I am deeply conscious that my visit to this historic place, in the presence of the most accomplished luminaries of the legal community of the State and the Country, is not only a great honour for me but also a symbol of the recognition of the Judiciary of Bhutan.

Bhutan is a small country sandwiched between two giants, China in the north and India in the south. Economic and political modernity of Bhutan can be attributed to the Indo-Bhutan friendship, which commenced with the visit of Prime Minister Jawaharlal Nehru in 1958. He trekked on foot and horse-back with his daughter, Indira Gandhi to meet His Majesty the Third King at Paro and addressed the people of Bhutan where he said,

“India and Bhutan are members of the same Himalyan family and should live as friendly neighbours helping each other.”

Nehru’s statement defined the spirit of the friendship between the two countries. The exchange of visits between the leaders of the countries and the people to people interaction further cemented the friendship. The constant interaction at all levels has promoted a better appreciation of each other’s culture and has reinforced the existing bonds of friendship. Writing to Mr. KK Venugopal, His Majesty the Fourth King said,

“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.”

Bhutan has a very special bond with Mumbai Government Law College. I am indeed happy and proud that many bright, young Bhutanese, who have been contributing to the nation building and democratization in Bhutan, are alumni of this College of which Dr. Ambedkar was the first Principal. I am certain that this College has benefited immensely from the erudition and wisdom of Dr. Ambedkar as an educationist, scholar and administrator. It is also a privilege and honour for me to be here at this august gathering of elevated groups summoned by the soul of the great Indian son, Dr. B.R. Ambedkar. I would like to pay my obeisance to him. Benjamin Disraeli said:

“The wisdom of the wise and the experience of the ages are perpetuated by quotations.”
Dr. B.R. Ambedkar’s words and deeds move the nation and stir the soul through the Constitution of India and roars through the lips and pages of judgments from the Judiciary of India. His constitutional values and *avatars* in the Judges are the agents of social and economic transformation and protectors of liberties in post-independent India. His embedded social and economic values are transformative and reformative, reminding India of its glorious past and the promises of its great future. His constitutional principles and germane values soared and traversed the oceans and the mountains of the globe. Bhutan was a grateful recipient of this wisdom.

Dr. Ambedkar rewrote the social, economic, political and legal history of India. It is difficult to fathom the measure of Dr. Ambedkar’s multifaceted contribution as a social reformer, torch-bearer for the deprived and labour leader. He is widely known for his contribution in the agrarian reforms, eradication of social evils, pre-independence liberation struggles against British dominion, legislative battles, in the education, political and constitutional development. Whatever spheres he touched, he left his Midas effect and his indelible imprint on the foundations of a great India. India is a fortunate birth place of visionaries and Prophets like Mahatma Gandhi and Dr. Ambedkar whose principles need to be emulated, especially by the Youth.

**Drafting the Constitution of Bhutan**

The origin of Bhutan as a nation state resulted from a democratic process in 1907 by electing a hereditary monarch akin to “the Great Chosen One (Mahasammatta),” which is similar to the social contract theory. The democratic process in Bhutan culminated, a century later in 2008 with the adoption of the Constitution. The monarch himself was instrumental in developing and ushering in this democratic Constitution.

Drafting of the Constitution of Bhutan began in the year 2001, when His Majesty Jigme Singye Wangchuck, the Fourth King astonished the Nation with the proclamation that Bhutan would embrace democracy. His Majesty cautioned:

> “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.”

With that Royal Proclamation to initiate drafting of the Constitution, we were reminded of the monumental work of Dr. B.R. Ambedkar. We studied the meaning, birth, types and dynamics of democracy.

As you know, 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

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based on wealth (plutocracy). Thereafter, the idea of “the constitution” engulfed the
world. Only 20 of the 190 countries with constitutions pre-date 1950. Etymologically, the
term constitution comes from the French, 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.

Beside functional and utilitarian objectives, the Constitution must promote progress,
stability and values. Therefore, 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. In the Indian context, Gandhian Constitution for Free India by Shriman
Narayan Agarwal stated that:

“Indian political thought is contained mainly in the two epics-Ramayana and
Mahabharata, the Manusmriti, Kautilya’s Artha-Sastra, and Shukracharya’s
Nitisara. The Ramayana describes the ideal kingdom of Rama in which people
were happy, peaceful and prosperous. In Shanti Parva of the Mahabharata,
Bishma enumerates the duties of a Kingdom, the chief end of the State being the
‘protection’ of the citizens so that they may lead a happy, righteous and
harmonious life, following their respective Dharmas or duties. Kautilya also
emphasizes the basic principle that the happiness and welfare of the people are
the primary duties of the King or the State. ‘In the happiness of his subjects lies
his happiness’ in their welfare his welfare.’ In Shukraniti, the King is primarily
‘the protector and benefactor’ of his subjects; he has to discipline the lives of the
citizens in such a manner that each follows his own vocation of Dharma without
encroaching upon the spheres of others”

Constitutions of nations generally promote democracy. Thus, we surveyed epistemology
and the evolution of democracy.

Democracy
Historically, Cleisthenes invented democracy in 508 BC. The word “democracy”
combined the elements dêmos which mean “people” and krátos a “force” or “power”.
Aristotle was a thinker of the classical Greek period whose political theories, like those of
Plato, set the bounds of political discourse throughout the middle ages. His work still
exercises a profound influence on modern political and social thought. Aristotle’s
political ideas are more immediately acceptable to the modern Western mind than Plato’s
because he comes closer to approving of democracy. Long before democracy flourished

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3We studied different constitutions such as the Written Constitution, Unwritten Constitution, Enacted Constitution,
Federal Constitution, Unitary Constitution, Flexible Constitution and Rigid Constitution, Old constitutions, Colonial
constitutions, the Neo-liberal constitutions, the Classic constitutions and the French Constitution, etc. Further, many
constitutional scholars have enumerated, as a form of reaction to the prevailing situations, limited form of
constitutionalism or controlled constitution. Refer
Yash Gai, A journey Around Constitutions Reflecting on Contemporary Constitutions.
4Nietzsche, “the law of Manu is an incomparably spiritual and superior work.”
in ancient Greece, the concept took root in the independent republic of Vaishali. In response to the changes and different situations, we recorded forty three types of democracy.

Democracy is to be ‘the rule of public opinion’ in the form of individual and self-determination. The Constitution must advance individual and national potential. Gandhiji elucidated that ‘My notion of democracy is that under it the weakest shall have the same opportunities as the strongest.’ Alex Tocqueville mentioned that ‘Democracy does not create strong ties between people. But it does make living together easier.’ His Majesty was keen to ensure participation and involvement of the people of Bhutan in the democratic process. The First Draft of the Constitution was publicly distributed and simultaneously launched on the Internet. After receiving feedback and comments, the second draft was distributed to every household and to every institution in the country, as well as to all international organizations based in Thimphu, the capital city of Bhutan. Moreover, Their Majesties the Fourth and Fifth Kings conducted nationwide consultations to discuss the Constitution with the people of all twenty Districts. It was a crucial move towards the creation of an ‘inclusive democracy’ recognizing the people’s participatory role in governance. In the first session of Parliament on May 10, 2008, His Majesty the King said,

“The highest achievement of 100 years of Monarchy has been the constant nurturing of democracy...I hereby return to our People the powers that had been vested in our Kings by our forefathers 100 years ago”.

As a witness to the past and global experiences, Bhutan ushered in a multifaceted democracy ingrained in “natural democracy” as noted by Prof. Kattsu Masaki. Democracy provides personal choice, common decision making and stabilizing results with responsibility.

During the drafting of the Constitution of Bhutan, the Drafting Committee studied:

(a) Around a hundred Constitutions (out of which fifty were studied in detail);
(b) Royal decrees and edicts, Acts of Bhutan, Speeches of His Majesty and policies of the Kingdom;

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6 Major democracies are (a) Direct Democracy; (b) Representative Democracy; and (c) Presidential or Parliamentary Democracy. Direct Democracy is achieved through direct participation of all citizens, whereas representative democracy involves a body of elected representatives and within the group of representative democracies, the focus may be on a strong president (Presidential Democracy) or on a strong parliament (Parliamentary Democracy). Apart from these basic types of democracy there are other various types of democracies such as: Athenian democracy or classical democracy, Anticipatory democracy, Defensive democracy, Deliberative democracy, Democratic centralism, Economic democracy, Grassroots democracy, Illiberal democracy, Jacksonian democracy, Liberal democracy, Market democracy, Multiparty democracy, Non-partisan democracy, Participatory democracy, Social democracy, Sortition, Totalitarian democracy, Westminster democracy, Procedural democracy, Substantive democracy, etc.
7 On 26th March 2005. Friends, critics, adversaries and the public were given sufficient time to express their views, make comments and provide suggestions regarding any provision in the draft Constitution. We received about 40 pages of comments from online readers including comments from the experts.
8 On 18th August 2005
9 The first public consultation meeting was held in Thimphu district on 26th October 2005 and the last meeting ended at the historic place of Trongsa on 24th May 2006.
Democratic values\textsuperscript{10}, democratic traditions\textsuperscript{11} and democratic culture\textsuperscript{12} so that the Constitution would not be incongruent to the basic philosophies;

Religious, cultural, philosophical and political basis of the Constitution;

Emerging legal paradigms and social and ethical control mechanism;

Lessons from numerous constitutional crises around the world;

The comments from international agencies, individuals and the Ministries of the Royal Government;

Clauses, sentences, provisions, prescriptive and non-prescriptive rights, declaratory\textsuperscript{13} dictums of many constitutions, constitutional reform documents, landmark judgments and constitutional writings;

Human rights conventions, treaties, protocols, covenants and other international and regional instruments; and

Constitutional values\textsuperscript{14}, principles\textsuperscript{15} and justice.

**Comparative analysis**

The Preamble of the Constitution of Bhutan declaring the objectives to be achieved by its provisions indicate its republican character like that of the Constitution of India. It begins with the words “We, the people of Bhutan” and ends with “Do Hereby ordain and adopt this Constitution”; like the opening words in the Indian Constitution, “We, The People of India” and ending with “Do Hereby Adopt, Enact and Give To Ourselves This Constitution”\textsuperscript{16}. The similarity begins and continues between our Constitutions. Consequently, “We”, the people is conceived as a collective body capable of an independent act and political legitimacy of constitution making.

The basic constitutional values incorporated in the Preamble are: blessings of the Triple Gem (Buddha, Dharma and Sangha), everlasting fortunes of Pelden Drukpa (rich heritage of glorious Bhutan), guidance of Druk Gyalpo (benevolent monarchy with republicanism), sovereignty, liberty, justice and tranquility, unity, and happiness of the

\textsuperscript{10}Democratic values include life, liberty, equality and dignity.

\textsuperscript{11}Democratic tradition includes rights and responsibilities, power of separation, a change from absolutism and the divine right of kings to constitutionalism.

\textsuperscript{12}According to Jack Balkin, a democratic culture is a culture in which individuals have a fair opportunity to participate in the forms of decision-making that constitute them as individuals. Democratic culture is about individual liberty as well as collective self-governance; it concerns each individual’s ability to participate in the production and distribution of culture and enter into public debate about cultural quality wherever it is manifested across all three spheres of publicly funded, commercial and home-made culture...in opera, crime writing, ballet, salsa, art galleries, TV, etc.

\textsuperscript{13}According to the declaratory theory, judges only declare law. Ref. declaratory and original law making by Bacon, Hale, Blackstone, Dicey, Salmond, etc. But Judges play a creative role in the making of the law. However, Austin and Bentham criticized it. Constitutive leads to errors and regulative leads to a derogable advancement of knowledge.

\textsuperscript{14}Constitutional values: It can be divided into (i) Constitutional core values, which generally are human dignity, sovereignty of a country, social justice etc., (ii) Supporting values comprising of freedom and equality, (iii) Structural values includes democracy and rule of law, (iv) Embedded values and principles and (v) Neutral values, which include Freedom, equality, democracy and freedom of choice.

\textsuperscript{15}Constitutional principles comprise of: Rule of Law: Both the people and the government must obey all laws. Separation of powers, [Montesquieu, Burke, Engels, Locke, Mill – 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 so far connected and blended as to give each a constitutional control over the other. Representative government, checks and balances, (no one branch should dominate the other. Equality, individual rights, freedom of religion, federalism and civilian control over the military.

\textsuperscript{16}Sir Earnest Barker wrote that “in a brief and pithy form the argument of much of the book, and it may accordingly serve as a key-note.”
people. Justice Kirby from Australia commented that “in the preamble to the Constitution of Bhutan there are poetical and beautiful words.” These are comparable to the basic constitutional values in the Indian Constitution such as sovereignty, socialism, secularism, republicanism, justice, liberty, equality, fraternity, dignity of the individual, and unity and integrity of the nation.

Article 1 of the Bhutanese Constitution expressly provides that the sovereign power belongs to the people of Bhutan and the form of government is a “Democratic Constitutional Monarchy”. It is the immutable principle of the Constitution of Bhutan. It can be either abrogated or amended only “through a National Referendum” or plebiscitary democracy. The power to amend the basic structure of the Constitution, through a referendum, is vested in the people. According to His Majesty, the sovereignty of the people is the principle of the Constitution, which rests with the people, whilst the legislative sovereignty is bestowed to the representative Parliament in line with Hans Kelsen’s doctrine. This is the original will of the Constitution.

The Constitution should have inbuilt checks and balances with the objectives of protecting liberties, freedoms, and rights incorporating the doctrine of separation of power at three levels. Firstly, territorial splitting has been done through the unitary system with constitutional guarantees for local government to deal with local issues under Article 22. Secondly, functional splitting is enshrined through the separation of power between the three branches of the Government under section 13 of Article 1. Thirdly, individual institutions are separated through the establishment of both ‘political’ and ‘professional’ offices within the executive. Further, the Constitutional bodies have been established to ensure good governance and compliance with the rule of law.

Article 2 deals with the institution of Monarchy. There is a provision that the King of Bhutan (Druk Gyalpo) has to abdicate and hand over the Throne at the age of 65 years to his successor. The King shall also abdicate for willful violation of the Constitution or for the permanent disability in a motion passed by the joint session of Parliament. It is a

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17 Drafting constitutions by the Economist on Nov 9th 2013 wrote, “Easy search should save time and effort for the business of drafting. That can produce workmanlike prose—or something more exotic. Bhutan’s constitution kicks off with: “Blessed by the Triple Gem, the protection of our guardian deities, the wisdom of our leaders, the everlasting fortunes of the Pelden Drukpa, and the guidance of His Majesty”. How to tag that?”

18 Dicey (1835 – 1922) differentiated the legal sovereignty of law making by the legislature and electoral sovereignty of the people as the political sovereignty. Dicey’s two kinds of sovereign – the legal and political. The legislature is the legal sovereign as it has the power of law-making. The electorate is the political sovereign and the legal sovereign acts in accordance with the wishes of the political sovereign.

19 The birth of freedom can be traced to “the gray dawn of 21st September, 490 B.C., 9,000 citizen-soldiers of Athens formed ranks on a plain by the Bay of Marathon.” Initially, freedom was not universal and pervasive. The slaves were denied freedom. Freedom can be negative freedom as espoused by Spencer, positive freedom, ‘selfdetermination 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 action as Bentham said: “Source 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 to be a universal law… a person shares with the whole community. He extended this community to all rational beings.” Kant insisted that actions resulting from desires cannot be free and he differentiated the ‘opportunity aspect’ from the ‘process aspect.’ Freedom is valuable for more opportunity to pursue objectives that we value and importance to the process of choice itself. Apart from other freedoms, our 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.
salutary provision. The provision that the Monarch will step down proves that the political sovereignty is vested in the people. It is the people’s representative who can sit in judgment over the King’s conduct. It is sovereignty of people\textsuperscript{20} or Popular Sovereignty\textsuperscript{21} in action\textsuperscript{22}.

There is a separate Article on environment (Article 5), which encompasses the fundamental duty of every citizen to contribute to the protection of natural environment and prevention of ecological degradation. During the Stockholm Declaration in 1972, India was the first country to make amendments in the Constitution by incorporating Article 48A as one of the directive principles imposing a duty in the State to protect and improve the environment, etc. Further, the Constitution of Bhutan expressly makes every Bhutanese citizen a trustee and imposes a duty on the State for its preservation, Section 3 of Article 5 mandates a minimum of 60% of Bhutan’s total land to be maintained under forest cover for all time. So the combination of Article 48A and 51 (a)(g) of the Indian Constitution are provided for in this Article. The Bhutanese Constitution also incorporates therein the doctrine of sustainable use of natural resources and to maintain inter-generational equity or the doctrine of public trust for environment preservation.

The growth of liberty, prosperity and representative government is an inexorable progress of human institutions that began with Greek democracy. After the Revolutions of 1848 in Western Europe, the doctrine of individual liberty\textsuperscript{23} 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. Liberty is classified into negative and positive liberties. The concept of “individual liberty” was criticized by thinkers such as Engles, 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”. Fried Hayek countered the argument that,
“...liberty, far from being improved by social justice and equality, was in fact endangered by socialist regimes.”

Liberty comprises 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.

The constitutional guarantee for civil liberties and their enforcement are enshrined under Article 7 of the Constitution of Bhutan. This is the assurance for protection of civil liberties, which is the essence of democracy. 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. Article 7 is a standing right that enables a citizen to sue for breach of their rights. Part III of the Constitution of India, civil liberties have an entrenched constitutional guarantee from the inception for their protection through the ‘rights’ route with the constitutional remedy (Article 32) for their enforcement. The United States remedied their lacunae in the Bill of Rights by judicial activism or juridification.

Section 17 of Article 7 guarantees protection against torture and other forms of degrading treatment incorporating the substance of the UN Convention against Torture and section 18 abolishes capital punishment. These are progressive guarantees of inalienable human rights. The provisions under Article 7 provide vertical rights of an individual against the State and also cater to the horizontal rights among individuals. Dr. B.R Ambedkar stated That,

“The real distinction between the two is that non-Fundamental Rights are created by agreement between parties while Fundamental Rights are the gift of the law. Because Fundamental Rights are the gift of the State it does not follow that the State cannot qualify them.”

The Constitution confers the First Generation of Rights in the nature of civil and political rights; the Second Generation of Rights concerning the right to economic, social and cultural rights; and the Third Generation of Rights pertaining to solidarity rights such as right to peace, happiness and 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. But there are certain rights, which are non-derogable rights. Even in emergencies, these rights cannot be trampled upon or suspended. In almost all of its variants, constitutional liberalism argues that human beings have certain natural (or

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24 The freedom and liberty under the Constitution is the sovereignty of the people and country is absolute. Freedom can be of (i) Personal Freedom- the right to think and act without government control, (ii) Political freedom- the right to participate in political process and (iii) Economic Freedom- the right to buy, sell and trade private property and the right to employment without the government interference.

25 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. 26 The Bhutanese Constitution has Civil rights (freedom of state),
“inalienable”) rights and that government must accept a basic law, limiting its own powers to secure them. This is the assurance for protection of civil liberties, which in many countries, this right is not expressly provided.26

Rights go with responsibilities and Article on ‘fundamental duties’ under Article 8 demands its citizens to foster tolerance, mutual respect transcending religious, linguistic, regional or sectional diversities. Gandhiji said that, “the true source of rights is duty.” Article 8 is similar to Article 51A of Part IVA of the Indian Constitution. Additional duties of citizens under the Bhutanese Constitution are provided under sections 6, 8 and 9 that is, to help victims of accidents and natural calamity, to pay taxes and to fight corruption. Fundamental duties are based on Buddhism and 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 Lord Buddha’s duties. Conscious duties make a responsible human being and Sir David Ross mentioned that “non-malfeasance is apprehended as a duty distinct from that of beneficence, and a duty of a more stringent character.” The combined efforts of Fundamental Rights and Fundamental Duties of every citizen and the State are realizing the Constitutional promise. 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.”

Article 9 of the Bhutanese Constitution enacts the Principles of State Policy like the Directive Principles of State Policy in Part IV of the Indian Constitution. Dr. B.R Ambedkar mentioned that:

“In the Draft Constitution of India the Fundamental Rights are followed by what are called “Directive principles”. It is a noble feature in a Constitution framed for Parliamentary Democracy... He cannot ignore them. He may not have to answer for their breach in a Court of Law. But he will certainly have to answer for them before the electorate at election time. What great value these Directive Principles possess will be realized better when the forces of right contrive to capture power.”

The provisions are similar for the creation of a welfare state towards the pursuit of the goal of Gross National Happiness (GNH). The concept of GNH encapsulate the vision of a welfare state. His Majesty’s proclamation combines Mahatma Gandhiji’s philosophy with the avowed objectives of the American declaration. Gandhi in a letter to Julian

\begin{footnotesize}\begin{enumerate}
\item political rights (interference and freedom to participate), substantive rights (education and employment), inalienable rights (the right to life),
\item inherent rights (right to life), inalienable right (equality before law), social rights, economic rights, standing rights positive rights, negative rights, corrective rights, distributive rights, proprietary rights and personal rights, perfect rights etc.
\end{enumerate}\end{footnotesize}
Huxley published in the UN Bulletin of 1947 had spoken of citizenship of the world linking the performance of duties to entitlement of rights. He had written,

“...all rights to be deserved and preserved come from duties well done. Thus the very right to live accrues to us when we do the duty of citizenship of the world...”.

Bhutan’s concept of Gross National Happiness is the synthesis of the constitutional philosophies. The Indian concept of ‘Vasudhaiv Kutumbakam’ and ‘Sarve Bhavantu Sukhinah’ are the same, and so are the modern worldwide human rights slogans—‘World is one family’ and ‘All human rights are for all’. The American Declaration pronounced: “all men are equal, that they are endowed by their Creator with certain unalienable rights that among these are life, liberty, and pursuit of happiness”.

One of the most important provisions of Article 9 is the effort of the State to execute policies to minimize inequalities of income and concentration of wealth among citizens.

Article 15 relating to Political Parties contain some salutary provisions. It confines the final election to the National Assembly to only two political parties—a party in government and another in opposition, which would prevent post-election horse-trading. In the absence of a clear electoral verdict, small parties or independent candidates will disrupt the whole democratic essence. Palkhiwala wrote that,

“The voice of a small minority is today mistaken to be the voice of the majority, simply because it is loud and vociferous, while the still, small voice of reason is not heard. So long as thinking men will not take the trouble to give public expression to their views, they should be reconciled to the thought of living under an administration of which the distinguishing feature is that it places “the lives of wise men at the mercy of fools.”

Article 16 enshrines State funding for elections. From the experience of elections in other countries, where money power besides muscle play a dominant role, Bhutan adopted that the State will provide funds for election campaigns to candidates and political parties in a non discriminatory manner.

Article 17 prescribes the essential qualification for the office of Prime Minister to ensure true representation of the people. The Constitution states that the Prime minister should be a natural born citizen of Bhutan. This rule has been extended to persons holding all the constitutional posts under Article 31 and those holding elective offices under Article 23. Such provisions tend to promote political morality. Mahatma Gandhi named politics without morality as one of the seven deadly sins. Dr. B.R Ambedkar mentioned that,

“Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-

26 Ref. Article 2, Section 1, Clause 5 of the Constitution of the USA.
dressing on an Indian soil, which is essentially undemocratic.” By constitutional morality Grote meant “… a paramount reverence for the forms of the Constitution, enforcing obedience to authority acting under and within these forms yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of the very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own.”

Article 21 deals with the Judiciary. It is the guardian of the Rule of Law\textsuperscript{27}, for which its independence\textsuperscript{28} is secured by suitable provisions relating to security of tenure, conditions of service and the essence of separation of power. Appointment of judges is made on the recommendation of the National Judicial Commission. The significance of Judiciary in Bhutan is a great assurance for the working of its democracy. The Judiciary has a seminal role in a democracy.

Article 27 states that the State will not use military force against a foreign State except in self-defense or for the purpose of maintaining its security, territorial integrity and sovereignty.

Article 33 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.

**Survival of Constitution & Democracy**

Many philosophers believed that political cycle was harmful. The transitions would often be accompanied by violence and turmoil, and a good part of the cycle would be spent with degenerate forms of government. To minimize casualties and facilitate transition, Bhutan looked into Aristotle’s political cycle comprising of six forms of stages and believed that these keep revolving in a cyclic order. Similarly, Polybius has defined four basic forms of government as democracy, aristocracy, oligarchy and tyranny, and Plato mentioned that the five forms of government are aristocracy, timocracy, oligarchy, democracy and tyranny. Having studied them, we created interlocking system and enshrined principles, doctrines and legal paradigms in the Constitution. The Constitution of Bhutan is rigid to establish normative values and flexible\textsuperscript{29} enough to be dynamic in-

\textsuperscript{27} We realized the value of the democratic society and the need to respect one’s right and others, ensuring supremacy of the “rule of law” that embodies the basic principles of equal treatment of all people before the law, fairness, and both constitutional and actual guarantees of basic human rights. The rule of law is the foundation for sustainable communities based on opportunity and equity. Dicey’s rule of law has the material rule of law and the formal rule of law. The material rule of law requires the realization of just legal order and formal rule of law requires that the state activities are to be based on laws that are consistent with the constitution. In his treatise, “Law of the Constitution”, he identified three principles which together establish the rule of law: (1) the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power; (2) equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts; and (3) the law of the constitution as a consequence of the rights of individuals as defined and enforced by the courts.

\textsuperscript{28} We adhered to the Statutory protection of Independence; Personal Independence and Integrity (not sway by personalities bias and extraneous influence); Professional Independence; Investigatory Independence; Reporting Independence; and Resources Independence.

\textsuperscript{29} The flexible constitution lays down a special process for its amendment. It does not distinguish between a constitutional law and an ordinary law.
order to embrace changes. The Constitution should contribute to social and political stability and introduce changes without disrupting the ongoing operation of the system. It means that society will over a period of time face social and political disruptions of various sorts in the political domain and the opposition party may gain sufficient power to become troublesome or disruptive and may take power and displace the government. However, the Harvard Professor Prof. Mark V. Tushnet said that the opposition would not be destructive.

The Constitution of Bhutan has survived for the last five years without any amendment. It has passed the first cycle and in the future it will be tested as we move with the change of time. However, we must be mindful for Aristotle warned that:

“Even the most minor changes to basic laws and constitutions must be opposed because over time the small changes will add up to a complete transformation.”

Any amendment to a basic law or constitution which would not satisfy the prerequisites enshrined in a valid entrenched clause would lead to so-called “unconstitutional constitutional law”, i.e. an amendment to constitutional law text which would appear to be constitutional law only by its form, albeit being unconstitutional as with respect to the procedure in which it has been enacted, or as to the material content of its provisions. The objective is to prevent amendments which would pervert the fundamental principles enshrined in it, in particular to prevent the creation of a legalistic dictatorship. But entrenched clauses are often challenged by their opponents as being undemocratic. It is also known as the basic structure of the Constitution and Immutable principle.

During the last five years, the Constitution of Bhutan has endured the constitutional goals, contributed to social and political stability without disrupting them and the governance to pursue goals for the nation. It has maintained stability and peace in bewildering changing times. In a system of election in which a party that loses the election must not feel that it has been permanently defeated. It should not therefore go into serious opposition to the new governing party. The constitution must allow the governance or the elected government to pursue the goals for the nation that the constitution and the governing party identifies.

**Conclusion**

The Constitution must ensure the realization of the constitutional promise. Constitutions have become major sources of values, institutions and procedures around the world. Constitutions are losing their national specificity. Rousseau once called the constitution a law engraved on the hearts of the citizens. The objective of the Constitution is to provide a sacred refuge and guidance to the nation. It is not an ordinary law. It is the statement of fundamental rights of the citizens, which normally forms part of modern written constitutions. Bhutan considered and incorporated intellectual, philosophical, spiritual and cultural values to make the Constitution, an inclusive Constitution. 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 embodies hope for survival and reassurance for our future and 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 shared anguish to assuage human suffering and lead a nation to glory. His Majesty said that:

“This Constitution is the most profound achievement of generations of endeavor and service. As it is granted to us today, we must remember that even more important than the wise and judicious use of the powers it confers, is the unconditional fulfillment of the responsibilities we must shoulder. Only in understanding our duties will the exercise of our powers be fruitful... 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.”

I am happy to present the macro view of the Constitution of Bhutan with certain influences from the Indian Constitution, which was chaired by Dr. B.R. Ambedkar. As the Chairman of the Drafting Committee of Bhutan, I admire and revere his transcendental wisdom and pervasive influence for social justice and democracy. His embryonic seed of the basic structure of the Constitution acts as the northern star to guide the way through the murky universe and functioning of democracy. His prophetic words echo:

“I feel that it is workable, it is flexible and it is strong enough to hold the country together both in peace time and in war time. Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that Man was vile. Sir, I move...”

I join you in your endeavour of remembering him gratefully for he is a symbol of the undying spirit of men, who lifted the hearts of human-kind so that we dare to aspire for a new society.

Thank You and Trashi delek