxford dictionary defines referendum as ‘a general vote by the electorate on a single political question which has been referred to them for a direct decision.’

According to the Black’s Law Dictionary, referendum is the process of referring state legislative act, a state constitutional amendment, or an important public issue to the people for final approval by popular vote. It is a direct vote in which an entire electorate is asked to vote on a particular proposal to either accept or reject that proposal.

Democratization in Bhutan has emanated from the Golden Throne. Democracy in Bhutan encompasses both direct and indirect democracy. Direct democracy was instituted through people’s referendum and indirect democracy through parliamentary democracy.

This provision for a national referendum further confirms His Majesty the Druk Gyalpo’s concern to confer on the people absolute power to enable them to play a direct role in determining issues of state policy.

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869 Supra.n.134.  
870 South Asia Analysis Group.  
871 The term “general will” seemingly implies that there is an interest common to all persons involved. But even if this were true, running a direct democracy on this principle would be impractical. But Rousseau, after building a heady image of united purpose and brotherhood among the masses, finally admits the impracticality later in the essay and provides a slightly less demanding criterion: majority rule.  
873 Refer the 77th National Assembly Resolution.
Direct democracy is included under Referendum in Article 34 as an additional power, which belongs to the people. It was submitted during the public consultation that since the people had already pledged their trust and faith in Gongsar Ugyen Wangchuk in 1907, Article 2 should not be disturbed. According to the Drafting Committee, Article 2 provides the basic structure of the Constitution. Thus, it cannot be altered and amended. However, His Majesty did not favour that provision. He commanded that the people of Bhutan express their wish directly. Section 1 of Article 1 confers popular sovereignty to the people. Therefore, the power to amend has been given to the people under Article 2 (24). It is the mandatory referendum. This huge power has been bestowed on the people and not on the Parliament. 874

The People of Bhutan have the power to change the basic provisions of the Constitution through referendum. 875 There are four circumstances in which a National Referendum can be invoked, namely, Article 2(24), 2(26), 34(2) and 35(3). It is necessary to restrict excessive referenda to avoid delay and inaction that may result in instability. Instability of a State breeds chaos, displacement and revolution.

His Majesty Jigme Singye Wangchuck said:

In Article 34, there are two ways of amending the Constitution. As per Article 34, the provisions of the Constitution can be amended if 51% of people from the Dzongkhags vote in the National referendum. The People of Bhutan can amend even the provisions of Article 2 on the Institution of Monarchy. The procedure and method of amending the Constitution is adequately provided. With the commencement of the democratic system of governance, there is a danger of the political parties amending those provisions in the Constitution, which are detrimental to them, which is normally done in other democratic countries. I hope this would not happen, but people should keep in mind and know that there is a possibility of this happening. It can happen. What is important is that the Government is the government, which works in the interest of the people. If the government though called the government of the people works only towards their own benefit, then the purpose of having a democratic government is a failure. 876

In the course of making our Constitution, we never failed in giving in depth thought, placing interests and wellbeing of the country at the top. Even though you may support the Monarchial system, we have drafted the Constitution for the well being of the nation. In other countries, vote of confidence in a King is not decided in Parliament and National Referendum. Once the King ascends the throne, he remains on the throne for his life. We have seen it in many monarchy countries and found that it is a very bad example. Therefore, we should not follow such a system and cannot give approval for such a system. Our Constitution has been drafted after a detailed study of the constitutions of many different countries, including the countries that had Constitutional Monarchies. Our Constitution is different from any other constitutions of the world because we have drawn the strengths from them... If the people wanted their king to be good and capable, the people should select the one whom they can trust, and then only the fidelity of father-son relationship could be maintained between the King and the citizens for all times. Monarchy is not the best form of government for Bhutan as it has many flaws. The

874 Public Consultation in Zhemgang, 30th April 2006.
875 Refer Kuensel dated 23 March 2005.
democratic system also has its own flaws. The major flaw of monarchy system is that an heir, whether capable or not, is enthroned as a King... In times to come if the people are fortunate, the heir to the Throne would be a dedicated and capable person and be a good King. Otherwise the heir could be a person with mediocre ability or even an incapable person. Therefore, National Referendum is appropriate to choose the people’s King. If a king is incapable and fails to look after the well being of the people and cannot fulfill the aspirations of the people, the people need not involve in internal strife and protests, but they can change the king by calling National Referendum. It would be befitting to exercise your rights when you are empowered by the Constitution. With greater responsibilities mandated by the Constitution, the people should think positive and be progressive. The provisions on National Referendum would give you more advantages than disadvantages. If a king is capable he will not be forced to step down even after ten times of national referendum. Therefore, there is nothing to be worried and be apprehensive about it.  

Representative Democracy means to select from among the representatives who will vote. Indirect power is with Parliament in which a three-fourth majority can call for a referendum. Under representative democracy, Parliament has the power to formulate policies, make laws, and govern the country under the powers delegated by the Constitution.

Bhutan has had representative democracy since 1953 with the establishment of the National Assembly. Voice of the People expressed through a referendum is enshrined in the Constitution of Bhutan. The people can exercise their constitutional right of amending it, for the Constitution is the embodiment of the moral sentiment of the people and general will of the People. The greatest power rests with the people. A referendum is the expression of the will of the people. It is an enduring symbol of trust bestowed upon the people by His Majesty.

**Article 34**

**Section 1**

“The will of the people shall be expressed in a National Referendum. A simple majority of the total number of votes cast and counted shall be required for the referendum to be adopted.”

His Majesty Jigme Singye Wangchuck said that the people can express their will through a National Referendum with a simple majority. A motion for referendum will be decided by a simple majority of the total votes cast and counted.

His Majesty Jigme Singye Wangchuck said:

*If any provision requires an amendment, it can be done in two ways; first, by votes of three-fourths of the total members of the parliament in favour of amendment. Second, any provision of the Constitution can be amended by National Referendum with simple majority votes. If the people are of the opinion that any provision of the Constitution needs to be amended for the benefit of the people and the country, the National*
Referendum can be called in all twenty Dzongkhags and, if more than 50 percent agree on the amendment, the Constitution will be amended.879

Article 34
Section 2 (a)

“The Druk Gyalpo may command a National Referendum if:

(a) In His opinion a Bill, which is not passed in a joint sitting of Parliament, is of national importance;” or

This provision provides for a referendum that entrusts His Majesty to refer a Bill of national importance, which has not been passed in a joint sitting of Parliament. It is a different provision. In many of the countries, Head of the State shall not withhold his assent, if the Houses refuse to consider his request to reconsider or amend. Under the Bhutanese Constitution, His Majesty may command a National Referendum if in his opinion a Bill, which is not passed in a joint sitting of Parliament, is of national importance. Through this system, Parliamentarians ultimately will be before the court of People.

The National Referendum can check parliamentarians by ensuring that the Bill is palatable to the majority of citizens. It will also help in consolidating democratic institutions and promoting the rule of law. The Sovereign power belongs to the people of Bhutan and it should be the ultimate decision of the people to decide what is best for their interest. The Parliamentarians must be aware of their responsibilities to the People of Bhutan and realize that an important issue can be referred to the people.

Article 34
Section 2 (b)

“(b) An appeal is made by not less than fifty percent of the total number of members of all Dzongkhag Tshogdues.”

This sub-section enshrines an initiative referendum or popular referendum, where a simple majority of the total members of all Dzongkhag Tshogdues can initiate a referendum. The initiation of the referendum here is not determined through the citizens, as it would entail a signature campaign. The signature method has set an unhappy precedence in Bhutan. Most People do not know what they are signing and why they are signing. The signatures can be bought and coerced. Their decisions can waver. Moreover, in Bhutan we have a precedent of deciding any matter affecting a particular society through a representative member. The members normally convene meetings in their respective constituencies to endorse their views either relating to law or any other matters.

His Majesty Jigme Singye Wangchuck said:

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The people can amend the Constitution through national referendum. An appeal is made by not less than fifty percent of the total number of members of all Dzongkhag Tshogdus. The Constitution will stand amended, if the person in the twenty Dzongkhag votes for the motion by more than fifty percent. 880

Article 34
Section 3

“A National Referendum shall not be held on the question of imposition, variation, repeal of taxes or any other grounds as may be prescribed by law made by Parliament.”

Taxes are never popular and yet they are necessary. Taxes can reduce disparity and fund the public utilities and services. Hence, it would be morally and legally wrong to send the proposal of imposing or raising taxes for the recommendation of the people. The Constitution under this provision clearly states that Parliament should not refer any matter relating to taxation for the people’s view and decision. It is the responsibility and power of Parliament to deal with any matter concerning taxation. Therefore, it is constitutionally excluded from the ambit of the referendum. His Majesty Jigme Singye Wangchuck mentioned that the Bhutanese are not disloyal and unpatriotic but that it is the habit of the Bhutanese people to postpone hard and unpleasant decisions to the future. Taxation is one of the hardest and unpopular decisions.

Justice Holmes said:

“Taxation is the price which we pay for civilization, for our social, civil and political institutions, for the security of life and property, and without which, we must resort to the law of force.” 881

Parliament has been empowered to make laws to exclude certain issues from the scope of a national referendum.

Article 34
Section 4

“Parliament shall, by law, prescribe the procedure for holding a National Referendum.”

There must be an established procedure to ensure justice through procedural protection. It eliminates trial and error method based on logical methods. Every process should have the concern and approval of the people, expressed through their representatives, which will be vigilant over fairness of laws. Consequently, Parliament must prescribe the procedure for holding a National Referendum. Procedure is to safeguard through series of logical steps that requires chronological sequence and its implementation translates into results and actions without misusing and abusing the system. Procedural safeguard is necessary for lawful use.

Article 35

880 Public Consultation in Trashigang, 24th Dec. 2005
Constitution is an enduring document to generate certainty and continuity. His Majesty Jigme Khesar Namgyal Wangchuck said:

The reason for drafting our Constitution, and adopting a democratic system of government and a new political system is not after thinking that we need to adopt a Constitution, but to make our country more stable and to achieve our people’s ultimate interest in a better way. The new democratic system has been adopted after thinking of these reasons. If our Constitution is to benefit our people, and enable our country and people to achieve their ultimate interests, we have to keep in mind that all the powers are in the hands of people. Therefore, if citizens carry on the duty well and serve well after thinking well, there is no need to worry at all. Today, when the prophesized king like Jigme Singye Wangchuck has been born in our country during our time, and for more than 33 years, till today, he has laid very strong foundation for our country and people. When he clears and shows us the path clearly for whatever duties and works are likely to be there hereafter, we should not miss the opportunity and disappoint our His Majesty. Whether it is you or I, we should all unite and collectively serve properly, without failure.882

Notwithstanding the necessity of permanence, the Constitution responds to the changing times and situations through amendments. As certain old institutions collapse or stagnate and familiar voices become faint echoes, Bhutan is turning its one source of limitless capital, of wisdom and dynamism. The Buddhist doctrine of impermanence and change is constant and the only way to thrive is to be flexible. This dynamism is amendment which of course has to be exercised with prudence. It is also known as repeal. It has direct repeal by Parliament and implied repeal by judicial interpretation.

His Majesty Jigme Singye Wangchuck said:

If any provision requires an amendment, it can be done in two ways. First, by votes of three-fourths of the total Members of Parliament in favour of amendment. Second, any provision of the Constitution can be amended through National Referendum with simple majority votes. If the people are of the opinion that any provision of the Constitution needs to be amended for the benefit of the people and the country, a National Referendum can be called in all twenty Dzongkhags and, if more than 50 percent agree on the amendment, the Constitution will be amended. Foreseeing that some of the provisions in the Constitution would become invalidated, obsolete or irrelevant with changing time or purpose, effective, strong and vibrant provisions for effecting amendment are provided under Article 35 to prevent the emergence of irresponsible political parties when the democratic system of governance is established in our country, like in other countries. However, there is every possibility that political parties could try to amend those provisions, which are unfavorable to their purpose through Parliament, but it is the responsibility of the people to prevent the political parties to effect such amendments. If the political parties amend the Constitution for the good of the country, then it is always better to let the amendment effect.883

However, the Constitution cannot be amended frequently. If so, it becomes more like any other statute and will lose its sanctity. The Constitution should have sanctity and should not be subjected to willful amendments and the basic structure of the Constitution has to be preserved. Aristotle said that with frequent amendments, it will be as if:

“The law has no power to secure obedience save the power of habit, and that takes a long time to become effective”

Therefore, this Article follows Marriot’s classification of a Constitution. Bhutan has a rigid Constitution. It lays down a special process for its amendment. Amendment by the legislature mandates a specified quorum of members or a majority of the two Houses in a joint session. Thus, Bhutan has single frame with rigidity and legalism. Three-fourth majority or double majority is required to amend the Constitution and thereafter the Constitution shall stand amended only on the Assent being granted by the Druk Gyalpo. If in case the Assent is not granted and is of national importance sections 1, 3 and 4 of the Article on referendum shall apply.

Being a rigid Constitution, it also prescribes referendum on the proposed amendment in order to elicit popular reaction. In assuaging the rigours of rigidity and legalism, the Constitution provides the facility, with which the Constitution could be amended, under this Article. Therefore, in order for the nation to use the Constitution to make greater advances, we must remember Napoleon, who has mentioned that constitutions are good only as we progress under them.

His Majesty Jigme Singye Wangchuck said:

*We have drafted our Constitution keeping in view that at least it shall not be amended for the next 100 years, but with the change in time that will not be possible. With passing times, amendments cannot be avoided...One decided by Parliament may be amended by the people through referendum. That is why people have the highest power to amend the Constitution. In one way, it is a good thing and in another way, we have given you absolute powers. When you are given the absolute power you must render your service honestly and dedicatedly with body, mind and speech. Firstly, when you are given such a power it is important that you understand the Constitution properly and thoroughly. Secondly, it is in your hand to elect the government that will serve the interest of our country. As we launch our Constitution, it is the people who should be the custodians. That’s why I am confident that people will take utmost care and serve the country.*

Hence, the provisions of the Constitution relating to the amendment of the Constitution divide the Articles of the Constitution into groups. A part of the Constitution can be amended by Parliament by a double majority, a majority of not less than two-thirds of the members of each House present and voting, and by a majority of the total membership of each House. Finally, the people of Bhutan have the exclusive power to amend the provisions of the Constitution through a National Referendum.

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885 Marriot (1859-1945), an English historian, classified constitutions as unitary and federal, rigid and flexible, parliamentary and presidential.
The Constitution of Bhutan is comprehensive in its overall design. The Drafting members have devised a political system that separates the powers of government and place a mutual check on the powers of each branch, and ensures fundamental rights and liberties. Any new constitutional amendment must steer clear of the intention upon these bedrock principles of parliamentary government.

Concerning Amendment, Dr. Venkata Rao said:

“The Supreme Court very intelligently said the right of Parliament to amend the Constitution is not unlimited…..Then if the right is not unlimited when does the limit begin? The Supreme Court said the limit begins where the basic structure starts. That means you can amend any part of the Constitution except the basic structures....”  

The Bhutanese Constitution has an entrenched or basic structure system. It may be amended only through a referendum.

His Majesty Jigme Singye Wangchuck said:

As we start the system of referendum, the people are empowered with the power to amend provisions of the Constitution. We all must know that our responsibility is to adhere to the Constitution. The political party alone cannot take care of the Constitution, if the people are negligent of the same. If we want a good party, if we want a party, who can cater to the nation we must make them render the service to the country. That is why it is the responsibility of the people to take care of the Constitution. Though, we have drafted our Constitution that would stand for at least 40-50 years, but we never know what kind of problem our country would face or what would be the mental attitude of our people in the future. I feel the amendment to the Constitution in our country in future may be inevitable. That is why whenever there arises a need to amend our Constitution in future, the power lies with the people under the national referendum. It entails a heavy responsibility. As the people of Paro Dzongkhag submitted, if all people in 20 Dzongkhags and the country should prosper, develop economically, the sovereignty and the security safeguarded strongly, and if the people want to live in peace and tranquility, the most important responsibility and the duty of the people is to serve the country well with concerted effort of body, speech and mind. Therefore, I pray that our Constitution bring tremendous benefits for the country for hundreds of years.

The Constitution must solve the difficulties of the present and future dangers. It must identify the difficulties and think of the welfare of the people, safeguard the sovereignty and independence of the country.

**Article 35**

**Section 1**

“Subject to the provision of section 26 of Article 2 and section 9 of Article 33,

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887 Dr. R Venkata Rao’s talks to the Judiciary of Bhutan on 15th November, 2011. He is the Vice Chancellor of the Bangalore Law College.
888 Public Consultation in Paro, 9th Nov. 2005.
889 Royal audience by His Majesty Jigme Singye Wangchuck, 29th Nov. 2001.
Parliament shall have the power to amend by way of addition, variation, or repeal the provisions of this Constitution in accordance with the procedure set out in this Article.”

His Majesty Jigme Singye Wangchuck said that in enacting a Constitution, it was important to ensure that it would be relevant for hundred years and beyond. While consulting the Bhutanese people, every effort must be made to try and ensure that the Constitution would be relevant for at least fifty years. It is important for the people to discuss and finalise a Constitution that would benefit the country. Bhutan today has the unique opportunity to draw up a Constitution that would benefit the people for generations to come. However, we may need to make amendments in some of the Articles due to changing times for the benefit of the people. The Constitution must serve the national objectives. Thus, the Constitution confers upon Parliament, the power to amend the provisions of the Constitution except the provisions of Article 2 and during the emergency under Article 33.

His Majesty reminded the people that the provisions of the Constitution could be amended any time by the government if the motion is passed by three-fourths of the members of Parliament with the Royal assent.

His Majesty Jigme Khesar Namgyal Wangchuck said:

If the government wants to amend it, it can be done through Parliament and it should be passed by not less than three-fourth of the total number of members of Parliament.890

Article 35
Section 2

“A motion to amend the Constitution under section 1 of this Article shall be initiated by a simple majority of the total number of members of Parliament at a joint sitting and, on being passed by not less than three-fourths of the total number of members in the next session at a joint sitting of Parliament, the Constitution shall stand amended on Assent being granted by the Druk Gyalpo.”

It is a normal constitutional process to initiate amendment by a simple majority of the total number of members. It is further safeguarded by the provisions of a joint sitting with mandatory requirement of being approved by not less than three-fourths of the total number of members and the motion to be passed in the next session. The passing of motion for the amendment is to be held in the next session for the reason that the members need time to study and deliberate on the proposed amendments. Further, like any other passing of Bills, the Constitution shall stand amended only after receiving the assent of His Majesty.

His Majesty said:

The provisions of the Constitution may be amended through Parliament. A motion to amend the Constitution shall be initiated by a simple majority of the total numbers of Parliament on being passed by not less than three-fourths of the total number of members

of Parliament. The greatest power to amend the provisions rests with the people. All the 
powers are being devolved to the people, but when any provision is amended the future 
well being of the country must be taken care of. Any bad provision will have adverse 
impact in the country. I have full trust and confidence that upon devolution of all powers 
you will render your service with utmost loyalty, dedication and service for the best 
interest of the nation. I hope and pray that the new system of government will be 
successful in achieving the objective of the government, strengthening security and 
sovereignty of the nation and fulfilling aspiration of the people.  

Article 35
Section 3

“Parliament may call for a National Referendum if, in its opinion, a Constitutional 
Bill, which is not granted Assent by the Druk Gyalpo is of national importance. 
Accordingly, sections 1, 3, and 4 of Article 34 shall apply.”

His Majesty is the custodian of the Constitution. If a Constitutional Bill is contrived and is 
against the general interest of the people of Bhutan, the security of the nation, and/or sovereignty 
of Bhutan, it is His Majesty’s constitutional duty to ensure that the Constitution is protected from 
the tyranny of majority. Therefore, if the matter is of national importance, and His Majesty does 
not grant Assent, Parliament may refer the Constitutional Bill to the people to be considered in a 
the National Referendum. This is an additional check in passing of the Constitutional Bill that is 
of national importance. The voice and the will of the people are supreme and the Constitution 
gives primacy to it.

Article 35
Section 4

“In any instance of a difference in meaning between the Dzongkha and the English 
texts of this Constitution, each text shall be regarded as equally authoritative and 
courts shall reconcile the two texts.”

This section deals with the interpretation of the texts in two languages. The Constitution has 
accorded recognition to the National language Dzongkha under section 8 of Article 1. Dzongkha 
is a comprehensive Court language and is the language used in the Dzongs. It has exhaustive 
vocabulary, which has domestic and agricultural usages including the usage of words for the 
forest and wildlife. Nevertheless, Dzongkha has restrictive terminology in scientific and political 
philosophies. The Constitution has more than 1,700 new words, incorporating various principles. 
Therefore, the drafting committee has incorporated certain vocabulary from Chhoekay. However, 
there was uproar over the understanding of the Dzongkha text by many sections of the society. Consequently, His Majesty the Druk Gyalpo has expressed His concerns over the feedback that people were finding difficult to understand the Dzongkha text of the draft Constitution and commanded that the language in the Dzongkha draft should be simplified to the extent possible 
without diluting the content.

While simplifying the Constitution, it had to respond to the public concern. Many alterations had

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89I Public Consultation in Mongar, 12th Dec. 2005.
to be made. Hence, in any difference in the meaning between the Dzongkha and the English texts, each text is regarded as equally authoritative. The Constitution should not lose sight of the need of English for legal purposes and for scientific and international purposes in the world, as constituted today. Without English, it would cause legal anomalies during its interpretation and implementation.

His Majesty Jigme Singye Wangchuck said that the Constitution must have acceptance and legitimacy. Acceptance is derived from participation of the People. Legitimacy comes with the reflection of the aspiration of the succeeding generations. When the Constitution does not reflect that aspiration, the system will face the danger of abrupt changes.

It is unfortunate that Dzongkha, which is our national language, is not the authoritative text. According to the Humboldt a language is more than a grammar and vocabulary, it embodies a distinctive world-view and constitutes the common element, which expresses the common culture and underlying the diversity of individuals within a nation.892

However, due to the outcry by a few, both texts had to be made equally authoritative.893 Kuensel reported on Friday, 22 April 2005, as follows:

“His Majesty said that, since the Dzongkha text would prevail over the English text in the event of differences between the two, it was necessary to ensure that the simplification of the language was done without altering the substance or the meaning of the provisions of the Constitution.

“The chief justice, who chaired the Constitution drafting committee, told Kuensel that, while simplification of the language was desirable, the text must be written in legal language so that instances of misinterpretation were minimized. He said that the Dzongkha Draft of the Constitution was written in simpler language than other laws enacted in the past. He also pointed out that there were more than 1,700 different legal and professional words in the English text of the draft Constitution. The committee had to find corresponding terms and it was sometimes difficult to express legal and political concepts in spoken Dzongkha... The Constitution is the supreme law of the nation and must not be subjected to different interpretations arising from weaknesses in the language ... the Constitution was a profound document which could not be fully understood in letter and spirit by every citizen. In most countries in the world common people are not expected to fully understand all the provisions of the Constitution and it is the lawyers and judges who interpret it,...We will do our best to simplify the language of the Dzongkha draft to make it easier for the people to understand and enable them to offer their considered views to His Majesty the King,”.

On 1st July 2005, a Committee894 was formed and tasked to simplify the Dzongkha Text of the Draft Constitution of Bhutan. The Committee submitted the submissions of their first meeting in obedience to the Royal Command on 12th May 2005:

893 At the national level, the criticisms had latent objectives. It was their strategy to add and change certain provisions of the Constitution. Conversely, there was no condemnation from the International organizations. Explanation of the Chairman of the Constitution Drafting Committee during the Public Consultation in Thimphu, 26th Oct. 2005.
894 Lyonpo (Dr.) Kinzang Dorji, Zhabtog Lyonpo, Dasho Sangay Dorji, Director General, DDA, Dasho Sangay Wangchuk, Director General, Department of Culture, Dasho Khambu, Drangpon, Shera Lhendup, Legal Officer of NEC, Kuenphen Legal Services (former Drangpon), Lam
“to make it as simple as possible, same word having different meanings could create problems in the future as it will be interpreted according to the convenience of the party concerned, to make it more explicit but without losing the meaning of the English text, the only opportunity to improve it, to involve more people with Dzongkha background, earlier command to make it more simple and easier to understand, to have a glossary, it does not matter how simple the translation, as long as people complain we have to try to make it simple enough for everyone to understand, in such a case, we may have to make the English text the reference point.”

Later the Dzongkha and the English texts were reconciled with great difficulty by another committee.

Dzongkha is the language symbolizing the identity of Bhutan and it is the national language of Bhutan. It is a symbolic expression of the State and its identity. Without identity, Bhutan may not have been a sovereign country. The culture of others would have inundated us. Dzongkha contains egalitarian and enlightened words that make Bhutan a progressive nation. It is one of the most beautiful languages. No Dzongkha words are dogmatic. Hence, it beautifully serves the principles and theories of our Constitution. Language has a transforming and liberating role. Encompassing the liberal ideals of Dzongkha has transformed Bhutan. Now it must liberate our people from grinding poverty and give them dignity. Language is the symbol and expression of social status. Social status in Bhutan is not stylized and frozen. It is dynamic. Language makes people aspire to be respected and accepted. It must cater to social upliftment.

Dzongkha is a carrier of our culture. It carries cultural, traditional and spiritual values. It embodies a distinctive view. It is that which constitutes the common element and which expresses the common culture and underlines the diversity of individuals within a nation. Culture widens the mind and deepens the spirit. This culture, tradition and identity are common aspirations and characteristics that bound and continue to bind us together. Tradition is the embodiment of the moral sentiment of the people. Bhutan had the opportunity to make history. There were 117 major words to express principles, doctrines and values, which have textual, cultural and grammatical basis. Edmund Burke’s principle of respect exhorts for inherited rights and for established customs.

Language is connected with national experiences, perception, reference and source of national information. Bhutan has a leading role in preservation of linguistic and cultural heritage.

Language is the greatest gift to the human kind. It is an effective means of communication. More than that, it is the necessary tool for thinking and for self-expression. Indeed, without language we could not have a cultured and a civilized society. It is a unifying and creative force. Language empowers an individual to understand problems and to solve them. It would auger well to remember Sumita:

Chhechong, Director, National Legal Course, Choki Dhedup, Kuensel Corporation, Dorji Tshering, Director, National Library, Mindu Dorji, M.D. Translation and Consultancy Services (former Kuensel employee), Tashi Dendup, BBS Corporation and Lyonpo Dorji Wangdi, Cabinet Secretariat.

The Committee consisted of Dasho Tashi Phuntsho, Dasho Sangay Dorji, Lam Chhechong, Drangpon Jangchuk Norbu, Drangpon Kinley Namgyal, Drangpon Rabjam Rinzin Wangdi, Choki Dhendup, Drangpon Gembo Tashi and Drangpon Pelden Wangmo.
“From writing come names;  
From names come words; and,  
Words express all the meanings.”

This is extraordinarily true for Bhutan. Dzongkha, being the national language, must also have personal, higher and national relevance. Personal relevance must relate to job market and upward mobility; our national language must enhance our economic life. Higher relevance relates to national self-sufficiency in matters of vocation and expertise. It must both embrace and enhance our human aspirations to live lives of solidarity and justice as well as of competition and struggle. Competition is painful but it produces greater results. Dzongkha must raise national consciousness and lead to the nation’s economic progress.

Language has a transforming and liberating role. Encompassing the liberal ideals of Dzongkha has transformed Bhutan. Now it must liberate our people from grinding poverty and give them dignity. Language is the symbol and expression of social status. Social status in Bhutan is not stylized and frozen. It is dynamic. Language makes people aspire to be respected and accepted. It must cater to social upliftment.

Dzongkha is a carrier of our culture. It carries cultural, traditional and spiritual values. It embodies a distinctive view. It is that which constitutes the common element and which expresses the common culture and underlines the diversity of individuals within a nation. Culture widens the mind and deepens the spirit. Dzongkha enhances traditional virtues and social harmony.

Despite the extraordinary qualities of Dzongkha, it has its limitations. It is spoken by a small population. The forced imposition of learning Dzongkha by increasing class hours for students, insisting upon compulsory correspondence and giving higher status will be limiting factor and encourage disinterest. Dzongkha must flourish from the people’s will and from its own inner strength. Its inner strengths are its poetic language, comprehensive vocabulary and its spiritual qualities.

Dzongkha must not be only a kitchen language or an official working language. Language must enhance access to great literature. Its usefulness and utility must be vast and should enhance access to cultural and religious literature. Therefore, Dzongkha without Chhokey would be difficult. The forefathers of Bhutan proudly presented, developed and preserved the language through the pages of history and through immortal words in folk tales and religious teachings, through the sacrifices that they made, the pain they endured and the internal differences that they buried in order to oppose external aggressions against the independence, sovereignty and freedom of the nation. This culture, tradition and identity are common aspirations and characteristics that bound and continue to bind the people together. Tradition is both guide and teacher, and it is the embodiment of the moral sentiment of the people. Dzongkha must continue to respond to human aspirations, progressive ideas, liberation and greatness. Language promotes social and economic mobility, social equality and social norms.

EPILOGUE

A Constitution of any Country encompasses the system of fundamental principles by which a nation is governed. It is critical to any exploration of the growth of democracy and is the root
document of democracy. Indeed, it is the fundamental law of the land and is the apex of all laws. It is in fact the very backbone of the government and hence, its understanding and appreciation is necessary in a Society.

In a system which adheres to the concept of Rule of Law, the following ingredients are necessary:

(a) Fundamental Law
(b) Limits on the power of the government
(c) Enforceability in a court of law by citizens

The Constitution of Bhutan aspires to give to the people a law that will preserve and uphold their rights and guarantee to them a state of sustainability in all spheres.

Bhutan witnessed a peaceful transition to democracy under the leadership of the Wangchuck dynasty with the adoption of the Constitution. The Constitution was drafted on the personal initiative and, the wise and courageous decision of His Majesty Jigme Singye Wangchuck.

Following the Royal Command, the Constitution Drafting Committee was established. It comprised representatives from the twenty Dzongkhags directly elected by the people, two members from the Dratshang, the Speaker of the National Assembly, seven members from the Royal Advisory Council, three from the Judiciary, and six from the Government. There were thirty-nine members chaired by the Chief Justice of Bhutan. We had honest disagreements and interactive debates. It was an honour and a pleasure to work with the members.

Having deliberated exhaustively over several meetings, the draft Constitution was submitted to His Majesty after ten months. His Majesty then proffered a copy of the draft to the Indian Ambassador on the same day for onward dispatch to Mr. K.K. Venugopal, Senior Advocate, of
the Supreme Court of India. Thereafter, eight consultative meetings were held between him and the Bhutanese counterparts\textsuperscript{904}.

Concluding the corrections, Mr. K.K. Venugopal stated:

\textit{“Here ends the most modern Constitution with maximum fundamental rights.”}

Thanking him for his work, His Majesty in a letter to Mr. K.K. Venugopal on 27\textsuperscript{th} October 2004 mentioned:

\textit{“I would like to inform you that I would be presenting the Draft Constitution of the Kingdom of Bhutan to our Cabinet in November this year. The Draft Constitution will then be distributed to the twenty districts of our country for the input and views of the people. In framing the Constitution, my consideration has been to introduce a democratic political system that is best suited for Bhutan, a system that will ensure good governance and fulfill the aspirations of the Bhutanese people. While I realize that a large section of our people, especially in rural Bhutan, may not understand the functioning of parliamentary democracy, it is necessary to take full advantage of the unique opportunity provided by the peace and stability we enjoy today to introduce the new political changes.

“As an internationally eminent lawyer from India, a country which is our closest neighbour and friend, you have been most forthcoming and sincere in sharing your views and expertise with our Constitution Drafting Committee. It gives me great pleasure to recognize your valuable legal advice in a task of great national importance for us, the drafting of our nation’s Constitution. Our Drafting Committee was indeed privileged to receive your friendship and benefited immeasurably from your counsel and wisdom in the constitution making process.

“I would like to express my deep appreciation to you for the distinguished service you have rendered to Bhutan and for your valuable contributions in further strengthening the close ties of friendship and goodwill between our two countries.”

His Majesty Jigme Singye Wangchuck enunciated his vision that the Constitution must establish a dynamic system of governance, which would uphold the true principles of democracy and support and enable the political system to safeguard the sovereignty of the country and the rights of the people.\textsuperscript{905} However, there were divergent views.

Many members of the Committee and the people, during the public consultation, pleaded that the Monarchy should continue. But with the passage of time, the members were clear. They wanted His Majesty to continue to exercise his prerogatives concerning land and census in addition to the functions of the Head of State.

The members were mortally afraid of dictatorial Prime Minister and they were worried with unwieldy powers of a Prime Minister. Therefore, checks and balances were incorporated. This was against the vision of His Majesty. He did not want a weak government that would be

\textsuperscript{904}Lyonpo Sonam Tobgye, Drangpon Kuenlay Tshering, Drangpon Lungten Dubgyur, Kinley Namgay and Gembo Tashi. The meetings were held in New Delhi, Goa and Thimphu.

\textsuperscript{905}Refer Kuensel dated 30\textsuperscript{th} November 30, 2001.
ineffective, unstable and dangerous to progress, security and sovereignty of Bhutan. One of the measures was two party system and elimination of coalition government.

Members of Parliament wanted to establish clear hierarchy with a Speaker controlling the Dzongkhag Tshogdu\textsuperscript{906}, Gewog Tshogde\textsuperscript{907} and Thromde Tshogde. The post of Dzongda was also controversial but however, they accepted that the elected body might endanger security and sovereignty of the Nation. Further, His Majesty pointed out to the members of the Lhengye Zhungtshog that there had been some concerns on the administrative structure and functions of Local Governments. The Constitution had, therefore, made a provision for Parliament to regulate the powers and functions of the Dzongda and Local Governments to ensure that they would be self reliant and self sustaining.\textsuperscript{908} The Members debated over non accountability of the Royal Civil Service Commission and lack of service to public. The Commission had too much power without accountability.

I was personally engulfed by few constitutional issues in the world. Sabotaging the Supreme Commander in Chief of the Armed Forces and the Militia by other agencies of the Government would have scuttled the constitutional delineation of power. Similarly, frequent amendments to the constitutions were my concern. Hence, His Majesty said that it was also important to keep in mind that there was always the possibility that Political Parties would try to amend certain Articles in their own favour.\textsuperscript{909} Consequently, we have a rigid Constitution so that it would not be subjected to personal prejudices and interests. However, there should be an outlet to crises with reliance on the amendment process and referendum. Democracy \textit{per se} is resilient. It was reinforced by His Majesty that making amendments in the Constitution would be required and necessary from time to time.\textsuperscript{910} My main anxiety was the security of Bhutan as it is a small and vulnerable country.

Many governments and international organizations offered their help. Some of them called it “the Bhutanese way of drafting Constitution.”\textsuperscript{911} But their offers were declined to furnish ownership to the Bhutanese and confer sovereignty on them. We needed their comments to improve the document but not their ideologies to be enforced on the Bhutanese.

A few wanted to incorporate their drafts overruling the drafts of the Committee. This was improper. The legally constituted committee cannot be subverted by interested individuals. I, as the Chairman, had the duty to respect the consensus of the Committee. If the provisions were to be amended, the people and the Members of Parliament had the opportunity to overrule the Committee. The document was in the public domain for many years. Criticisms continued but success triumphed over eternal criticism. The criticism is the price for the success.

The Bhutanese Constitution is the result of the existence of the best energies of statesmanship, foundation of extensive debates, and a careful crafting of the time and more importantly the consultation with the people. It is the outcome of peace, living example of un-restrained devolution of power by His Majesty Jigme Singye Wangchuck, His trust in the people and the Nation. It was a courageous act of His Majesty. Never in the history of any Constitution making

\begin{itemize}
\item \textsuperscript{906} District Council.
\item \textsuperscript{907} County Committee.
\item \textsuperscript{908} Refer Kuensel dated 23\textsuperscript{rd} March, 2005.
\item \textsuperscript{909} Refer Kuensel dated 29\textsuperscript{th} October, 2005.
\item \textsuperscript{910} Refer Kuensel dated 29\textsuperscript{th} October, 2005.
\item \textsuperscript{911} Report submitted by Pelden Wangmo, Registrar of High Court, \textit{Workshop on Constitution Making}, Pretoria, South Africa, Dec. 2005
\end{itemize}
was such a wide scale public consultation ever attempted or were given due consideration like the making of the Bhutanese Constitution.

Constitution making in recent decades has some characteristics that distinguish it from earlier phases. Most important are the widespread acceptance of the need for public engagement, the impact of international law, and the influence of international communities. As significant to the experiences of Constitution making, the increasing accessibility through Information Technology and impact of globalization acted as a greater contributing factor to “constitutionalism”.

The fundamental value of the Constitution making in Bhutan was inherently a process led by constitutional mandates instead of imposed constitutional framework drawn from internal or external mandates. It was a quest for political constitutionalism, emphasizing process as well as substance, to provide democratic governance.

During the public consultation process, people had the greatest admiration for the illustrious past achievements under the benevolent monarchs but lingering fears of an uncertain future under democracy. However, with gentle persuasion and consistent effort, they accepted the imminent changes.

His Majesty established institutions so that the system would prevail over the power of individuals. He fought the war to save the nation from the scourge of terrorism, and incorporated provisions in the Constitution to make the wise and educated rule the State. The adoption of a Constitution, which ensures liberty, freedoms and rights for all are His Majesty’s enduring symbol of love for Bhutan and His dedication to the happiness of the Bhutanese.

The Constitution Drafting Committee had many challenges such as:

(a) To follow a credible process to convince the genuine objective to establish a constitutional monarchy;
(b) To liberate the people from the prevailing situations, beliefs and prejudices;
(c) To balance the spiritual, social, political and constitutional values and power structure;
(d) To enhance the political will and political capacity, and to work on the best democratic principle of voting;
(e) To ensure that different theories/models of choice and sovereignty such as collective choice, informed choice, reciprocal altruism, public approbation, freedom of choice, public choice, preferential choice, social choice, territorial sovereignty, popular sovereignty and the legal and political sovereignty, are considered and incorporated;
(f) To incorporate the doctrines relating to freedom of choice with general will, greatest number, greater common good, social, political and legislative morality, rights and duties. It was a phenomenal undertaking in the crafting of the provisions;
(g) To guarantee safety under the new power, assess competing interests and to curb encroachment by extra constitutional power;
(h) To decentralize and distribute power at the policy, supervisory and operational levels under the implied principles of delegation of power;

912Constitutionalism is the anti-thesis of totalitarianism. This concept embodies the philosophy of limited government. The state should so exercise its power that the rights of individual citizens are not violated. It is a particular set of ideals, writes Austin Ranney, competing with other ideals for people’s loyalties, about the kinds of constitutional rules a nation should have. William G. Andrews refers to two aspects of constitutionalism in his definition, namely, the relationship of government to citizen and the relationship of one governmental authority to another.
To identify types of constitutions, which is rigid to establish values and be flexible to survive and to survive constant change. Therefore, balancing was a Herculean task;

(j) To ensure vertical, horizontal and institutional checks and balances to counter the tyranny of the majority or to remedy populist democracy;

(k) Ensuring accountability and responsibility through free, fair and periodic election to provide opportunity to change;

(l) To design a system of election to elect and reward good governance, and perpetuation of a dominant governing party an intellectual challenge while drafting Article 15;

(m) Despite different opinions about the value and the contents of the Constitution, His Majesty’s leadership of unwavering firmness and freedom to his people contributed to the making of the Constitution. His Majesty graciously observed that the draft was of good standard;

(n) After unveiling the draft Constitution, opinions were received in abundance from within and outside the Country. The Bhutanese Constitution is a product of reconciliation, consolidation and refinement of many years of wisdom from Bhutan and foreign countries. Nevertheless, all these were evaluated most carefully as Gandhiji said, “Adaptability is not imitation”;

(o) Taking objective views of the comments made through the media and letters submitted by many governments, institutions, multi-lateral agencies and individuals. Generally, the foreigners had both positive and negative comments, which created awareness to new possibilities;

(p) Taking balanced views submitted by the agencies and individuals and incorporating them into the draft to avoid institutional bias and strengthen institutional integrity.

Bhutan has taken all the precautions by learning the best from other countries, avoiding their mistakes and responding to the Bhutanese situations. It is the social and national duty to implement them and justify the introduction of the political party system. The justifications are as follows:

(a) The electoral process should be democratic to allow Bhutanese to compete on a free and equal basis. Free and fair election means the rules of fair play.

(b) The Constitution must avoid political alienation of the average citizen.

(c) The political party engineering of multi party during the primary and two-party system at the general elections must endeavour to reject extremes and isolate the radical and unstable elements.

(d) Primary elections should address the tyranny of two-party system and be responsive to new ideas. It averts perpetuation of incumbent parties. The nation has a strong interest in the stability. This does not permit a State to completely insulate the two-party system and exclude competition by new parties. A third party should emerge to challenge and replace one of the two main parties which are known as “Duverger’s Law”.

(e) The Constitution permits to decide the political stability through a healthy two-party system, decided after the multi-parties at the primary elections through free and fair means.

Never in the history of humankind, did our generation have a historic opportunity to make democracy of the best model, as ever desired. Let us seize the historical opportunity for self-purification and moral rearmament, follow a consciously defined and consistently followed line
of action. With our commitment, we can’t fail. Let our political system be the model for the 21st century.

The Constitution is the triumph of truth and virtue over vitriolic criticisms and lurking suspicion. The Drafting Committee had honest disagreements reflecting diversities of opinion and interest leading to progressive development and solutions. Consequently, the Constitution is morally defensible, socially rational and politically democratic.

It has interlocking system and enshrined principles, doctrines and legal paradigms. It is rigid to establish normative values and flexible to be dynamic to embrace changes. The Constitution has utilitarian reforms of constitutional system with social security, social regeneration and legal sanctity, which sets out the framework and the principal functions of the organs of the government or State and declares the principles governing the operation of those organs and regulates the relationship of these organs with the people.

His Majesty devolved his power to the people without their demand. It was a courageous act to face the overwhelming opposition to draft the Constitution. It is exemplary and worthy to emulate this shining example of detachment. In Henrik Ibsen’s words:

“...the strongest man in the world is he who stands alone.”

No artist can faintly glimpse his contribution. No song can express his love for the Nation and no historian can comprehend his transcendental greatness. His Majesty is the peerless embodiment of greatness.

The Constitution is the acknowledgement of the contribution by the Wangchuck dynasty during the last century enshrines the original will of the people in determining its sovereignty. The Constitution is self-constraining with values, institutions and procedures to advance constitutional compliance. Equality and reciprocity are part of the Constitution that enhances the moral and political principles that breathe life into public institutions.

Above all, the Constitution is the product of a careful consideration to preserve and promote the ideals of sovereignty, nationhood, peace, stability and liberty by drawing from the strength of its cherished historical foundation and consideration for the present and the future well-being of the people and the nation.

His Majesty Jigme Khesar Namgyal Wangchuck concluded the public consultations at Trongsa with the following statement:

“I am honored and privileged to follow the command of His Majesty to meet with the people and discuss the Constitution. We have completed the consultation meeting on the Constitution with the last meeting in Trongsa. His Majesty started the first 20 Dzongkhag Constitution meeting at Thimphu and I am very happy to conclude the meeting in Trongsa. After the completion of the meeting, the people should not forget about it, instead as I have said before, it is very important for us to make our country better day by day.”


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It is a very important day. Our responsibilities and duties are also very essential and important. The main foundation of our country is the Constitution. We are all privileged to be born in this decade and to get an opportunity to serve His Majesty the King. We are also fortunate to participate in such an important discussion on the making of the Constitution. Our responsibilities and duties are very important. If we could carry out our responsibilities with full commitment, it will not only make our future citizens happy and peaceful, but will also strengthen our country.

If we fail to carry out our duties, then our country will become unstable and unsecured. His Majesty, by placing his full faith and confidence in the people has entrusted us with all the powers. Therefore, it is very important for us to serve with full dedication and commitment. At this historic moment, first of all, I would like to submit my gratitude to His Majesty. Moreover, I would like to pledge myself more than before.

A King like His Majesty Jigme Singye Wangchuck has never been born in the Kingdom of Bhutan. I know this more than anyone else. Apart from serving His Majesty since my childhood, I had the opportunity to accompany and travel with His Majesty when He visited the Dzongkhags. Moreover, even at the Palace, I had the opportunity to serve and speak with His Majesty. Therefore, I have experienced His Majesty’s leadership on a daily basis. I have been able to understand His Majesty very well. His Majesty is like my root Lama and Teacher. I am very fortunate to have such an opportunity. It is also lucky for the people to have such a King in our country.

My only prayer is to pray for a divine human being like His Majesty to be born in the Kingdom of Bhutan. Our people have been serving His Majesty with full devotion until now. Similarly, hereafter also, when His Majesty works for the future of our country, it is very essential for our people to serve as much as they can. By serving His Majesty, it is like serving our people and our future generation. I am grateful to all the members of the Constitution Drafting Committee who have put all their efforts during the making of the Constitution by referring to various other constitutions of the world including our customs, culture and practices.

The Chief Justice Lyonpo Sonam Tobgye has also served His Majesty with full devotion and dedication. He has served not only the present Druk Gyalpo, but has also served the Third Druk Gyalpo. Even in making of this Constitution, all the deliberations and work were done under his guidance. He along with the members of the Drafting Committee has drafted this exemplary Constitution. For this, I am grateful from my heart to the Chief Justice and the members of the Drafting Committee.

I also would like to thank Secretary Dasho Tashi Phuntshog who has not only served His Majesty and our country with full commitment and devotion, but also in joining the consultation meeting of the Constitution.

The peace and prosperity, which we are observing in our country today, is the fruit of the hard work of our forefathers in protecting and preserving our independence and security. Our country has not been formed during the period of one or two generations. Our forefathers and succeeding generations have protected it for thousands of years.
The country, which has been formed by securing the security, protecting the independence with all the hardships and sacrifices made by our past generations of Bhutanese, has now been delivered to us. Therefore, we are obliged from the bottom our heart to our forefathers to serve the country and the Tsa-Wa-Sum with full dedication. Similarly, we also should be able to follow their example and pass on a stronger and better Bhutan to our future generations.

Even after His Majesty’s enthronement on the golden throne, our people have served with full dedication. The ministers, government officials, private sector personnel, lams and lopens of the dratshangs, gomchens, people’s representatives, gups, chimis, student boys and girls, teachers and armed personnel have served His Majesty and the country with full devotion. For these, I would like to thank all the people of 20 Dzongkhags.

Two years ago, when I was granted the title of Trongsa Penlop by His Majesty and during the ceremony, I had only one thought in my mind. In the history of Bhutan, every Trongsa Penlop has gone on to serve his nation and people selflessly in immeasurable ways. So, when His Majesty commanded me to this title, I had a different feeling. I asked myself how I would be able to serve my country and the people during my tenure. I wondered whether I would be able to serve like my predecessors. Even now, I have the same thoughts. However, I aspire to serve my country, the government and the people, the Tsa-Wa-Sum with full commitment within my capability and capacity.

Lastly, whatever we have done and whatever His Majesty has accomplished in about 33 years are all for the benefit of our younger and future generations. That is why our younger generations, who are in schools, have to keep in mind that His Majesty has bestowed with full faith and trust the opportunities to our younger generation, so that during your time, you will have further peace and happiness with greater economic prosperity. For this, His Majesty has laid a strong foundation for the country. Therefore, our younger generation has to keep in mind what I have just said and should work hard and strive further without wasting opportunities provided to them.

In future, if I tell you how our country would be, it all depends upon our young boys and girls. If our boys and girls think sanguinely and if they are capable then, our future country would become a good country to live in. If our younger generation has no capacity to shoulder the duties or they have no good education or are not dedicated to the interest of the country, then an ineffectual government will be formed with incompetent officials. If this occurs, it would show that we and our young boys and girls have failed in our duties.

The present school going students are our future ministers, members of the opposition party, members of the ruling party, Constitutional post holders, government officials, representatives of the people, gups, chimis, business, body guard, army & police personnel. Therefore, whatever has been done till date are for our future generations, all our young people have to take the responsibilities with full commitment and serve the country with their utmost dedication and further strengthen our country.

With our Constitution and with all the new political process in place, I believe that the sovereignty and the security of our country will be strengthened, we would be able to
achieve good governance and the people of Bhutan will achieve greater prosperity. My prayers have always been for the betterment of our country. Long live His Majesty the Fourth King of Bhutan. “Pelden Drukpa Gaylo.”

Essence of the Constitution
In accordance with the democratic theory of the people’s constitution-making power, the people are the epicenter, which articulate liberty, freedom, rights and duties for the people, and values and traditions of Bhutan and sovereignty and security of the nation. The Constitution creates self-determination to live its life in the manner that it thought best with the power of the State to implement laws, rules and regulations so that the country can realize the goals and visions and the entrenched constitutional values. Therefore, the Constitution must contribute to social and political stability and introduce changes without disrupting the ongoing operation of the system. It must allow governance or the government to pursue the goals for the nation that the Constitution identifies. The Constitution should have inbuilt insurance theory of constitutional regime.

A Constitution is an on-going process, which reinvents and metamorphoses in a progressive society with protection of liberty, freedom and rights, to inspire future generations to give love and loyalty to their country and reverence for the Constitution. It has enshrined the rights of the people under a democratic system, which has been designed to perpetuate happiness, ensure security and guarantee liberty for all. It has been ordained by the will of the people, and can be changed only by the sovereign command of the people. Hence, the supreme power of the Constitution shall govern the people according to wise laws and protect them from all eventualities. The freedom and liberty under the Constitution is the constituent of Gross National Happiness, and sovereignty of the people. The Constitution embodies hope for survival and reassurance for future. It is the document that exemplifies personal sacrifice of Their Majesties for the national vision of greater and general public interest. Collective dreams and common aspirations for a unifying vision expressed in this document will address the common misery and share anguish to assuage human suffering and lead Bhutan to glory.

Therefore, adopting the Constitution, His Majesty Jigme Khesar Namgyal Wangchuck said on 18th July 2008:

“Lastly, this Constitution was placed before the people of the twenty dzongkhags by the King. Each word has earned its sacred place with the blessings of every citizen in our nation. This is the People’s Constitution.”

Reiterating the submission made at the conclusion of the public discussions, on behalf of the Constitution Drafting Committee, I as the chairperson of the Drafting Committee would like to thank the People of Bhutan and all those who have made contributions intellectually or financially to the drafting of the precious document and submit as follows:

Blessed by the precept of Ugyen Guru Rimpoche and Zhabdrung Ngawang Namgyal;
  The hereditary Kings of the Wangchuck Dynasty;
  Having turned the wheels of both religion and politics;

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914 On 16/6/2005, the Government of India contributed Ngultrum one crore through Dr. Ketan Shukla, DCM, Indian Embassy to meet the expenditure incurred during the drafting process.
The peace, happiness, fortune and education of the people of Bhutan have flourished.

The Fourth magnanimous Monarch;
Having initiated the drafting of the Constitution;
For the principle enshrining the doctrine of democracy;
The boundless vision of His Fourth Majesty and His Majesty cannot be neglected.

His Majesty Jigme Khesar Namgyal Wangchuck;
Having accomplished his works is auspicious;
And with prayers that the Dynasty will remain longer than the river;
The white scarf of full devotion and dedication is hereby submitted.

Finally, I would humbly submit that the foundation of the Constitution are sound, its provisions are useful and for the benefit of the people and it has been created for immortality. I trust that the people of Bhutan accept this divine gift so graciously given by their Majesties and preserve its sanctity through their wisdom and foresight and guard it from and against aggression from within and without.