Making of the Constitution of the Kingdom of Bhutan

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On behalf of the Members of the Drafting Committee, I have the honour of publishing the introduction to the Articles of the Constitution on the auspicious day of the historic Coronation. It is based on the constitutional principles, legal and academic doctrines, philosophical and spiritual canons, traditional sources and public consultations. The detailed explanation of every section will be published in a book later.

Preamble

The Preamble is an introductory statement or preliminary explanation of the purpose, directives, and the philosophy of the Constitution. It clarifies the Constitution, states its source and the nature of polity. The Preamble of Bhutan’s 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.

Justice Michael Kirby\(^1\) 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 Drukpa 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 amity with everybody. That we should try to bring down inter-conflict strife and war and live together in peace and harmony.”

The proclamation “We the People…” 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 “Gna-cha”, 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.\(^2\) 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).

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1 Justice Kirby, the former Justice of the High Court of Australia delivered his talk on 14th & 15th of December 2010 in conjunction with a series of lectures on constitutionalism and democracy organized by the Judiciary of Bhutan with the adoption of the Constitution and the establishment of a Democratic Constitutional Monarchy.

2 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’.
The fundamental values of Constitution making in Bhutan are inherently a process led constitutional mandate instead of imposed constitutional framework. It is an act of our own people. Every member of the household in the country received a copy of the Draft Constitution. There was extensive public participation. The people participated during the historic process of the Constitution making in the august presence of His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo, and His Majesty the Druk Gyalpo, Jigme Khesar Namgyel Wangchuck. Their Majesties visited every Dzongkhag, read every page of the Draft Constitution and discussed every word of 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, kuenselonline created a special forum for comments on the Constitution online, wherein many comments were sent. Therefore, the expression “We the People of Bhutan” firmly finds it place in the Preamble as it is reflective of the holistic participation of the Bhutanese people in the drafting of the Constitution and genuinely symbolizes their true will. 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 second paragraph of the Preamble incorporates a historical perspective, the prevailing circumstances and the vision for the future. It invokes the blessings of the Triple Gem, the protection of our guardian deities, the wisdom of our leaders and forefathers, and the everlasting good fortunes which Bhutan and its people have always been blessed with. This invocation denotes the records of historical and religious belief and its derivative values, acknowledges the services of the past leaders, and extols the virtues of the past leaders (Gyalwa Gom) that inspire the future generations. This paragraph further solicits the guidance of His Majesty the Druk Gyalpo, Jigme Khesar Namgyel Wangchuck, in the making of the Constitution and the journey of a democratic system in the country.

The third paragraph is the soul of the Preamble. It reaffirms the sovereign status of Bhutan with a solemn pledge of every Bhutanese to “strengthen the sovereignty of Bhutan.” It 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 continued peace, prosperity, and justice. The success of the past must be ensured for future by the Constitution and the policies of the future must also be strengthened by the Constitution.3 His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo said that:

3 Royal audience with the members of the Constitution Drafting Committee, 19th November 2001.
“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.”

It is a clear testimony that the strength of Bhutan comes from the unity of our citizens. It is vested in the belief that if our country is 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 the unity are the core values of the Bhutanese Constitution. Therefore, the Preamble is to clarify that the People made the Constitution as they are source of popular sovereignty with power to adopt their own constitution thereby, declaring their will as Bhutan to be a sovereign and democratic country. The Constitution embodies our best achievements, which have continued to peace, economic progress and peaceful political transformation.

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. 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. 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”. Scientifically, there are many evidences establishing the existence of Bhutan. According to Dr. Michael Aris,

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5 The “unity” must start within a family, a community and the country.
6 Refer Kuensel dated 26th August 2003.
“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.”

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 the Kingdom 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 peopling of the Himalayas and Eastern Asia in general.⁷

In the past, Bhutan had many regional rulers. It was Zhabdrung Ngawang Namgyal⁸ who united the nation under one government with an apparent federal structure under different Chilas⁹ and the country was known as “Druk”. 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.¹⁰ It was transferred to the Druk Gyalpo under dual sovereignty on 17th of December 1907 and can be equated with Locke’s principle “that political sovereignty comes only from the consent of the governed.” One of the philosophers who supported the principle of popular sovereignty was Rousseau. Popular sovereignty is an attribute of direct democracy. According to James Madison, popular sovereignty creates departmental or concurrent or coordinating theory that has a connection to the phrase “We the people” and “ordain and adopt” of the Preamble and demonstrate the powers to make a constitution. It shows that the legitimacy of democratic politics belongs to the people of Bhutan. In his explanation to the people in Trashigang during the public consultations, His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo said:

‘... 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

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⁷ The Bhutanese Genome Progress report in February 2005 by Prof. Dr. Peter de Knijff.
⁸ Zhabdrung Ngawang Namgyel (1594–1651) was the unifier of Bhutan as a nation state.
⁹ Chilas means executive governor. They were also known as Penlop.
¹⁰ Sovereignty (popular sovereignty) – 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. (Refer: “The People Themselves, Popular Constitutionalism and Judicial Review” by Larry D. Kramer, page 106)
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.

(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” or plebiscitary democracy. This is the original will of the Constitution.

(c) **Democracy** – Democracy means that people shall rule themselves either through direct or indirect elections. The process and power of the majority of citizen to make decisions through referendum under Article 34 is a direct democracy. And the election of representatives to Parliament for a fixed term under Article 23 is indirect democracy. Thus, democracy entails the primacy of the 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’. Speaking to the people of Dagana during the public consultations, His Majesty the Druk Gyalpo 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. [Translated from Dzongkha]

Furthermore, 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 mentions 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 also has her own national language, coin, currency, postage stamps and a standing army.

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11 The Constitution of Bhutan, Section 26 of Article 2.
The Article provides 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, the Fourth Druk Gyalpo on 30th November, 2009 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 Thrinzhung 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 to the Executive, Legislature and the Judiciary. It is also known as the original or supreme will of the people or by fault originalism.

### 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. The King is the Dharma Raja. Hegel embraced constitutional monarchy and Thomas Hobbes said monarchy provides stability. Dante Alighieri said that “monarchy is the best” form of government and Jean Bodin added that “monarchy brings unity...with a single and unified power”. The people of Bhutan in order to establish justice, ensure domestic tranquility, provide for the common defence against external aggression, to 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

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13 "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.”

14 Dante Alighieri, *De Monarchia*, Book III, Ch.XIII.


16 It has been clearly provided in 1907 social contract agreement made between Gongsar Ugyen Wangchuck and the people of Bhutan.

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. It was the materialization of the words of His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo, when he explained:

“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.”

Under this Article, the provision regarding the stepping down of the Druk Gyalpo upon reaching the age of sixty-five years, is a unique and profound provision which is 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 generations past. Such profundity was also echoed by Sir William Blackstone, the famous English Judge of the 18th Century, when he said, “The king never dies”.

Commenting on the provisions under Article 2, DANIDA mentioned that “the general retirement age without exception was mentioned as a positive and remarkably innovative move”. 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.”

Montesquieu’s idea that “monarchy should be based on honour” and Hegel’s notion that “hereditary succession is necessary to avoid factionalism” as well as Hobbes observation that monarchies are providers of security 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

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18 The Constitution of Bhutan, Article 10 Section 1.
19 The Constitution of Bhutan, Article 1 Section 2.
20 Justice J. S. Verma is the former Chief Justice of India. He gave a public talk on 13th October, 2010 in Bhutan.
His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo, pronounced that the Kings of Bhutan flourished with proactive actions.

**Article 3**  
**Spiritual Heritage**

The Article on Spiritual Heritage was a very sensitive and an emotional issue at the time of drafting. We had one of the longest discussions on the provisions of this Article. However, there was a general consensus that the spiritual virtues of faith, hope and duty to help one another is necessary for human beings. Moreover, it was necessary to think about the applicability of the document for posterity as commanded by His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo. 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 that:

> "The Buddhist, being the basis of the cultural values which are incorporated in the Constitution which is actually the way of life in Bhutan. The practice of Buddhist are the truth of Lord 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."\(^{21}\)

During the various public consultations of the Draft Constitution, His Majesty the Fourth Druk Gyalpo and His Majesty the Druk Gyalpo made the following clarifications:

(a) 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.\(^{22}\)

(b) 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

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\(^{21}\) During the public talk on 13\(^{th}\) October, 2010 in Bhutan.  
\(^{22}\) Public Consultation in Haa on 2\(^{nd}\) November 2005.
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.\textsuperscript{23}

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 Lord 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 as we understand from the “theory of empiricism” and that of Edmund Burke’s principle of “respect for inherited rights and for established customs”.

**Article 4**

**Culture**

The Constitution is fully founded in the historical, cultural and religious principles of the Bhutanese people that underlie the glories of Bhutan. Future generations can exalt the Constitution with pride. Although, Constitution of Bhutan is unique and different from other constitutions, it has considered the good principles and practices of other constitutions and incorporated the best of those 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 turn the pages, they will forever hear the voice of the nation.

Mathew Arnold (1822-1908) said that culture is the passion for sweetness, and the passion for making them should prevail.\textsuperscript{24} 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. Religion provides values and moral fibre whilst culture exhibits a separate identity and unity. Thus, this Article is unique to 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 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. His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo said that “Bhutan is a very small country with a rich cultural heritage.”\textsuperscript{25}

\textsuperscript{23} Public Consultation in Samdrup Jongkhar on 22\textsuperscript{nd} April 2005.

\textsuperscript{24} Mathew Arnold, *Culture and Anarchy*, (1882)

\textsuperscript{25} Kasho 1985, National Assembly 33-12, 34-27
Culture blossoms the mind and scintillates the spirit. It is important for determining the well-being of the social fabric. Our future should always reflect our past complete with its traditions, values and aspirations. 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.”

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 recognized tradition and Government support. Almost all our culture and tradition express religious, moral, spiritual and social values as well as functional utilities. His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo’s Kasho in 1989 stated:

“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 our culture and tradition is one of the true identities of our country’s independence and sovereignty. Bhutan being sandwiched between two giant and populous countries, cultural identity is our only defence.

His Majesty the Fourth Druk Gyalpo is the key advocate for the promotion and preservation of our culture, tradition and environment. On 2nd June, 1999 His Majesty said,

“We have been able to strengthen our unique national identity through the promotion and preservation of our culture and tradition. Another area in which we can draw much satisfaction is our success in the preservation of our 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 our achievements”.

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

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26 Culture, A critical review of concept and definitions; Papers of the Peabody, …
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 ...

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. For this reason, in the constitutions of other countries there are no provisions on religious and cultural heritage.

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.

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 and 5 it seals 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.

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 we lose tradition, culture and religion. Socially our system will break. Culture provides the national identity.

Article 5

Environment

Bhutan’s commitment to environmental conservation has been commended worldwide. The World Environment Organization awarded the “Champions of the Earth Award, 2004-2005” to His Majesty the King and the people in recognition of the efforts in the conservation of the environment. His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo, was also awarded...

“Environment being the most important issue, the Constitution has a separate Article to recognize its separate identity and 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 our 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 our achievements.”

The past and present achievements need future. A short-term gain will endanger the long term future. Hence, this Article is to protect the environment and further strengthen the policy on the protection of environment as one of the main pillars of the Gross National Happiness. 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. We must reaffirm our undying faith in nature, unyielding human effort and enduring effort to preserve, conserve and protect our 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. It is supported in Hylozoism by Cudworth that the theory that life is inherent in all matters. Conservation and protection of the five elements\(^1\) of this planet is the basis of our survival and refuge for our posterity. It is necessary to avoid an imminent hazard to the public safety and not to commit suicide.

The protection of environment is one of the main pillars of the Gross National Happiness concept and of this Constitution. This innovative and unique constitutional approach may serve as a model for other constitutions. His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo, said that the importance of natural resources and environment has long been felt by the Government even before the state of current conservation efforts. 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 our rich environment. Simultaneously, the duty of preservation falls on the State. Article 5 incorporated the doctrine of inter-generational equity or the doctrine of trust which in the field of environment is accepted as very well settled. Article is far more elaborate and because of 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, is showcased during the festivals in Bhutan since 13\(^{th}\) 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 trial of

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\(^{1}\) Four elements - Empedocles established the theory of the four elements
prosecuting for indiscriminately slaughtering innocent wildlife in the higher mountains and burning and destroying environment of natural habitat for innumerable sentient beings. He 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 being.

Commenting on Article 5 of the Constitution, the International Agencies in Bhutan like UNDP mentioned that, “There are a number of admirable provisions designed to ensure conservation of Bhutan’s natural environment.” Similarly, Helvetas said that “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 our limited resources, without compromising on the development of our country. Their Majesties during the public consultation in various Dzongkhags explained that:

(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 agriculture 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 of us has to give very serious thoughts on the repercussion effect of destroying forest. 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 the sustainable rate and our country will develop at immense rate. In case of the 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 rates. In our case, instead of oil, we have sustainable water resource which will never deplete even for hundred 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 will dry up and secondly landslides 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...\(^{32}\)

(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 down to our children.\(^{33}\)

(c) **Our people know very well as to how important our environment is, it is one of the biggest sources of revenue proceeds.** Whether for the people or the government, firstly revenue comes from agriculture, secondly from animal husbandry, and minerals and electricity. All of them come out of forest. That is why, it is more important to take good care of our environment, more than before and it is not only for us alone that we need to take care of our environment. When we hand our stable country to our children after 50-60 years or 100 years or so, it is our duty to hand over not only a stable country but also our environment in a good condition. Electricity is one of the biggest contributors of revenue in our country. For example, till now the yearly revenue from electricity is slightly more than 2331 million. When we begin our Tala Hydro-Electric Project, it will add another 400 million to the existing revenue from electricity. That is why, it is very important to take good care of our environment. We should understand well as to how problems will arise if we do not take good care of our young mountains. Our country’s revenue would be affected if, erosions take place, water springs from barren land and rivers dry. It would affect our revenue and the farmers living in villages. We should take good care of our environment from hereon as it is important for us to hand it over to our children in a better condition than what it is now.\(^{34}\)

(d) ....our country is a small landlocked country and is surrounded by big and highly populated neighbouring countries. In other countries, they have oceans and mountains as their boundary. In the absence of it, they have built walls as their boundary to protect their country. In case of our country, we have only forest and nothing else.\(^{35}\)

(e) **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, even in the future by our children, to protect our environment.\(^{36}\)

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

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32 Public Consultation in Trashigang on 24th December 2005  
33 Public Consultation in Trashi Yangtse on 28th December 2005  
34 Public Consultation in Pema Gatshel on 31st December 2005  
35 Public Consultation in Samtse on 27th March 2006  
36 Public Consultation in Lhuentse on 24th December 2005
commitment of our 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 our biological resources including the preservation of our wild life. Fifty one percent of our country’s area is formally protected through a network of national parks, protected areas and biological corridors.

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, 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 their 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 right. Bhutan is no exception to such a history.

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

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 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. The Acts were thoroughly debated and the necessary amendments made by the Members of the Royal Advisory Council and the National Assembly sitting jointly before being enacted. No Act was enacted in toto in the form it was presented. After the draft Act has been submitted to the House, the draft is 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 establishment of citizenship laws.

37 A natural born citizen is a person, both of whose parents are citizens of Bhutan. It is similar to Article II, Clause 5 of the Constitution of the United States of America:- “No person except a natural born Citizen, or Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.”

38 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.

39 The person who applies for citizenship by naturalization must fulfill the conditions laid down in Article 6 Section 3 of the Constitution and the Citizenship Act.
“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 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, its 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 would have an enormous impact on the economy, society, politics and environment of a small nation like Bhutan. It will endanger the security and sovereignty of the Nation. A strong citizenship law is security for the people of Bhutan. Citizenship is national identity, security and sovereignty of a nation.

**Article 7**

**Fundamental Rights**

The rights, liberties and freedoms are the precious jewels of an individual. Article 7 of the Constitution guarantees these rights, liberties and freedoms. The principles enshrined under the Article on Fundamental Rights were incorporated from the various Royal Edicts, Speeches of Their Majesties and laws of Bhutan in conjunction with various other documents. Furthermore, it has philosophical basis of the following noteworthy historical documents:

(a) Magna Carta of 1215 AD;
(b) The Glorious Revolution in England (1688-89);
(c) Jefferson’s statement mentioning that ‘all men are created equal’;
(d) Declaration of the Rights of Man and of the Citizen 1789;
(e) Thomas Hobbes’ right of nature (jus naturale) and law of nature (lex naturalis).

Venerable Thich Nhat Hanh in his Old Path White Clouds walking in the footsteps of Buddha mentions that:

> “It takes great courage to stand up for and protect what is right... Do not violate the rights and commitments of others.”

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42 SIGALOVADA SUTTA (The Layman’s Code of Discipline)
43 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.
44 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.
The provisions under Article 7 of the Constitution 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.”

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 of the Constitution enables a citizen to sue for breach of their rights. In many countries, this right is not expressly provided. Therefore, those countries remedied their lacunae in the bill of rights by a kind of judicial activism. A court of one of those countries observed that there is no point of 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 that:

“The list of rights is extensive, including many of the basic fundamental human rights enshrined in international covenants.” (Comment by UNDP)

“The list of rights enshrined in this provision is comprehensive and reflects in an adequate manner the relevant international standards in this field.” (Comment by Helvetas)

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.”

Freedom
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.

Buddhism is based on social reforms and freedom for all. Lord Buddha taught eight freedoms and ten advantages. The word for freedom in Dzongkha was Daelwa in Choenjug and Zhelung. Hence, we used the word Dal dbang to mean freedom. It is a more profound word. It was bitterly

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45The Bhutanese Constitution has Civil rights (freedom of state), political rights (interference and freedom to participate), substantive rights (education and employment), inalienable rights (the right to life), 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.
46A Dissertation on the Canon and Feudal Law, 1765.
opposed by the Dzongkha experts and few Parliamentarians. They suggested *rangwang* but it means independent or self-determination. We cannot have common words for everything. The words must have history, philosophy and inspiring values with source.

Freedom can be negative freedom\footnote{Negative freedom consists in the absence of coercion, the absence of interference from other people. Negative rights are a person right that another party refrains from doing something.} as espoused by Spencer\footnote{Herbert Spencer in Social Statics (1851).}, positive freedom\footnote{Positive freedom is the actual possibility of developing human capacities – enlarged ability to contribute to common good.}, ‘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 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.

**Liberty**

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 developed. Succeeded by the 1789 Declarations of the Rights of Man and the Citizen, 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 Angles, Marx, Nietzsche and Freud. They had 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.”

In the Bhutanese context, the term for liberty is *dod bdang* (Doe-wang). Liberty comprises of civil, political and the 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 secured from unreasonable search and seizure, including the rights 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.

**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 Human Rights:

“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. Under such extreme cases, fundamental rights should be subject to some limitations. This principle is incorporated in many Constitutions. 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 republcae 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 that “No ones 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.

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.

Comments on the draft Constitution of the Kingdom of Bhutan by United Nations High Commissioner for Human Rights dated 2 August 200551 mentioned that:

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50 Refer “The cashing-In. The student ’Rebellion’ Capitalism: The Unknown Ideal, 256.
“The draft Constitution is well drafted and quite comprehensive. The document appears to draw considerably on the civil and political rights that are set out in the Universal Declaration of Human Rights, which is very positive. The document is internally consistent and the English translation of the text is written in an easily understandable and clear fashion.”

His Majesty said:

‘The fundamental rights accorded 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.’

Fundamental rights limit the power of Legislature, secure individual liberty, barricade from majority and provide security against arbitrary action by the government. It enhances individual’s freedom for development to his/her fullest potentiality. Civil, political, social, economic and cultural rights are the basis of human progress, peace and progress of the Nation. These vested and contingent rights prevent trampling of the inalienable rights, crushing of the inherent freedom and pounding of the precious liberty of an individual. No political authority, power and wealth can violate fundamental rights. Fundamental rights provide security against arbitrary action by the authorities. These rights represent the cherished values of the people of Bhutan. They are justifiable and beyond the reach of majority establishing a government of law and not of man.

Article 8
Fundamental Duties

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, we have to assume duties in the interest of our country. Consequently, 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.”

52French Declaration of the Rights of Man and Citizen (1789).
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." 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”.

Every person should bear a moral duty to have self-limitation and to enjoy the conferred rights. As 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.” Thomas William Rhys Davids said that;

“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 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.”

During the last decade, the imbalance between the rights and duties emerged. In this connection, Samuel Gregg reminds that

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54 George Bernard Shaw is an Irish dramatist & socialist (1856 - 1950).
56 Samuel Gregg is Resident Scholar at the Centre for Independent Studies (CIS) and Director of the religion and the Free Society research programme.
“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.”

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.”

Fundamental rights and fundamental duties of every citizen are the combined efforts and the State is realizing towards the Constitutional promise. Therefore, Lord Buddha in Light of Asia said;

“Be thou content to know not, knowing thus
Thy way of right and duty:”

In addition, under the Constitution usage of term “duty” and “responsibility” has been maintained to avoid future wrong interpretation 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. Word has specific meaning and implication.

### 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.

The Principles of State Policy embodied in this Article are directions to the Government to guide the establishment of a just society and 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 the government. They are yardsticks in the hands of the people to measure the performance of the government against nationally prescribed goals and principles.

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58 The Tragedy of Democracy by Samuel Gregg.
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. Lord Buddha said, “A correct economic policy should be based on voluntary participation.” 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 improving services, promoting economic growth and opportunity and meeting peoples’ aspirations for a progressive future for Bhutan. The Drafting Committee embodied a preservative principle under this Article to ensure that things do not get worse.

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 should be the road map in formulating the policy of the government. Most of them are non-absentee clauses. Prof. Ben Saul rightly observed during the seminar on 15 December 2010 in Bhutan 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 justifiable 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 political party in power must endeavour to follow the principles, ideals and goals set forth. Otherwise, dramatic changes may occur after every election with uncertainties. The objectives of this Article are to endeavour up-liftment of disadvantaged and remove inequality:

(a) Between the genders;
(b) Between the rich and poor;
(c) Of income, concentration of wealth, and promote equitable distribution of public facilities among individuals and people living in different parts of the Kingdom.
(d) Between the different sections of people to access medical facilities and education; and
(e) Between the areas and Dzongkhags on the basis of different needs so that the allocation of national resources results in comparable socioeconomic development.

And the principles of State policies are to:

(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;
(o) Encourage free participation in the cultural life of the community, promote arts and sciences and foster technological innovation; and
(p) 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.”

Elaborating on the Article, His Majesty said59:

“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

59Public Consultation in Paro on 9th November 2005.
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.”

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*\(^60\), pacta sunt servanda, principles of equality, principles of reciprocity and other principles.

Principles of State Policy are to provide social and economic justice, where there will be no concentration of wealth in the hands of a few. It provides guidelines and directives to the Government, to be kept in mind while framing laws and policies. This principle laid down the 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 rights.

**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 and bi-cameral was supported by John Adams. Bi-cameral Parliament prevents hasty or ill-considered laws, which are drafted without proper reflection. It provides scope for diverse interests for political debates. 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 11th century in the winter of Saxon King in 1245. Religious leaders from the counties attended the House. However, in England during the 14th century, there was a division of the House of Lords and the House of Commons resulting in the establishment of bi-cameral parliament.

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\(^60\) *Jus cogens* which means “compelling law” is a technical term given those norms of general international law that are considered as hierarchically superior. They are the set of rules, which are peremptory in nature and from which no derogation is allowed under any circumstances.
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 bicameral form of Parliamentary system since the establishment of the Houses. The Constitution continued the bicameral system when Bhutan embarked upon parliamentary democracy.

Bhutan being a small country, many people suggested for unicameral system. While recommending a bicameral system, His Majesty did not want the terms, “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 the money and financial Bills, which can be introduced only in the former. Hence, Bhutan has adopted bi-cameral parliament. It provides scope for diverse interests for political debates. 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 check and balance. 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

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61 John Adams, Thoughts on Government, Chapter 4, doc.5, Papers 4:86-93, Apr. 1776.
62 Edmund Burke explained 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 while.”
educated Parliamentarians to provide the nation with enlightened laws. Parliament is the citadel of justice and embodiment of crystallized wisdom and leadership. Parliament of Bhutan is the representative of the People of Bhutan. It is to represent the constituency, the people in his or her constituency. However, the representative should think of the national good.

Deliberative democracy favours on hearing out every policy alternative and providing time to research on it. It has enclave and conclave divisions. Therefore, boycotting parliamentary sessions may tantamount to violation of this. 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\(^63\) said:

“We are not aware of 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\(^64\) 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,\(^65\) 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” and John Ray, who said “They that make laws must not break them.”

\(^{63}\) Professor of Policy and Governance, Crawford School of Public Policy, Australian National University, Canberra.

\(^{64}\) Morality in the Latin is moralitas, which means “manner, character and proper behavior”.

\(^{65}\) One of 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.
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.

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 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 Zhungtsog and the National Assembly.”

The old terminology, the Royal Advisory Council, was replaced by the National Council as commanded by His Majesty and is one of the Houses of Parliament composing twenty-five members.

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 population and geographic size.

The National Council is an apolitical body. The Council is not in pursuit of power but to render wise, 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 the opinion of the nation to be adequately expressed on it but it must be done with restraints.

During the drafting of the Constitution, some of the Committee members questioned the need for a second chamber. They considered that Bhutan was too small a country to have bicameral
Parliament. There were also criticisms that the National Council was a superfluous body. However, except with respect to financial and money bills, the National Council has the same powers as that of 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 the body of statesmen where calmer 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 that:

“...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 National Council 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 rationale and functions of the National Council can be summarized from the profound words of His Majesty:

66 Desk Review of Bhutan’s Draft Constitution.
67 Professor William Maley is Director, Asia-Pacific College of Diplomacy, Australian National University, Canberra.
69 His Majesty elucidated to the public during the public consultation in various Dzongkhags.
It is duty of the National Council to maintain and ensure check and balance with the ruling party, the opposition party and the Ministers.\textsuperscript{70}

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.\textsuperscript{71}

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.\textsuperscript{72}

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.\textsuperscript{73}

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.\textsuperscript{74}

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.\textsuperscript{75}

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

\textsuperscript{70} Public Consultation in Thimphu on 26th October 2005.
\textsuperscript{71} Public Consultation in Dagana on 5th February 2006.
\textsuperscript{72} Public Consultation in Tsirang on 8th February 2006.
\textsuperscript{73} Public Consultation in Wangdue Phodrang on 7th December 2005.
\textsuperscript{74} Public Consultation in Thimphu & Punakha on 26th October /2005 & 27th November 2005.
\textsuperscript{75} Public Consultation in Punakha on 27th November 2005.
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 12
The National Assembly

In the past, the National Assembly was Parliament. His Majesty, the Third King Jigme Dorji Wangchuck was a progressive ruler. It was His Majesty, who 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.

At the time of its establishment, people expressed 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, promote public welfare and develop political consciousness among the people so that they could play a greater role in the decision making process in running the country. Through this 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 responsibilities was the enactment of the Thrimzhung Chhenmo, the Supreme Law.

With elected members of Parliament, Bhutan has opted for liberal democracy. 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 representative democracy with indirect rule by majority. Their Majesties said that democracy in Bhutan shall be disciplined and be based on integrity.

The open system is misused and manipulated. Bhutan has taken into consideration the mistake of other countries. With the Bhutanese political system, Dzongkhags cannot be marginalized as political parties will be broad based under section 4 of Article 15 and to a certain extent, one of the two political parties will always be represented in all the constituencies unlike in a multi-party system, where the ruling party may not necessarily have representation from all the constituencies.

The National Assembly, as one of the two houses of Parliament, is elected to represent the people and to ensure governance by the people under the Constitution. It provides a national forum for public consideration of issues, to pass legislation and scrutinize, and oversee the executive action.

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

76 Public Consultation in Gasa on 13th May 2005.
77 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.
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 running the country.

During the public consultation, Their Majesties explained:

(a) Among our Dzongkhags, the small Dzongkhags shall have 2 members and in bigger Dzongkhags we shall have a maximum of 7. This has been incorporated in our Constitution.\(^\text{78}\)

(b) When we say that His Majesty the King has devolved the authority to people, it means that the capable person who can work for the benefit of the country to 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.\(^\text{79}\)

(c) In some countries, only few members represent millions of people in Parliament. In our country, it is the case of not million people, but few thousand people will get one representative.\(^\text{80}\)

(d) However, as we have already discussed the importance of the people in the democratic system, whatever laws we make in our country and what 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.\(^\text{81}\)

**Article 13**

**Passing of Bills**

This Article establishes 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 Committee. Similarly, the process of promulgation of the laws and the process of making it public before its enforcement should also be clarified in the Rules of Procedure. The Constitution must not be burdened with details.

Professors Walter Kalin\(^\text{82}\) and Jorg Kunzli\(^\text{83}\) 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

\(^\text{78}\) Public Consultation in Wangduephodrang on 7\(^{th}\) December 2005.

\(^\text{79}\) Public Consultation in Zhemgang & Bumthang on 30\(^{th}\) April 2006 & 21\(^{st}\) May 2006.

\(^\text{80}\) Public Consultation in Bumthang on 21\(^{st}\) May 2006.

\(^\text{81}\) Public Consultation in Trongsa on 24\(^{th}\) May 2006.

\(^\text{82}\) 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.

\(^\text{83}\) Professor Jorg Kunzli is Associate Professor of Law at the University of Bern.
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 centres to avoid errors and edify truth and
accuracy. It is not a delaying tactic, but provides different avenues for reflection.

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 wrote:

“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. It 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 & 14 are enjoined by His Majesty the Druk Gyalpo’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 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 15**
**Political Parties**

Introduction of 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. Party system would divide families and the country. However, His Majesty declined 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. Huntington stated that strong parties are “the prerequisites for political stability in modernizing countries.” 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 had chosen a pluralist reality over a monistic democracy. An effective party system provides choices to the people and assures legitimacy. Political parties play an important role in every society. According to the American Political Science Review:

> “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.”

Democracy without parties would mean there are no organized bodies. 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,

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84 Audience with His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo on 30th November, 2009.
85 Public Consultation in Punakha on 27th November 2005.
86 Samuel P. Huntington, *Political Order in Changing Societies.*
the members confront powerful and influential individuals and groups. Political parties 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. Bhutan did not wish for multi-parties in the National Assembly representing overly narrow interests.

Bhutan could not allow multi-party in the National Assembly to avoid the dangers as pointed out by Professor Benjamin Reilly, who said:

"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 the 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 by coalitions are more fragile. The coalition is often weak and less stable. Often, a small party in the coalition triumphs like the Nazi under the Weimer Republic (1919-1933).

Government of a single party can reach consensus. 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 votes is declared the ruling party and the other will be declared as the opposition party. This system provides opportunity to fresh parties and stability of the government.

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

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87 “Constitution against parties.” Thomas Jefferson said that, “if I could not go to Heaven but with a political party, I would not go there at all.” In farewell address, President George Washington urged his countrymen to “discourage and restrain” the “common and continual mischief’s 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.
unfounded. The two parties have to accommodate and balance their interests through their members to form national cohesion and legitimacy 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, alienation fed by distrust and separation exerted by fundamental differences. It was an 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 that:

“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, JS Verma mentioned that:

“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 choice of a right party and selection of a capable candidate.

His Majesty the Druk Gyalpo explained to the people that:

(a) Our political system differs slightly from other countries. 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

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88 Professor Andrew McIntyre is Dean, ANU College of Asia and the Pacific, Canberra.
or 16 parties in every dzongkhag, our people can avail opportunity to select their government based on informed choices.

(b) There is a high risk that the dzongkhags would be touted 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 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. Unlike in other countries, the function of the opposition party in our country is different. In other countries, the opposition party keeps working on a strategy to overthrow the ruling party. The opposition party impedes the ruling party in the discharge of their service towards achieving the national goal. The opposition party in our country is not allowed to oppose the ruling government against any such moves. The task of the opposition party in the National Assembly is to provide assistance and support to the ruling party while striving to promote the national interest to the best as possible. In case, the ruling party deviates from the mandate of promoting national interest and fulfilling the aspirations of the people, the opposition party must protest against any activity not designed for the well-being of the nation. The opposition party must keep the move of ruling party under close surveillance.

(c) 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.

(d) 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.

(e) 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 and all of them, while during their campaign in the dzongkhags, 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.

89Public Consultation in Thimphu on 26th October 2005.
90Public Consultation in Thimphu on 26th October 2005.
91Public Consultation in Haa on 2nd November 2005.
92Public Consultation in Paro on 9th November 2005.
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.93

(f) 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.94

(g) However, in the general election we will have only two parties in the fray. By then, our people can judge which party will cater to the national solidarity. Good governance is very important and if the government is not efficient there is no point electing a party to form a government. Therefore, I have full hope that the two-tier system of election introduced in our country will be better than the other countries.95

(h) When the two parties which obtain the first and the second highest number of votes contest in the general election, a party who wins the majority of the people’s confidence will be called as ruling party and the losing party will be called as opposition party. The main reason for restricting to two-party system is because, if there are many parties, our people will face difficulty in electing an efficient party who will strive to promote the national interest.96

(i) But 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. If you look at other countries, the opposition party will never think for the national solidarity instead, they keep on working on a strategy to overthrow the ruling party. The system of other country is such that the opposition party impedes the ruling party in the discharge of their service towards achieving the national goal. The opposition party will never support the ruling party in the pursuit of national interest and this is the main reason of their instability.97

(j) Our political system is slightly different from the political system of other countries. At the time of preliminary election, we must allow as many parties as they wish to participate. At present we do not know how many parties would be formed but we expect the minimum of about 5 to 10 parties to emerge. In 20 to 30 years, more political parties than expected may come up and we must permit as many parties as possible to participate during primary round. After that, the two parties obtaining the first and the second highest number of votes will be eligible to contest in the general election. There will be only two parties contesting in the general election. After the general election, a party who wins the majority of the people’s confidence will form the ruling government

93 Public Consultation in Paro on 9th November 2005.
95 Public Consultation in Punakha on 27th November 2005.
96 Public Consultation in Punakha on 27th November 2005.
97 Public Consultation in Trashiyangtse on 28th December 2005.
and the losing party will obviously stand as the opposition party in the National Assembly. The task of the opposition party is not to disrupt the government but to provide assistance and support the ruling party while striving to promote the welfare of the nation and the people.  

(k) The task of the opposition party is to oppose the ruling party when it deviates from the interest of the country. Our system defers slightly from the system of other countries. In other countries there are as many as 30 to 40 parties contesting in the general election. When there are many parties campaigning at the same time, it is difficult to judge which party is capable because every party will commit to serve the country and the people in the same manner. But their intention of committing promise is to win the votes. The job of the people is to judge which party has the most capable party candidate and cast votes in favour of the most able party. Since we will have only two parties, it is easier for us to ascertain the good and able party. When the new political system is first launched it is important to know our responsibilities. We must sacrifice our self interest and devote ourselves for the larger interest. When we think of the nation at large it is very important that we elect the most capable parties.

(l) 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.

(m) 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. The main objective of the opposition party in other countries is to oust the ruling party, create disharmony in order to overthrow the government so that the opposition party can assume the ruling government. But in our country, we have adopted strong and appropriate precise words governing both the ruling and the opposition party. Our opposition party has an

98 Public Consultation in Pema Gatshel on 31\textsuperscript{st} December 2005.
99 Public Consultation in Pema Gatshel on 31\textsuperscript{st} December 2005.
100 Public Consultation in Samdrup Jongkhar on 22\textsuperscript{nd} April 2006.
important role and responsibilities. The job of the opposition party is to support the ruling party in striving to promote the national welfare. So long the ruling party serves in the interest of the people, such problems like creating disharmony, incite uprising and conspiring to oust the government is not allowed. Both the ruling party and the opposition party must work collectively and support each other in fulfilling the aspirations of the people. Nevertheless, it is the job of the opposition party to oppose and attempt to overthrow the ruling government if the ruling party works against the interest of the nation and people.\textsuperscript{101}

(n) 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.\textsuperscript{102}

(o) We have good systems and principles in our country. Our constitution was drafted by the government and peoples under the wise leadership of His Majesty the Druk Gyalpo. 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.\textsuperscript{103}

Duopoly or two party systems for the general election and multi-party systems for the primary election are truly a political innovation by His Majesty. 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.

\textbf{Article 16}

\textbf{Public Campaign Financing}

His Majesty incorporated this Article personally though many people opposed 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, external sources etc. If the parties or candidates were allowed to receive funds for the election campaign, corruption and the influence of donors would enter the system and affect governance.

\textsuperscript{101} Public Consultation in Chukha on 25\textsuperscript{th} March 2006.\textsuperscript{102} Public Consultation in Bumthang on 22\textsuperscript{nd} May 2006.\textsuperscript{103} Public Consultation in Dagana on 5\textsuperscript{th} February 2006.
As George Chapman said “men’s judgment sways on that side where fortune leans”. The potential limit in the case of the government funding the election campaign is that some of the parties or candidates may be principally motivated to receive funds.

There is 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 the election. It will have serious implication, as they will be forming the government. They will belong to the political parties taking part in the electoral process.

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. However, in case of government funding the election campaigns, the only disadvantage would be that some of the parties or candidates would only focus in receiving the fund. Funding in elections to curb malpractices is an important provision to promote political morality. Prof Casper remarked that:

“Bhutan Constitution has done something that other Constitution has not done. The Bhutanese Constitution recognizes political parties as an integral organ of the State through the formulations of the relevant provisions.”

His Majesty the Druk Gyalpo explained:

(a) 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 that only to the extent necessary for the purpose. Secondly, once the fund is handed over to the Election Commission it becomes auditable. 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.\textsuperscript{106}

(b) That is the reason why we had to incorporate precise words in the Constitution. It is important for all of us to remember that if the bad political parties who does unlawful acts then eventually we will have to elect such people as Prime Minister, Ministers and all other leaders from the winning parties. That is why 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. That is why unlike in other countries our Constitution is a unique one. 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. If we look at our Constitution we must not allow such systems to creep into our country.\textsuperscript{107}

(c) 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. But the political parties may collect funds from the individuals and the private parties. Moreover, 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. The Election Act is also ready. Around next year, it is going to be put to National Assembly and once it is passed by the National Assembly, we will start implementing the system.\textsuperscript{108}

(d) Like the ones above the system is not in other countries. To tell you in short during the campaign, the funds will be given by the Election Commission. In other countries the funds are essential for the campaign. There are many areas where expenditure is involved. 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 should prevail 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. As per His Majesty’s command we have introduced the democratic system in Bhutan. This system is a very good system. 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.\textsuperscript{109}

\textsuperscript{106} Public Consultation in Haa on 2\textsuperscript{nd} November 2005.
\textsuperscript{107} Public Consultation in Wangduephodrang on 7\textsuperscript{th} December 2005.
\textsuperscript{108} Public Consultation in Trashiyangtse on 28\textsuperscript{th} December 2005.
\textsuperscript{109} Public Consultation in Pema Gatsel on 31\textsuperscript{st} December 2005.
(e) No matter whether it involves millions and millions of money so long the parties can cater to the welfare of the people. The important thing is to have good system and adhere to that system. It is not enough to have good system in the paper, but it has to be complied with and if not there is no way that we can fulfill the aspiration of the nation.\textsuperscript{110}

(f) Leaving aside Article 15, if we refer to Article 16, we have public campaign financing. If I tell you briefly about this, we have to fund the parties while campaigning and if we look at our rules governing the election expenditures, it is different from the rules of the other countries. In our country the Election Commission shall provide the fund for the election. Such procedure will benefit a lot in our country.\textsuperscript{111}

(g) 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...\textsuperscript{112}

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 to three months. 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.

\textbf{Article 17}  
\textit{Formation of Government}

The history enunciates the change of Government. Before 1960, the Palace was the centre of governance. Late Majesty Jigme Dorji Wangchuck transferred that power to a system of governance by devolving executive power to the executive branch of the Government. The executive branch was too powerful, which continued till the establishment of the democratically elected Government, during which for the first time, the Ministers and the Government were attacked by the Legislature.

Bhutan adopted a parliamentary form of democracy. His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo, in his National Day Address in 2004, said that:

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“...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.”\textsuperscript{113}
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Parliamentary Government is a form of representative government, which has the following features:

\textsuperscript{110} Public Consultation in Pema Gatshel on 31\textsuperscript{st} December 2005.  
\textsuperscript{111} Public Consultation in Trongsa on 24\textsuperscript{th} May 2006.  
\textsuperscript{112} Public Consultation in Trongsa on 24\textsuperscript{th} May 2006.  
\textsuperscript{113} Refer Kuensel dated 20\textsuperscript{th} December 2004 “His Majesty’s National Day Address”.

(a) Close ties between government, executive and parliament;
(b) Compatibility between government and members of parliament, meaning that the Prime Minister and Ministers of 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 parliament and call new elections; and
(e) Parliamentary accountability. A vote of no-confidence may be tabled against the government, against the head of 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 the government is not backed in a vote of no-confidence, 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 Trashi Yangtse (2005), His Majesty the Fourth Druk Gyalpo 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 danger that we might face the same problem that some of the countries are facing now."

Under the parliamentary democracy, the representative Government should neither be autocratic nor be too feeble for fragmentation and instability. Its roles are evolved and it should continue to do so. Being a representative and democratic Government, Bhutan must have politically active citizens generally or exclusively playing a part in forming the political will.

In order to fulfill the desire of her people and for the success of democracy in the country, Bhutan would need a good party system focused in providing good governance. Role of a government from Mercantilism to Commercial Capitalism, according to Adam Smith are of national defense, protection of the member of society from the injustices or oppression, erection and maintenance of those public work and public institutions ‘do more more than repay it’ to society as a whole and to have an utilitarian supported representative democracy to make the interest of the government coincide with the general interest.

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. According to Edmund Burke, democratic executive satisfy a stable executive and responsible executive. Ministerial responsibility is daily questions, resolutions, no confidence motion and periodic assessment by electorates. Public approbation by the people through Parliament should determine their election; provide opportunity to change or official endorsement by public.
The party in power has a responsibility for the general management of the Government and for the consequences of inaction. It must provide leadership. Substantiating the importance of a strong government, His Majesty 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.”

Justice J.S. Verma of India applauded Bhutan’s clear criteria set for the Office of Prime Minister:

“Membership of the National Assembly as the essential qualification for the office of Prime Minister is 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.”

During the public consultation meetings, Their Majesties said:

(a) 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.

(b) 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.

(c) 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

114 Refer Kuensel dated Friday, December 2005.
115 Public Consultation in Paro on 9th November 2005.
116 Public Consultation in Samdrup Jongkhar on 22nd April 2006.
functions of the Opposition party in the Constitution, it is to support the Government in its effort to serve the nation and the people.\textsuperscript{117}

The Prime Minister, who is also a member of the National Assembly, heads Bhutan’s parliamentary form of government. The Prime Minister being 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 winner from two parties ensures easy formation of a 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 they were voted for. Fractured mandates create change of plans and policies.

It is in the interest of the nation for which 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.

The Prime Minister will not serve for more than two terms to ensure fresh ideas, change of leadership for new hope and avoid entrenched biases and prejudices. It is a political morality. As Euripides said “New faces have more authority than the accustomed ones.”\textsuperscript{118}

In order to be cautious and attentive to the public opinion, the Ministers are appointed on the recommendation of the Prime Minister and removed on the advice of the Prime Minister. Similarly, a motion of no confidence against the Government may be moved and be dismissed by the Druk Gyalpo. Thus, this Article enunciates a Government of the people, for the well-being of the people and to promote and protect rights, welfare and benefits of those rights to the people, ensure the aspirations of the people, promote good governance, and strengthen political and economic stability in the country. The Government must have macro policies with adequate power to ensure progress, prosperity and strengthen sovereignty.

It 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. The government 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. They cannot be hostage to the voice of 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 though public and social choice must guide the enlightened Royal Government of Bhutan.

\textsuperscript{117} Public Consultation in Sarpang on 11\textsuperscript{th} February 2006.
\textsuperscript{118} Euripides – Greek Poet 480 BC – 406 BC.
Article 18
The Opposition Party

This Article is one of the most striking features of the Bhutanese Constitution. Similar or analogous provisions on Opposition parties cannot be found in other Constitutions.\textsuperscript{119}

The Opposition Party is an essential part of a Constitutional Democratic System. The role of the Opposition Party in the political system requires a careful scrutiny of Governmental power. It is the presence of the opposition inside 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 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. If the Opposition behaves in an obstructionist manner, it will pay the price. His Majesty clearly elucidated this point to the public when he said:

\begin{quote}
\textit{“The Opposition Party in Bhutanese politics would be unique. They would not be permitted to stall the workings of Government or Parliament. They would behave as watchdogs on the ruling party's performance”.}\textsuperscript{120}
\end{quote}

The Opposition party has the responsibility for the conduct of its opposition, management of public discussion, development of alternative policies and programs. Indeed, according to the American Political Science Review, 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.\textsuperscript{121}

During the public consultations, Their Majesties mentioned that:

\begin{enumerate}
\item[(a)] \textit{In other countries there are a lot of problems because of too many Opposition parties. Here in Bhutan, our Constitution envisages only one Opposition party and that is why it is hoped that we will not face similar problem. As mentioned earlier, as we all know that the Opposition parties in other countries always attempt to bring down the ruling Government at the earliest. In other countries, with many parties, all the losing parties join together to form Opposition party... We have thought over well and incorporated in our Constitution strong provisions underlying that the Opposition party should support the ruling party and work for the interest of the people. That is why unlike other countries, our Opposition party will not create disharmony in the country.}\textsuperscript{122}
\item[(b)] \textit{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...}
\end{enumerate}

\textsuperscript{119} 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”.

\textsuperscript{120} Refer Kuensel dated 31 December 2005.

\textsuperscript{121} American Political Review. \textit{Toward a More Responsible Two-Party System}. Pg. 18.

\textsuperscript{122} Public Consultation in Thimphu on 26\textsuperscript{th} October 2005 and Paro on 9\textsuperscript{th} November 2005.
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. That is why our Constitution has spelled out clear provisions on the roles and responsibilities of the Opposition party in our country....

(c) ...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 and we hope that there will be no enmities between the ruling and the Opposition party. And there will be no problems like that in other countries. However, it is very important that we the people must understand the problems of other countries. In other countries, though the responsibility and the duty of the Opposition party are to see the working of the ruling party, they normally try to obstruct any work, which is initiated by the ruling party. The Opposition parties always try to device means to destabilize the Government with an intention to become the ruling party themselves. We must not allow such bad political system to arise in our country. We are not criticizing the democratic form of Government in other countries for there are some good and bad systems as well. That is why we should adopt in our Constitution the good elements of the other democratic principles and we must understand that we must make our system a unique one.

(d) ...what is important for us is that the new political system in our country must cater to the best interest of the country and the people....There will be only two political parties in our country, the winning party as the Government and the losing party as the opposition. In other countries all the losing parties form alliance to form the Opposition party and thereby become very strong. Their responsibility in the Assembly is not to support the Government but they always try to obstruct the Government in their work. Their main intention is to work on the means to destabilize the Government as early as possible. Such bad political system should not come in our country.

(e) ...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. 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. Thus it is very important that this system should not be kept only on the paper only, but it is very important to work according to the system.

The unique system and the original intent of the Constitution is that the Opposition will not be what is described in the words of H.L. Mencken “Under democracy one party always devotes its chief energies to trying to prove that the other party is unfit to rule – and both commonly

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123 Public Consultation in Punakha on 27th November 2005.
124 Public Consultation in Wangdue Phodrang on 7th December 2005.
125 Public Consultation in Mongar on 12th December 2005 and similar statement has been made also during the public consultation in Trashigang on 21st December 2005.
126 Public Consultation in Pema Gatshel on 31st December 2005.
Opposition is not an opponent and enemy of the State and through the Opposition and deliberative assembly, the Kingdom will not be exposed to any single view. Otherwise 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.

Article 19
Interim Government

The unique provision of the Interim Government has been introduced by His Majesty the Fourth Druk Gyalpo to ensure free and fair elections. The cabinet would be required to resign during elections while an Interim Government would carry out the Governmental functions. The Interim Government would have no right to change the existing policies or implement new ones but would ensure the continuity of the Government during elections and prevent misuse of the bureaucracy, Government funds, property, and even civil servants by the ruling party. His Majesty during the public consultation said that:

...Interim Government means that during the election when both the parties are away for election, an Interim Government will be appointed for the maximum period of 3 months that is to continue with the routine functioning of the Government. The Interim Government would have no power to make new plans and policies. The reason for the requirement of this Interim Government is that we have seen in other countries the party in power enjoys an unfair advantage and it uses the Government resources and services of the civil servants to help win the election. We do not want bad traits of electoral system existing in other countries to take root in our soil. That is why an Interim Government would be appointed for a period of three months to run the Government for the time being, while political parties in power go for election. Such a system of Government is very good for the people and the country...

An Interim Government will ensure free and fair elections. The Constitution provides for an Interim Government for a period not exceeding three months when the National Assembly is dissolved to hold general elections. In many countries the party in power enjoyed an unfair advantage because it used Government resources and even civil servants to help in winning the elections.

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. Analytical study of Caretaker Government shows that if the Government in power is asked to continue as a Caretaker Government on the dissolution of the National Assembly, it has the following negative aspects:

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128 Refer Kuensel dated 28th December 2005.
129 Refer Kuensel dated 29th October 2005.
(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. His Majesty added that, in many countries, the ruling party misused the Government’s resources and even civil servants, during the elections.  

(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 election. 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.

(c) It would be an independent organization. Thus, the losing parties cannot accuse the Election Commission of conducting unfair and biased elections.

(d) 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.

Extolling the virtue of the Interim Government, Their Majesties reminded public during the consultation that:

(a) Under the Article 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. 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 this 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.

(b) The Interim Government shall be formed for the 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 the gap of the council.

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131 Refer Kuensel dated 10th December 2005.
132 Public Consultation in Thimphu on 26/10/2005 and similar statement has been made also during the public consultation in Haa on 2nd November 2005 and in Wangdue Phodrang on 7th December 2005.
of ministers during those three months. Such provision is not there in any other countries. This is an exemplary provision in our Constitution. When we look into the functioning of the other countries, the main problem they have is that when election is at hand, not only the resources of the Government but even the civil servants are made to work for the party. Here in Bhutan, when the election is at hand, all must come together and participate in the election. At that time both the ruling party and the Opposition party should be dissolved. During those 3 months both the primary election and other election must be completed. For this very reason we have this provision in our Constitution to prevent such practices in our country. Our Constitution is far better and consistent than others.\textsuperscript{133}

\begin{itemize}
\item[(c)] The reason why we introduce an interim government system in our Constitution is that when we conduct election the Government functionaries will remain dormant for about 3 months. During such period of time the Interim Government will function. The Interim Government, however, will not have the authority to decide on the political matters. If we look at other countries, many problems arise during elections. Keeping these things in mind, our Constitution has been drafted with adequate safeguards.\textsuperscript{134}

\item[(d)] \textit{...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. 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. The reason for adopting this system is to prevent the Ruling Party from using Government property and making all the civil servants work for their party and to prevent them even if they have the thought to do so. If it is done as per the system it will be beneficial work for the country.\textsuperscript{135}}

\item[(e)] \textit{...The 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. The Interim Government does not have any power especially regarding policy matters, relating to foreign countries, etc. This way, it will really help and benefit during the election process.\textsuperscript{136}}
\end{itemize}

In the public consultations, the provision on the Interim Government provoked debates. Many of the people thought that Caretaker Government would be better, but it has many problems. 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 wants a credible and smooth transition of power. Peace is the people’s privilege.

\textsuperscript{133} Public Consultation in Punakha on 27\textsuperscript{th} November 2005.
\textsuperscript{134} Public Consultation in Lhuentse on 24\textsuperscript{th} December 2005.
\textsuperscript{135} Public Consultation in Pema Gatshel on 31\textsuperscript{st} December 2005.
\textsuperscript{136} Public Consultation in Samtse on 27\textsuperscript{th} March 2006.
Article 20
The Executive

The term executive is derived from the Latin word *execution*, which means to carry out or execute. The government and administration is a portion of state power based on the principle of separation of powers after the formation of a constitutional state. Its job is to initiate and execute fundamental political decisions taken by the legislature, which is the law-making body of state power. It is also responsible for providing state leadership within the scope of the Constitution based on law to translate their policies into actions.

The Constitution establishes the overriding supremacy of critical fundamental values. It establishes a framework for the formation of government and enshrines conduct of administration. As Samuel H. Beer has explained:

“To be politically oriented would mean, in general, knowing how your government operates... having a “cognitive map” of the polity... and also knowing how it ought to operate and what it ought not do... having a “normative map.””

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 obligating their clients through their collective decisions”. 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. *(Book of Ritual).*

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 the Fourth Druk Gyalpo 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 the chairman, who was the Prime Minister.

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A Government must pursue public policies to provide employment, good and steady income and a way of life that they cherish. A Government must pursue a constant aim of policy in every generation to find the best way of advancing these goods. In addition to it, public policies must include public goods such as access to a park, policing, scientific research, mass transportation, a clean environment, etc.

In accordance with 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. Further, 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. It should avoid a sense of political alienation of the average citizen through centrist coalition. The political party engineering should endeavour to reject extremes, and isolate the radical and unstable elements”.

Bhutan envisaged a Democratic Executive Government that satisfy stable and responsible executive. The Constitution created our own self-determination to live her life in the manner that she thought best. The Constitution gave the State certain powers and authority such as:

(a) The power to use force in certain situation for defence of the country or to prevent outbreaks of crime and violence. Consequently, the State has an army and police;
(b) Power to collect taxes from the people to provide public facilities like roads, electricity, education and health for development of individuals and country; and
(c) The power to implement laws, rules and regulations so that the country can realize the goals for which it was set up.

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 and which will ultimately lead to an ideal form of harmony, but rather that the state is responsible for identifying weaknesses in the process and intervening in a regulatory way.

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, which is not personal and has a

138 Kenneth Galbraith’s “the social imbalance” by Michael Bliss in his article The Public Good in Canada in IDEAS.
139 Walter Bagehot was a 19th century British businessman, essayist, Social Darwinist and journalist who wrote extensively about literature, government, and economic affairs.
140 Study Materials compiled by Prof. (Dr.) Ranbir Singh, Prof. (Dr.) Srikrishna Rao and Prof. Jagbir Singh Dahiya from the National Law University Delhi.
propensity for praise and intolerance to criticism and singing the eternal songs of gratitude. Public service is duty for an elected person. This Article envisages a dynamic Executive, mandated to protect and strengthen the sovereignty, provide good governance and ensure peace, security, well-being and happiness of the people.

**Article 21**

**The Judiciary**

The Judiciary is the institution, on which rests the noble edifice of the Rule of Law, that conducts with unremitting efforts to fulfill its commitment to justice. Socrates said, "*Justice is virtue and wisdom*" and "*injustice is vice and ignorance.*" Thus, Justice is a promise to humanity. The paramount duty of the Judiciary is to ensure that falsehood does not triumph over the 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 courts in 1961. It was consolidated by establishing the High Court in 1967. Further, His Majesty the Fourth Druk Gyalpo in order to take “justice nearer to the people” with a clearer delineation of responsibilities between the Executive and the Judiciary, the first Dungkhag 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.

The Judiciary is a passive branch of the Government. 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 dispute 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.

**Court system**

After very careful considerations between the concentrated system propounded by Hans Kelson of Austria and mixed or diffused system, Bhutan followed the middle path. The High

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142 Aristotle also expressed that he wanted to legislate for a single supreme court.

143 Talk by Prof. Gerhard Casper, Emeritus President of the Stanford University on 14th September, 2010 in the High Court - Authority concentrated in one court as constitutional court. It was adopted by Czechoslovakia before Austria and later by Germany, Italy post World War II and by the states formed after the break up of the Soviet Union. France – * priori concentrated system.
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 must be strong and independent to discharge its duties. Political or any other form of interference should not paralyze the legal system as it perverts justice. 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 impeccable. If the justice system is based upon values of independence, impartiality, integrity and professionalism, and if, within the limits of ordinary human frailty, the system pursues those values faithfully, people will be satisfied. The Judiciary of Bhutan must rise to the challenges and meet those expectations of the people in the administration of justice and enable the rule of law to continue to thrive.

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.”

It 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.”

It is arguable that the appointment of justices for life is not good. Many countries have amended that term to 75 years. On the contrary, too short a term is equally bad, as the 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 Judiciary. Further, for the purpose of maintaining the

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144 Constitutional and Cultural Values: Bhutan Perspective by the former Chief Justice of India, J.S. Verma to the Legal Fraternity at Thimphu, Bhutan on October 13, 2010.
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. The society demands new ideas and dynamism. No institution must be burdened by perpetuation. Hamilton mentioned that the tenure of the justices should be “defined and fixed in the Constitution and made unalterable by the legislature.”

Furthermore, Prof. Ben Saul\textsuperscript{145} elucidated that:

\begin{quote}
“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.”
\end{quote}

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 kabaney 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.”\textsuperscript{146}

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.

\textsuperscript{145} Prof. Ben Saul at the High Court Conference Hall on 15.12.2010.
\textsuperscript{146} Lord Justice Scrutton in an address delivered to the University of Cambridge Law Society on Nov. 18, 1920 (1 Cambridge Law Journal, Pg. 8.)
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 stages of the judicial process enhance submission of facts and issues methodologically, systematically and exhaustively. The process is in pursuit of the truth and facts that strengthen due process and the rule of law.

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 (1801-1835), 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 (1819) 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 kriarchy. Judiciary of Bhutan must set the 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.

Article 22
Local Governments

Bhutan decided to have the unitary system of Government. It is governed as one single unit with one legislature. Bhutan has a proud history of Local Government with sound foundations for a genuinely workable democracy at all levels of society.

The decentralization policy fully enabled the people to participate in the decision making process. His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo, initiated the decentralization process with the establishment of the Dzongkhag Yarkye Tshodue in 1981 and the Geog Yarkye Tshogchung in 1991. Decentralization was to empower the local people to develop their areas, bestow responsibilities and accountabilities, and to enhance capability towards self-reliance. Decentralization and streamlining of the administrative system have paved the way for greater participation of the people in the socio-economic development of the country.

147 William Shakespeare, Measure for Measure, Act II Scene 2, line 107 & 108.
With the elected members, Local Governments will represent their local communities. They should be responsible and accountable, and should focus on community identity and civic spirit. They must provide appropriate services to meet community needs in an efficient and effective manner, and to facilitate and coordinate local efforts and resources in pursuit of community goals. 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.”

Decentralization to the Local Governments is a desirable means of diminishing tension among the gewogs and the centre. In Milton’s words,

“Local Government is essential for developing a real political competence, federalism and delegation”.

The Article for the Local Government had the most intensive and extensive debate among the Drafting Committee members. The same deliberation was repeated in Parliament.

Decentralization 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.\(^{148}\)

Local Government is the grass roots democracy that emphasizes trust in small decentralized units and municipalities for local identification of problems, solutions at the field and involvement of the local people. Appreciating the Article, DANIDA stated that:

“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... 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.”

It was further emphasized by UNDP, which stated that:

“A comprehensive Article on Local Governments (Article 22) supports the policy of decentralization.”

\(^{148}\) Royal Command issued on Thursday 26\(^{th}\) June 2006.
Explaining to the people, Their Majesties said:

(a) *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.*

(b) *The Dzongdag will be the executive head since all the Dzongkhags will have major development ... However, he will not be involved in politics. Our Dzongdags will not be allowed to participate in the politics at all. As regard to the Gup, 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 related to finances.*

(c) *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.*

(d) *The people of Bhutan have direct and free choice to elect their candidates and not candidates forced upon them through the selection and nomination of political parties. Similarly, people can dissolve Local Governments. Therefore, there is no need for opposition since it is not based on political parties.*

Local Government is the continuation of the historical evolution and political system, which was resuscitated and refined by His Majesty. It is responsive, effective and efficient local administration and social service to the local people. Local Government promotes self-governance, shares power with the people at the grass root, develops local resources and capabilities and attends to their local interests. Consequently, the State develops and executes 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 and 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 their electors. Negligence of any area is a failure of a nation. Hence, Local Government and decentralization are curative and preventive actions.

**Article 23**  
**Elections**

The concept of election through voting was not a new concept for Bhutan. The Buddhist concept of "*Tsa Trampa*" 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

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149 Public Consultation in Paro on 9th November 2005.
150 Public Consultation in Wangdue Phodrang on 7th December 2005.
151 Public Consultation in Samdrup Jongkhar on 22nd April 2006.
152 Royal Command of 22nd June 2006.
153 *Tsa Trampa* is one of the "seven things for appeasing a quarrel" from Kanjur Sutra Dodey Nyapa.
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.

There were a few 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 goes 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. 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.

Lately, 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 electoral law specialist Graeme Orr mentioned:

“the quest ... is for rules that promote political equality and deliberation over the law of the political jungle.”

Bhutan has taken all the precaution by learning the best from other countries, avoiding their mistakes and responding to the Bhutanese situation. It is the social and national duty to implement them and justify the introduction of the political party system. The electoral process should be democratic to allow Bhutanese to compete on a free and equal basis. As Horowitz said,

“Election is a passive translation of individual wishes into a collective choice.”

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. Rightly, His Majesty said:

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 are primary tools to help force political openings and expand political participation. It is the principal vehicle of democracy. Elections offer political parties an opportunity to share alternative platforms with the public. Therefore, elections have to be free and fair to ensure full transparency in the political debate. Free and fair elections are indispensable to 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

154 Aristotle advocated and used in classical Athens and Venice.
155 Stuart Mill favoured open ballot. To him secret voting was selfish and irresponsible.
158 Audience of the HM the Fourth King on November 30, 2009.
representatives. His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo, explained that 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. Therefore, before the first national election, Bhutan conducted a mock election in April 2007, where 28% of the total eligible voters voted in it. They voted the Druk (“Thunder Dragon”) or the Yellow colour from the four fictitious parties represented by four colours. Kuensel reported that: 159

“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,”

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 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 necessary conditions for free and fair elections are:

(a) Impartial administration, to ensure that enrolment 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 that ensures that the votes are counted fairly and accurately.

According to recent United Nations General Assembly resolutions, it recognizes that:

“...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

159 Refer Kuensel dated 22 April, 2007.
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. Moreover, ‘political systems and electoral processes are subject to historical, political, cultural and religious factors’. 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.

Similarly, regarding the Constitution of Bhutan, Dr. Benjamin Reilly wrote:

“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 elections. This should promote direct links between constituents and their representatives, as it produces a legislature made up of representatives of discrete territorial areas. Some analysts have argued that this ‘geographic accountability’ is particularly important in agrarian societies and in developing countries. Again, this is an important consideration for Bhutan, given the nature of its society and economy... Beyond this requirement for single-member electorates, these provisions leave open the broader choice and structure of Bhutan’s electoral system. This is an important omission... preferring to use subordinate legislation to detail the system to be used.”

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 first democratic elections were conducted smoothly and effectively with voter turnout reaching 79% in 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.

During the public consultation, Their Majesties said:

(a) As submitted, even if we look at other countries, a lot of problems arise during the time of election. 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 of election, there will be number of political parties contesting in the election. However, as I mentioned earlier, at the time of election the power is in the

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161 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.
163 Desk Review of Bhutan’s Draft Constitution with Respect to Parliamentary, Electoral and Political Party Systems by Dr Benjamin Reilly on 2 June 2005 for UNDP.
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 dzongkhas. 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
commom 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. 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.164

(b) 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.165

Election has historical, spiritual and social basis. It provides individual choice expressed without
any retribution through secret ballot. Collectively, election provides opportunity to change
official endorsement by public. It provides responsibility of one’s choice. It is a fight for
democracy and a referendum for consensus. It is a periodic performance evaluation with the
dominant message from the electorate. It is an individual choice with collective decision for self-
determination. Freedom of choice and human nature will produce rational and good choice. It is
the wisdom of public. It is a democratic right and privilege of a citizen. Moreover, every
Member of Parliament must have direct link with their constituents to have ‘geographic
accountability’. People must have power and right to elect or reject party or replace a candidate.

Article 24
Election Commission

Elections are the foundation of the Bhutanese Parliamentary Democracy. It is anchored on free,
fair, impartial and periodic elections to be conducted by independent and impartial electoral
machinery: the Election Commission. The conduct of free, fair and impartial elections depends
upon three variables: namely independent and impartial electoral machinery; independent
political parties and candidates; and the electorate. Besides, adult franchise, free, fair and

164 Public Consultation in Sarpang on 11th February 2006.
165 Public Consultation in Bumthang on 21st May 2006.
periodic elections, and independent election machinery are prominent features of the Bhutanese democracy.

The Election Commission must realize the mandate of the Constitution and aspirations of the people to circumvent corrupt electoral practices, electoral offences, 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 choice. Every citizen should be given the opportunity, as a right, to express his or her views and desire. No person should 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, the Fourth Druk Gyalpo, decreed that:

“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 instrument of democracy with fidelity to the Constitution professed through his Oath of Office. His actions and philosophy should be democratic and conscience of public confidence. His power starts with the dissolution of the Government and ends with installment of the new Government.

**Article 25**

**The Royal Audit Authority**

The proposal to establish an Audit Authority was made during the 16th National Assembly in 1961. However, the Royal Audit Authority of Bhutan 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.

Recognizing the growing importance of an Audit Authority in ensuring economy, efficiency and effectiveness in the use of public resources, the Constitution has enshrined the Royal Audit Authority as a constitutional office. Through the functions of the Audit, 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 taxpaying community.

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166 Kasho of 31st December, 2005.
His Majesty the Druk Gyalpo decreed that:

“At a time when we are establishing parliamentary democracy in the country, it is very important to promote good governance, increase the accountability of the civil service and root out corruption at its initial stage. Towards this end, the highest importance must be given to further strengthening the functions and responsibilities of the Royal Audit Authority in keeping with the provisions under the Constitution.

“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.”167

Their Majesties during the public consultation meetings mentioned that:

(a) The Royal Audit Authority (RAA), Royal Civil Service Commission (RCSC) and the Anti-Corruption Commission (ACC) have a very big responsibility. All the three have their Acts drafted. It is very important to make it such that corruption never crops up in Bhutan. It 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. In other countries, one of the biggest inconveniences has emerged is due to bribery. If we can prevent bribery, it will benefit a lot in achieving the ultimate interests of our Government and people. For example, it is like a disease. If our body is inflicted with a dangerous disease, it is very difficult to remove it. Likewise, if corruption takes root into our system and happens to exist for a long time, it is very difficult to eradicate it even if we attempt to remove in future. That is why, the responsibility to eradicate corruption from our country, from the beginning lies not only on the Government, ministers and the Druk Gyalpo alone, but on all the citizens from all the 20 Dzongkhags. It is very important to eradicate fraud from our country at all times”.168

(b) 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. I really get worried when I hear about such things. It is very important to eradicate the evil practices of corruption with the joint effort of our people from now only. I can’t say whether we can fully eradicate corruption but it is very important for every one of us to shoulder the responsibilities and work hand in hand to eradicate

corrupt practices. This responsibility is not only upon one or two people or even just a Government but it is the joint responsibility of every one of us. This responsibility is cast equally upon businessmen, gups, chimis, students and every one of us including myself. Therefore, it is very important to bear in mind the evils of corruption and work towards eradicating such evils from the very beginning itself. Even in other meetings, I have talked about it. Our country is a religious country and every act is guided by compassion and sympathy. 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 with 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.  

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 elect 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 compliment the vision of His Majesty to repose trust in the people.

Multifaceted approaches can remedy emerging diverse ills. Sterilized approach to dynamic changes will mutilate an organization and throttle public confidence. The Constitution mandates the institution to protect and render professional service to the nation without fear and favour. The Audit Act symbolizes the aspiration and expectation of “We, 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. The society has imposed heavy burden on the auditors. They must discharge these responsibilities with utmost dedication, determination and enthusiasm. Indeed, the Auditor General is the custodian of legitimate expenditure of public funds. Every fund must have maximum benefits and coverage. The Nation owns it.

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169 Public Consultation in Samtse on 27th March 2006.
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 officer were Chilas or Penlops in the regions and under them there were Dzonpons, Dronyer, Zimpon, Tapons, etc.

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.

His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo, said that the importance of the civil service would be even greater after the introduction of democracy. It is important that the small, compact, professional, and independent bureaucracy established by His Majesty be maintained and strengthened. The bureaucracy has to live up to the faith of the people.

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 effectively functioning state.

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

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170 “Bureaucracy”:- The original French meaning of “bureau” was the baize used to cover desks. The term bureaucracy came into use shortly before the French Revolution of 1789, and from there rapidly spread to other countries. The Greek suffix -kratia or kratos - means "power" or "rule." Bureaucracy thus basically means office power or office rule, the rule of the officialdom.

171 Refer Kuensel dated 28 December 2005.
performance evaluations. They are career employees, recruited and promoted on the basis of their administrative skill and technical expertise.\textsuperscript{172} 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, be accountable and be responsible.

The members of the Royal Civil Service Commission are not appointed at random. 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.

Their Majesties during the public consultation meetings mentioned that:

\begin{enumerate}
\item \textit{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. 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 and some may not. The most important is the civil servants. For that we should have a strong civil service Act.}\textsuperscript{173}
\item \textit{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.}\textsuperscript{174}
\end{enumerate}

James Burnham advocated a theory of bureaucratic revolution. Human Resource Development is enunciated as a top priority in our country. Bhutan has built 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 are based on

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\textsuperscript{172}Sun Yat-sen (1867-1925) - 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.
\textsuperscript{173}Public Consultation in Thimphu on 26\textsuperscript{th} October 2005.
\textsuperscript{174}Public Consultation in Lhuentse on 24\textsuperscript{th} December 2005.
\end{flushright}
meritocracy. Through merit, a person can achieve what one mind can perceive. Truly, Eric Hoffer said of becoming a leader. “... In a time of drastic change, it is the learners who inherit the future.”\textsuperscript{175} 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 favour. To seek reward for performing duty and propensity to claim credit is the sterilization of national character. As Shakespeare said, it is “too little payment for so great a debt”\textsuperscript{176} 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 best of many and the civil servants should be one of them.

**Article 27**

**The Anti-Corruption Commission**

Corruption is the silent public enemy and a chronic virus that produces poverty and inequality, and endangers civil society. Corruption will undermine Their Majesties’ vision of the unfolding democracy in Bhutan, impede socio-economic development and contribute to instability in future. Corruption is an unrelenting assault against the very foundation of democratic institutions, which hijacks electoral processes, emasculates the rule of law and creates bureaucratic labyrinth for the solicitation of bribes. It is one of the root causes of under-development and poverty. It is 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. His Majesty Jigme Singye Wangchuck, the Fourth Druk Gyalpo, decreed that:

> “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,

\textsuperscript{175} Eric Hoffer (25th July 1902-21st May 1983), *Reflections on the Human Condition*.

\textsuperscript{176} William Shakespeare, *The Taming of the Shrew*, Act 5, Scene 2, line 163.
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.”

Further, His Majesty stated that:

“It is the responsibility of the officials and the authorities, and the duty of everyone to take full and equal responsibility to eradicate corruption from our country. Corruption encompasses those who take bribe, give bribe and not report to anyone about it. Despite the compassionate nature of Buddhist Bhutanese, corruption does not merit compassion. Corruption has become the root cause for suffering of the people and has even destroyed Governments.”

This Article enshrines the establishment of an Anti-Corruption Commission as an independent constitutional office with the overarching duty to combat and prevent corruption in the Kingdom. It is the vision of His Majesty, the Fourth Druk Gyalpo in having a democracy that enshrines the philosophy of Gross National Happiness, that is responsive to people’s aspirations and needs that enhances transparency and accountability of governance.

His Majesty said,

“How big the challenge will depend on how soon and how strongly we decide to oppose it. Remember, under a democratic system, the rise of corruption and its effects will become rapidly magnified. So there is no room for corruption, not now and not in the future."

“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 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 Namgyel Wangchuck, the Druk Gyalpo, said that corruption is like a serious illness, which if not prevented from the very beginning will become incurable, no matter what sort of medications and treatments are taken. His Majesty said it was important to ensure that corruption did not take hold in Bhutan, especially at this important juncture of its political development. He said that the Bhutanese people, being spiritual, including officials and layman tend to easily forgive those guilty of

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177 Kasho dated 31st December, 2005.
179 Ibid
corruption. He told the people that it was their duty to build a strong and prosperous nation and to pass on to future generations a brighter future. Corruption and those guilty of corruption and other such acts jeopardized the nation's very stability and progress. They must be punished according to the law, without fear or favour, and unhampered by misplaced piety.

Moreover, by electing good politicians, committed to ethically carrying out their public responsibilities, would have a direct impact on the country’s future and on the success of the Constitution and the democratic system per se. In our country, people must be mindful that it is important to prevent such bad practices from the very beginning. It shall be the responsibility of all officials and the authorities, and the duty of everyone to take full and equal responsibility to eradicate corruption from our country. Nothing has a more divisive and alienating effect upon society than moral complacency and a lack of individual and collective responsibility. Corruption encompasses those who take bribes, give bribes and do not report corrupt acts they are aware of. Despite the compassionate nature of Bhutanese, fighting corruption is a civic duty for the sake of the nation and the body politic. It does not merit compassion. 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 and more than that 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.”

During the Public Consultation meetings, Their Majesties said:

(a) The work and the responsibility of the Anti-Corruption Commission will be to monitor and inspect and charge sheet the corruption case to a court and to report to the Government. They must also report to the Assembly and the Parliament.\(^{181}\)

(b) As explained earlier, the Anti-Corruption Commission is also a very important body because of the transition period of Bhutan. We hear that the corruption is rampant in other countries. Therefore, before it is too late, it is imperative to enact Anti-Corruption Act to prevent Bhutan suffering from bad practices prevalent in other countries. It is a joint responsibility of the Government and people to curb and fight against corruption in our country. Since the Anti-Corruption Act is very important we have drafted it and waiting for its enactment. I have been telling the people repeatedly that if we are to strengthen our country and if we feel that we have the responsibility to make our country better than what it is today, before we hand it over to the future generation, we have to get rid of corruption. Take the example of some of our neighboring countries, just like inflicted by some dreaded disease it is difficult to get rid of corruption once it infects the

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\(^{180}\) Refer Ten Virtuous Act of Buddhism.

\(^{181}\) Public Consultation at Thimphu on 26th October 2005.
body. Once corruption creeps in, it is very difficult to achieve the goals of the people. I have heard of the various forms of corruption prevalent in our country, which is a matter of deep concern for all of us. So it is important to stop corruption from getting into our country from the very beginning. We all have a joint responsibility to prevent corruption. I must repeat that all of us must prevent corruption from creeping into our society. We all must take the responsibility to handover our country to our children in a good and stable condition.

(c) ...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.

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. Lord Buddha said “All know the way; few actually walk it.” The way is fair investigation, prompt prosecution and just dispensation. Punishment for corruption will gratify many law-abiding citizens and petrify few violating the laws.

**Article 28**

**Defence**

A standing army is a symbol of sovereignty. Pazap, a form of militia was a part of our heritage. In the past, Bhutan has successfully repelled successive invasions from Tibet and by the British from India. The Duars wars were fought valiantly led by Gongsa Jigme Namgyel himself.

The Army of Bhutan transitioned to a modern army from 1927 by sending two educated boys for training in India under the second King. The Defense Force heroically defended the nation from external threats and internal rebellion and insurgence.

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182 Public Consultation in Lhuentse on 24th December 2005.
183 Public Consultation in Gasa on 13th May 2006.
In the field of military, Bhutan gained confidence and adulation from outside. His Majesty 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 commanded that:

“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 to 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 the 4th Druk Gyalpo 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 Tsawasum. I am a soldier of the Pelden Drukpa.”

Their Majesties opined that:

(a) I want to inform all as we are gathered here that we are trying to reduce the number of uniformed people in defence as much as possible. Today, there are about 10,000 defence personnel. Hereafter, as Pazaps in the past, we would encourage militia. If possible, it would be good if 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 then 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. In 2003, we had big difficulty because our 10,000 security personnel were not enough. You all might not know that for a small country, 10,000 army personnel is a big number. The 10,000 odd security personnel are not enough in the time of danger to the country. But, at the moment, when there is no security danger from anywhere, be it from the north or south, 2,000 personnel has been retrenched for which I have already sent the Kasho to the Army Headquarters. It is very expensive on the Government exchequer to maintain a big number of army personnel. For that reason we have to reduce the number drastically and we are going to reduce the wings too. Our country is a small country, compared to our neighbours. Their population runs into millions. In Bhutan, otherwise, there is no need for the army. There are people from the villages, people from the business community, people from the civil service, and from all strata, who say that we don’t have to fight battles. But that is not true, there would be times, when the country will face...
security problems. And when the security problems arise, the burden is on the Bhutanese people to defend the sovereignty of the country. At the moment, we are trying to reduce the number of the army, but we will train at the least 20,000 people as militia. And if possible we will try to train more than that.\textsuperscript{185}

(b) When we are all altogether, if I may mention as an information to you, we are trying to reduce the number of military personnel as much as possible. Today, there are about 10,000 personnel in the defence. Hereafter, possibly by next year, we would like to strengthen the militia. As in the past, we would like to reintroduce the Pazap system. Therefore, if it is possible, we would like to train about 20,000 people and keep them in reserve. We will not keep them for years and years, but train them for about a month in a year by our army and send them back to their villages. Whenever there is any security threat to our country, they will be summoned. I think that this will be very good for the country. If we follow the present system, when there is security problem the 10,000 defense personnel are not adequate and we face lots of difficulties. At this juncture when we have no security problems and with 10,000, regular army, we have excess defense personnel and wings. But if at any time in the future there arises any security threats, 10,000, army will never be enough. As such, we have to train at least 20,000 as militia. In the past, when I took over the throne, many senior officials told me that there was no need to establish army in a small country and that we are a very small country surrounded by giant countries like China in the North and India in the South and that we will not have war with them. But what they said was not true because if we had no army, then we would have faced grave sovereignty and security problems in situations like in 1990 and 2003. Therefore, with the change in time, even if we are a small country and even if our neighboring countries are very big, it is very important for every Bhutanese citizen to safeguard and protect the sovereignty and security of the country more than their own lives. Therefore, we will reduce both the strength and the wings of the army, but once we introduce the militia system, we will have about 20,000, militia.\textsuperscript{186}

(c) My expectation is to have 20,000 militia comprising of men between 18 and 40 years of age. The RBA would impart training to these militia men for a duration of one month and then allow them to go back home to carry out their routine work. They would not be recruited as permanent soldiers. If such system is adopted, our country would benefit at the times of need in the country. We would have enough people to safeguard the security and sovereignty of the country when problems of security arise in the country. For instance, in 2003 we had very tough time for not having enough soldiers. We had around 10,000 soldiers only even after having combined all three branches of armed forces and voluntary militia. We wished we had about 20,000 soldiers instead of 10,000 during that time. For example, today, after about two years of subduing the security problems in the country, we have an excess of 10,000 soldiers. This strength of soldiers should be reduced to the minimum possible. We are planning to reduce the wings too. In the past, most of the people from outside and inside, including the senior Government officials and common citizens felt that it was not justified to have standing army for a landlocked and small country like Bhutan, when we have two powerful countries, China in the north and India in the south. That was 30 years ago. But everybody knows that it has proven wrong during

\textsuperscript{185} Public Consultation in Thimphu on 26\textsuperscript{th} October 2005.

\textsuperscript{186} Public Consultation in Haa on 2\textsuperscript{nd} November 2005.
our own lifetime. If we did not have standing army in our country in 1990 and 2003, the country was in great danger of being in some other hands. 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. The responsibility to safeguard the security and the sovereignty of Bhutan lies in the hands of the citizens. Each and every citizen is required to take the responsibility of safeguarding the security of the country, both in words and action. Therefore, it is felt that some training is required to make people effective and efficient. In future, we will reduce the standing army to the minimum number possible and then increase the militia force.\(^{187}\)

(d) From the defense side, the number of armed forces will be reduced to the minimum extent possible. Today, Royal Bhutan Army has more than ten thousand soldiers. Henceforth, like traditional pazap in 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 and when we have ten thousand soldiers, it is in excess. Therefore, if we keep the number of army at same level, then the Government will face acute financial problems on one hand, on the other, if we decrease the number of army and if problem arises, then we will be in difficult situation. Thus, during our time we have faced two times security threats. So, our country being small and landlocked, there is no need for standing army. We cannot win a war with anybody as pointed out and 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.\(^ {188}\)

(e) If I tell you as information regarding the defense recently His Majesty has mentioned that the number of standing army shall be reduced as we have no security problems now. But as usual, His Majesty has commanded time and again that we the people should be taking care of the sovereignty and security of our country as we reduce the strength of our army. His Majesty also commanded that the system of militia should be introduced as we reduce the number of our standing army. When we say militia army we are going to train all the private people, civil servants, school going boys and girls above fifteen and even the villagers. Our own armed force will train the use of arms and ammunitions to the groups. The training is not going to be for months and years. It is going to be for one month at a time for students above the age of 18 years during their vacation, for the people in the village when they have less agricultural works to do. For civil servants, when they can find time. Then the strength of our militia is not going to be seven hundred to eight hundred but we are going to increase it up to 20 to 30 thousand. And in future, we will go on increasing the number to 40 to 50 thousand with the increase in population. We all know in the year 2003 how our country faced serious threat on our sovereignty and security. That time we hardly had 10 thousand comprising of three forces. That time while we were solving the problem we had to worry as we had the shortage of soldiers and

\(^{187}\) Public Consultation in Paro on 9th November 2005.

\(^{188}\) Public Consultation in Punakha on 27th November 2005.
population. Yet led by our His Majesty the three forces had served the country very well by sacrificing even their lives. We could solve the problem as even the public had provided strong support to our forces. At present we have no security threat. That is why His Majesty has commanded to reduce the strength of our army. But if we have huge numbers of militia armies in future we will be able to take good care of our country’s sovereignty and security. But militia need not train for long duration. Training for one month in a year should make our people to be able to handle the weapons and come out to protect and support our country should there be need in future. The farmers, civil servants and the students will have to leave behind their work and come forward to serve the country. That is why His Majesty has commanded that in future we should start with the system of public authority.\textsuperscript{189}

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, you gain public confidence. Consequently, you contribute to peaceful resolution of conflicts and complaints, which contribute to a fair administration of Justice. The Police 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”. From 1966, regular recruitment and training started at Dradul Makhang in Thimphu. The Dradul Makhang was changed to Zhilen Namgyelling. By 1974, many Bhutanese police officers had received training in various reputed institutions like Indian National Police Academy, Police Training College and Central Detective Training School, etc. and in 1975, the first batch of Bhutanese-trained recruits passed out from the training centre. With ongoing professional knowledge, technical competence, operational skill, the Police must continue the work that they began in 1965 to protect and preserve peace, tranquillity and for a just and lasting peace among ourselves through honest and hard work and be impartial, honest, fair, polite, fearless and imbued with spirit of service.

Military exhibits higher and noble human spirit. Their unquestioning obedience, burning patriotism, fearless courage and sacrifice are as described by Napoleon Bonaparte “The army is the true nobility of our country.” Military is not only for the defence of its people. Their history and impact have shaped the nation and its social, cultural, political and geo-political spheres. Their 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 29**

**The Attorney General**

This Article covers the Attorney General and the responsibilities of the office. The predecessor of the Attorney General’s Office 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.

\textsuperscript{189} Public Consultation in Tashiyangtse on 28th December 2005.
The Attorney General 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 organization reaffirms the ideal of protection of the innocent and bringing the errant to Justice. Timely detection and prompt prosecution will exalt the majesty of justice, prevent clandestine transgressions and terrify the wrong doers. People want timely action. Delay demorizes the system, frustrates the people and camouflages the evil. We cannot condone this. We may not succeed immediately, but a good start has been made. 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 manners of people according to law.

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 it, 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.

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. It can recommend from the overall views without any disparity.

A public organization or 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. It is a conflict of interest.

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, occupy constitutional offices. 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 in the civil service, the Auditor-General 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.

Constitutional posts are extremely important. 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 voice and adjust themselves to the power. They have to be fair without fear and 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 Singye Wangchuck, the Fourth Druk Gyalpo, pointed out that in many countries, the President or Prime Minister usually select people who are close to them for constitutional posts. In the Bhutanese Constitution, except the Drangpons of the Supreme Court and the High Court, a broad-based committee of five persons namely, the Prime Minister, the Chief Justice of Bhutan, Speaker of the National Assembly, the Chairperson of the National Council, and the Leader of the Opposition Party, select holders of constitutional offices. His Majesty expressed the view that the selection and appointment of persons to constitutional posts being very important, such a system was more reliable and credible and would help 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.¹⁹⁰ His Majesty viewed that constitutional office holders must perform their duties strictly in accordance with the rules provided for them by the Constitution and other defining legislation and Acts. To ensure that they are indeed of the highest caliber possible, the Constitution requires that the Constitutional Office holders be appointed by the committee so as to prevent appointments on political interest or party affiliation.

Further, His Majesty Jigme Khesar Namgyal Wangchuck, said that constitutional office holders provide one of the most important check and balance mechanisms in our democracy. Therefore, as eminent persons, the standards they are assessed by in terms of experience, educational qualification, performance, and moral and ethical character must be very stringent and closely tailored to national requirements. As such, in addition to high qualification, the candidate for these posts must be natural born citizens. The Constitution drafters felt that this full and very stringent set of criteria, will best safeguard the national interest and uphold the principles embedded in the Constitution.

The holders of constitutional offices must receive adequate powers to enable them to function independently without fear or favor. Without such power, they will be unable to perform their duties as required. The holders of the constitutional offices are answerable only to Parliament, which has the sole power to impeach them for misbehavior or criminal acts as defined in supporting legislation and Acts.

Their Majesties during the public consultation informed that:

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¹⁹⁰Refer Kuensel dated 29 October 2005.
(a) 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.  

(b) I think the holders of constitutional offices have big responsibilities. In other countries, the election of holders of constitutional office are drawn by the Prime Minister. In countries where they have regent, such representatives elect the holders of constitutional post. But I feel that their system has got a problem. There are chances that they might elect the person of their liking and those who will benefit them. In order to prevent such problem in our country, the election to the constitutional offices shall be done by a committee of five people after thorough discussion on the basis of the capability, loyalty, and willingness to serve the country and the people to the best of his capacity. The responsibility of electing the constitutional office holders lies on the following people; the Prime Minister, the Chief Justice, the Speaker of National Assembly, the Leader of the Opposition Party and the Chairperson of the National Council. As I said earlier, the election shall be done by not one or two of them, but all five of them will sit together and discuss thoroughly before they elect the candidate.  

(c) If I say some few words about the holders of constitutional offices, this is totally a different system. In our country, this system has been started for the benefit of the country under the command of His Majesty. Many countries do not have such systems as in our country. The constitutional post holders have very important role and responsibilities. If they serve well they can really benefit the country and the people. If they do not serve well and engage in corrupt practices, they may cause great harm/injury to the country and there is danger that they may injure the welfare of the people. For this reason, it is very important to select the best from among the best and appoint those persons who care for the country as the officials of the constitutional offices. Five people will sit together and select them. The five people are—firstly, the Prime Minister of our country, secondly, the Chief Justice, then the Speaker, the leader of the opposition party and the Chairperson of the National Assembly. These five people will sit together and discuss who will be good for the constitutional posts and will see who will care and serve the country well and then decide upon whom to be appointed. The appointment is not by one or two persons, but all these five people will have to sit together, discuss and then appoint the post holders. The reason why I say that our system is better than others is because appointment of the constitutional post holders is done by the representatives of the King if there is any, or by the Prime Minister. The prime Minister will nominate and appoint the post holders. So the appointment is not carried out by one or two persons. If the responsibility of appointing the holders of constitutional offices is given to one or two person, it is unsure as to what kind of person they will nominate and appoint. So, as I told earlier, the system of appointing constitutional post holders by five people is really good and there is reason for

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191 Public Consultation in Wangdue Phodrang on 7th December 2005.
192 Public Consultation in Tashiyangtse on 28th December 2005.
you all to be happy about it. Again with regard to the removal of the constitutional post holders, if they do not serve the country well with care and concern or if they engage in any unlawful activities, they have to be removed and this system of removal is really good. The removal is done through impeachment and the authority is given to the parliament. Giving the authority of impeachment to the parliament is similar to giving authority to the people. Later on, if they act in a way that is injurious or harmful to the country they have to be removed. Giving the authority of impeachment to the parliament and not to just one or two persons is an extremely good system that needs to be appreciated.\textsuperscript{193}

(d) Holders of the constitutional Offices have to shoulder huge responsibilities. These officers while serving the country they would 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. 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. 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. 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, but not by one or two persons as per their whims and fancy. Five members consist of the Prime Minister, the Chief Justice, 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 the Parliament can impeach them. The system of impeachment is introduced in the Constitution. When we say that only the 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 always benefit our country.\textsuperscript{194}

Constitutional and statutory office holders will be independent of party politics and be faithful to the oath to the Constitution. Lawless constitutional or statutory office is no different from tyranny of a Government. They are the bastion of hope and refuge of democracy for happiness under the Constitution.

\textsuperscript{193} Public Consultation in Gasa on 13\textsuperscript{th} May 2006.
\textsuperscript{194} Public Consultation in Bumthang on 21\textsuperscript{st} May 2006.
Article 32

Impeachment

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, the Fourth Druk Gyalpo, emphasized that the need for a Constitution is to establish a dynamic system of governance, which would uphold the true principles of democracy.\footnote{Kuensel – 30th November 2001.} 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, check and balance is 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.

During public consultation Their Majesties said that:

(a) \textit{If the holders of the constitutional offices either resort in 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 the 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}.\footnote{Public Consultation in Paro on 9th November 2005.}

(b) \textit{Since the duties of the constitutional office holders being independent, we hope that in future they will carry out their duties well. Still, once the authority is given to individuals, we cannot predict their behaviour. Therefore, if by any chance they perform illegal acts and if they have to be impeached, only the parliament has the authority to do so. And even in parliament, they can be impeached if two third of the majority supports it. If not,
The constitutional offices are very important and conscience keepers of morality, legality, constitutionality and aspire for higher public standards. Therefore, they cannot misappropriate power. Remember Guru Rimpoche, who said “The powerful must know the limit of their power.”

Errors occur and the mistake of selection or appointment is not a license. Therefore, the Constitution has the constitutional remedies. Buddha said “Power abused is not all gain, Power is often folly’s bane”. Vote of confidence, no confidence motion and impeachment are necessary for self-restraint, public warning and undermining the august and exalted constitutional office. It is expedient to remember Thomas Fuller 17th Century English Writer cited by Lord Denning in Gouriet v Union of Post Office Workers (1978), who said “Be ye never so high, the law is above you.”

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.” Examples of particular common good include an accessible and affordable public health care system, and effective system of public safety and security, peace among the nations of the world, a just legal and political system, and unpolluted natural environment and flourishing economic system. It is misused by “free-rider problem”. Individuals can become “free rider” by taking the benefits the common good provides while refusing to do their part to support the common good. Others think that individuals should not have to contribute to the community’s common good, but should be left free to pursue her own personal ends. Finally, appeals to the common good are confronted by the problem of an unequal sharing of burden. Common good was advocated by Spinoza. The concept of common good encompasses:

(a) Interest of the state as a juristic person, which is the integrity, freedom of action and honour of the state’s personality and claims of the politically organized society as a corporation to property acquired and held for corporate purposes.
(b) Interest of the state as guardian of social interests.
(c) Social interests in the general security relating to general safety, general health, peace and order, security of acquisitions and security of transactions.
(d) Social interest in general morals cover a variety of laws for those dealing with prostitution, drunkenness and gambling.
(e) Social interest in conservation of social resources that covers natural resources and protection and training of defectives i.e., conservation of human resources.
(f) Social interest in general progress covers economic progress- freedom of use and sale of property, free trade, free industry, encouragement invention by the grant of patent.

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197 Public Consultation in Punakha 27th November 2005.

82
(g) Political progress covers free speech and free association.
(h) Cultural progress covers free arts, free letters, free science and promotion of education and learning and aesthetics.
(l) Social interest in individual life: self-assertion, opportunity and conditions of life.

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” might be advanced by its exercise. An emergency is an unforeseen combination of circumstances or the resulting state that calls for immediate action. Corwin indicated that it “connotes the existence of conditions suddenly intensifying the degree of existing danger to life or well-being beyond that which is accepted as normal.”

Justice J.S. Verma said:

“All issues, wised by the Indian experience of Emergency (1975-’77), 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 torture etc... Section 18 of Article 7 abolishes the capital punishment. These are progressive guarantees of inalienable human rights.”

During the public consultation their Majesties explained that:

(a) 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. Therefore, we need not have any doubt on this.199

(b) 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. 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...

No government should be impotent. Sovereignty and public safety supersede any interest. Salus repubicae est suprema lex - The safety of the State is the supreme law. Therefore, His Majesty the Fourth Druk Gyalpo said that an emergency would not be proclaimed in our country except in times of great national crisis affecting the country. Even if such an emergency is proclaimed, it would be in force for not more than twenty one days from the date of the proclamation. An emergency could be proclaimed when the country is heavily affected by natural disasters or

199 Public Consultation in Haa on 2nd November 2005.
200 Public Consultation in Paro on 9th November 2005.
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 emergency, which are national, territorial and financial emergency.

Proclamation of emergency is unfortunate, but the nation can be hostage of unseen exigencies. Extraordinary exigencies happen. Under extraordinary and extreme situations, extraordinary measures are warranted. Extreme situation warrant extreme measures.

**Article 34**

**National Referendum**

Referendum is grass root democracy and direct democracy. It is a practical manifestation of popular sovereignty. Rousseau mentioned that general will is through direct democracy. A referendum is a decision taken by the people (the electorate) rather than parliament on a particular proposed law or decision. Referendum being popular sovereignty, the people has power to adopt its own constitution and propose and adopt amendments to the constitution. However, it is neither evasion nor shirking of responsibility from taking decisions that are unpopular but for the national interest.

Democratization in Bhutan has emanated from the Golden Throne. Democracy in Bhutan encompasses both direct and indirect democracy. His Majesty the Fourth Druk Gyalpo instituted direct democracy through people’s referendum and indirect democracy through parliamentary democracy. Explaining the principle to the public of Trashigang, His Majesty said that Parliament under representative democracy has the power to formulate policies, laws, and govern under the powers delegated by the Constitution, but only the people of Bhutan has the power to change the basic principles of the Constitution through referendum. There are four circumstances in which a National Referendum can be invoked viz. 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.

Their Majesties during the public consultation said that:

(a) *In Article 34, the two ways of amending the constitution is very important. As per Article 32, the provisions of the constitution can be amended if 51% of people from the Dzongkhags vote in the National referendum. Even the provisions of Article 2 on the Institution of Monarchy can be amended by the people. 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 is detrimental to them, like is normally done in other democratic countries. I hope this would not happen, but you people should keep this in mind and know that there is a possibility of this happening. Because it can happen. What is important is that the Government is the government in the interest of the people. If*

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201 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.

202 Refer the 77th National Assembly Resolution.

203 Refer Kuensel dated 23 March 2005.
the government though called the government of the people, work only towards their own benefit, then the purpose of having a democratic government is failed.\textsuperscript{204}

(b) 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 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 a National Referendum. Once the King ascends the throne, he remains on the throne for his life. We have seen it in many other monarchies and found that it is a very bad example. Therefore, we cannot continue with 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 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 could 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 government, the people need not involve in internal strife and protests, but they can change that king by calling National Referendum. It would be befitting to exercise your rights when you are empowered by the Constitution. In accordance 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 would not be forced to step even after ten times of national referendum. Therefore, there is nothing to be worried and apprehensive about it.\textsuperscript{205}

Bhutan had representative democracy since 1953 with the establishment of the National Assembly. Thus, the voice of the people expressed through referendum is 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. The greatest power rests with the people. Parliament has no power to change certain provisions and if it does not command double majority. 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.

\textbf{Article 35}

\textbf{Amendment & Authoritative Text}

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

\textsuperscript{204} Public Consultation in Thimphu on 26\textsuperscript{th} October 2005.

\textsuperscript{205} Public Consultation in Paro on 9\textsuperscript{th} November 2005.
the country. Therefore, with the changing times and situation, the Constitution may require certain amendments. His Majesty the Fourth Druk Gyalpo explained that there were two ways to amend any of the Articles, including Article 2, which deals with the institution of Monarchy. Firstly, a motion for an amendment to the Constitution could be passed by three-fourths of the members of Parliament voting for a change in an Article, and secondly, it can take place if a National Referendum is held and more than half the voters from the 20 districts support the proposed amendment.

His Majesty the Fourth Druk Gyalpo said that making amendments to the Constitution would be required and necessary from time to time, but it was also important to keep in mind that there is always the possibility that political parties could try to amend certain Articles in their favour. However, the Constitution should not be amended frequently. If so, it becomes more like a statute and will lose its sanctity. The Constitution should have sanctity and should not be subjected to willful amendments. 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” as profoundly stated by Aristotle.

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 joint session. Thus, Bhutan has single frame with rigidity and legalism. Three-fourths majority or double majority is required to amend the Constitution. Furthermore, the Constitution shall stand amended only on the Assent being granted by the Druk Gyalpo. If in case Assent is not granted and is of national importance section 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’s who has mentioned that Constitutions are good only as we progress under them.

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 National Referendum.

The power to amend certain provisions of the Constitution lies with the people. With the provision for National Referendum, people are vested with full power to amend the Constitution. Therefore, it is important for the people to serve the country with utmost

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206 Royal audience with the members of the Constitution Drafting Committee on 29th November 2001.
207 Refer Kuensel dated 29 October 2005.
209 Marriott (1859-1945), an English historian, classified constitutions as unitary and federal, rigid and flexible, parliamentary and presidential.
dedication and exercise these powers and responsibilities with full commitment in the best interest of the nation. It is important to elect the government for the people and to uphold the Constitution in the best interest of our country.

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 mutual check on the powers of each branch, and ensures fundamental rights and liberties. Any new constitutional amendment must steer clear intention upon these bedrock principles of parliamentary government.

Concerning Amendment, Dr. Venkata Rao\textsuperscript{210} said:

\begin{quote}
“The Supreme Court very intelligently said the right of the parliament to amend the constitution is not unlimited. It did not say it is limited. It said 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. It is not said anywhere in the Articles. Then people asked them a question/s.”
\end{quote}

\textbf{Types of amendments}

Amendment is also known as repeal. It has direct repeal by Parliament and implied repeal by judicial interpretation. Thus, Their Majesties said that:

(a) 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 34 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.\textsuperscript{211}

(b) 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

\footnotesize{\textsuperscript{210} Dr. R Venkata Rao’s talks to the Judiciary of Bhutan on 15\textsuperscript{th} November, 2011. He is the Vice Chancellor of the Bangalore Law College.}

\footnotesize{\textsuperscript{211} Public Consultation in Paro on 9\textsuperscript{th} November 2005.}
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.212

(c) Actually, 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 the 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 with body, mind and speech honestly and dedicatedly. 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.213

(d) It is not that we have not given the power to the people, we have decentralized the administrative and financial authority to the GYT and DYT during 9th plan. Not only that, again when democracy starts, it is very important that we amend DYT and GYT Chathrims. Therefore, the inaugural drafting process will be done before the inauspicious year... 214

(e) The provisions of the constitution have been read to you. I am sure that you have understood the provisions. Once the constitution is deliberated in the twenty Dzongkhags, then it will be finalized. If the government wants to amend it, it can be done through the Parliament and it should be passed by not less than three-fourth of the total number of members of the Parliament. But it is important for you people to know that the Constitution can be amended by the people through National Referendum. If you people are not happy with the ones passed by the Parliament, you people have the power to change the decision of the Parliament. If an amendment is desired that the people would want to change any provisions of the Constitution, a National referendum can be called for in all the 20 Dzongkhags. If more than 50 percent of the people agree for the amendment, any provisions be it the provisions from Article 2 on the institution of the

212 Public Consultation in Paro on 9th November 2005.
213 Public Consultation in Punakha on 27th November 2005.
214 Public Consultation in Punakha on 27th November 2005.
Monarchy can also be amended. The power to amend the constitution lies with the people. With the National Referendum, people are vested with full power to amend the Constitution. But when the government gives power, it is important for the people to serve the country with utmost dedication. Therefore, the people should exercise these power and responsibility to uphold the Constitution and in the best interest of the country. We have faith and trust the people will exercise your power in the best interest of the nation. While drafting the constitution, we have referred to hundreds of constitutions and copied those provisions, which we thought would be relevant and beneficial to our country. At the same time, there were many provisions that were not relevant to us. In order to prevent problems that come along with democracy, we have included many strong and effective provisions. We have also drafted many Acts with strong and effective provisions. All these acts will be put up in the Assembly for discussion. We have tried to incorporate the important provisions. Although we have referred to the constitution of other countries, we have seen that there are many flaws. One of the flaws is that these constitutions have been drafted hundreds of years ago. When we drafted our constitution, the most important thing we have kept in mind is what is beneficial to our country and the interest of our country, what will secure our independence, sovereignty and security of our country, the welfare of the people and how the political parties will achieve the policies of the government. Keeping these in mind we have drafted the constitution.

(f) The provisions of the constitution may be amended through the parliament. A motion to amend the constitution shall be initiated by a 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 the damtse 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.

(g) It is very important to know the contents of Article 34. If there is any need to amend the provisions of the Constitution it can be done by the government through voting. The Constitution will stand amended if the motion is passed by three fourth of the members in the Parliament. If it is calculated by percentage it has to obtain 75 percent to effect the amendment. The people are empowered with the power to amend the Constitution. The people may amend the constitution by casting votes through the national referendum in all twenty dzongkhags. The constitution will stand amended if people in the twenty dzongkhags vote for the motion by more than fifty percent. That is why it is so important to understand this provision. This constitution has been drafted with the hope that it will benefit the society for more than hundreds of years. However, we may need to make amendments in some of the Articles due to complications of the words, and it would be good if the amendments were made for the benefit of the people. The Constitution being the law, security and welfare of the people, amendment proposed for the benefit of the

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215 Public Consultation in Wangdue Phodrang on 7th December 2005.
216 Public Consultation in Mongar on 12th December 2005.
political parties should not be entertained and should be protected by the people. In the process of drafting the Constitution, we have gone through hundred of constitutions of other countries, in order to see good part of their constitution and make our constitution better than that of other countries. In order to prevent corruption and mal-practices in the new political system in our country, we have really filtered the fine ones and have reflected it in our Constitution. We noticed so many shortcomings and defects of other constitutions. Though it is not right to find fault with the Constitutions of other countries, we have noticed that some of the constitutions are hundred to two hundred years old and have been drafted for the benefit of the political parties rather than for the benefit of the people and the country. Therefore, our Constitution was drafted keeping in mind the main objective of the forthcoming new political system of ‘constitutional democracy’ and questioning how to set it up and how to begin, how will it benefit the people and the country and its durability... It is very important to gather and try to make the Constitution very strong and stable. Therefore, it is important and necessary for the students to be present, as the future of the country lies in the hands of the youth of today. This is a Constitution meant for the people of Bhutan. It is very important to reflect on the welfare and needs of the people in the constitution though the task of drafting the constitution has been given to the Government.  

Authoritative Text

The Constitution states that:

“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.”

It is unfortunate that Dzongkha, which is our national language, is not the authoritative text. According to the Humboldt school, “a language more than grammar and a vocabulary – it bodies a distinctive world view.” However, due to the outcry by a few, we had to make both texts equally authoritative.  

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

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218 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.
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 Committee\textsuperscript{219} was formed and tasked to simplify the Dzongkha Text of the Draft Constitution of Bhutan. The Committee submitted their submissions of their first meeting in obedience to the Royal Command on 12th May 2005:

“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\textsuperscript{220}.

Language empowers an individual to understand problems and to solve them. It would augur well to remember Sumta,

\begin{quote}
“From writing come names;  
From names come words; and,  
Words express all the meanings.”
\end{quote}

This is extraordinarily true for Bhutan. Dzongkha is the language symbolizing the identity of Bhutan. It is a symbolic expression of our State and our identity as a people. Without identity, Bhutan may not have been a sovereign country. The culture of others would have inundated us.

\textsuperscript{219} Lyonpo (Dr. ) Kinzang Dorji, Zhabtog Lyonpo, Dasho Sangay Dorji, Director General, DDA, Dasho Sangay Wangchuk, Director General, Department of Culture, Dasho Khandu, Kuenphen Legal Services (former Drangpon , Shera Lhendup, Legal Officer of NEC,), Lam Chhechong, Director, National Legal Course, Choki Dhendup, 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.  
\textsuperscript{220} The Committee consisted of Dasho Tashi Phuntsho, Dasho Sangay Dorji, Lam Chhechong, Rabjam Jangchuk Norbu, Rabjam Kinley Namgay, Rabjam Rinzin Wangdi, Choki Dhendup, Registrar Gembo Tashi and Pelden Wangmo.
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.

Conclusion

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, the Fourth Druk Gyalpo.

Following the royal command, the Constitution Drafting Committee was established. It comprised of representatives from the twenty Dzongkhags directly elected by the people\(^\text{221}\), two members from the Dratshang\(^\text{222}\), the Speaker of the National Assembly\(^\text{223}\), seven members from the Royal Advisory Council\(^\text{224}\), three from the Judiciary\(^\text{225}\), and six from the Government\(^\text{226}\). There were thirty-nine members chaired by the Chief Justice of Bhutan.\(^\text{227}\) We had honest disagreements and heated debates.\(^\text{228}\) It was an honour and a pleasure to work with the members.

\(^{221}\) Jampel (Member from Bumthang), Palden Dorji (Member from Chukha), Dorji (Member from Dagana), Ugyen (Member from Gasa), Lhakpa (Member from Haa), Khamtula (Member from Lhuentse), Pema Dorji (Member from Mongar), Wangdi (Member from Paro), Gachu Wangdi (Member from Pema Gatshel), Namgyal Punsho (Member from Punakha), Dechen Wangchuk (Member from Sandrup Jongkhar), Chandra Bahadur Ghaley (Member from Samtse), Thakur Prasad Homagai (Member from Sarpang), Thinley Dorji (Member from Thimphu), Jangchub Dorji (Member from Trashigang), Lobzang Tshering (Member from Trashi Yangtse), Chopel (Member from Trongsa), Phurgye Drukpa (Member from Tsirang), Sigay Dorji (Member from Wangdue Phodrang) and Dechen Wangdi (Member from Zhemgang).

\(^{222}\) Venerable Drabi Lopen Kuenley Gyeltshen and Venerable Yangbi Lopen Chimmi.

\(^{223}\) Dasho Ugyen Dorji.

\(^{224}\) Dasho Rinzin Gyaltshen (Zhung Kalyon), Dasho Jamyang (Councilor from Chhukha), Dasho Chador Wangdi (Councilor from Trashigang), Dasho Gyeltshen (Councilor from Paro), Dasho Sonam Wangchuk (Councilor from Zhemgang), Dasho Adap Passang (Councilor from Wangdue Phodrang) and Dasho Leki Pem (Councilor from Dagana).

\(^{225}\) Lyonpo Sonam Tobgye, the Chief Justice, High Court, Drangpon Lungten Dubgyur (Phuentsholing Court), Pasang Wangmo, (Registrar,Wangdiphodrang Court).

\(^{226}\) Dasho Meghraj Gurung (Managing Director, Bhutan Posts), Dasho Tashi Phuntsog (Secretary, National Assembly), Lopen Lungten Gyatso (Principal, Institute of Language and Cultural Studies, Semtokha), Dasho Karma Ura (Director, Centre for Bhutan Studies), Dr. Dechen Tsering, (Head, Policy Coordination Division, National Environment Commission), Dasho Kuenlay Tshering (Director, Office of Legal Affairs, as the Member Secretary to the Constitution Drafting Committee).

\(^{227}\) Lyonpo Sonam Tobgye.

\(^{228}\) Discussion during the meetings of the drafting Committee and the public consultations were all recorded. The records were transcribed by Sonam Penjore and Tshering Tobgay, the bench clerks of the High Court. It was then translated into English by Drangpon Rinchen Penjor, Drangpon Karma Gyamtsho, Drangpon Tshering Dorji, Drangpon Kinley Namgay, Drangpon Rabjam Chador Punsho, Drangpon Rabjam Norbu, Gembo Tashi, Pelden Wangmo, Rinchhen Dema, Tandin Dorji, Kinley Dorji, Lhundup Zangpo, Deki Yangzom, Yeshey Dorji, Sonam Yangchen, Phub Dorji, Ugyen Penjor, and Karma Choden.
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, the Supreme Court of India. Thereafter, eight consultative meetings were held between him and the Bhutanese counterparts. Concluding the corrections, Mr. K.K. Venugopal stated:

“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 27th October 2004:

“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.”

Cross-checking

The Constitution of Bhutan is comprehensive and brief. It combines tradition with modernity to usher the nation into the 21st century as the harbinger of peace and advocates scientific temper with a spirit of 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 has several unique features. Firstly, it is among the fifteen shortest constitutions in the world. Secondly, most of the words and phrases enshrine principles and doctrines with

229Lyonpo Sonam Tobgye, Dasho Kuenlay Tshering, Lungten Dubgyur, Kinley Namgay and Gembo Tashi. The meetings were held in New Delhi, Goa and Thimphu.
their sources\textsuperscript{230}, epistemology and political philosophy. Thus, His Majesty informed the first public consultation meeting in Thimphu that:

\begin{quote}
“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.”
\end{quote}

Finally, every provision of the Bhutanese Constitution was compared with the respective clauses of the constitutions of twenty-two countries\textsuperscript{231}.

**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 15\textsuperscript{th} October 2004 to be reviewed by the Legal Committee\textsuperscript{232} 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 4\textsuperscript{th} December 2004. There were more than four hundred submissions in total.\textsuperscript{233} Meanwhile, His Majesty sent the draft to the Council of Ministers on 1\textsuperscript{st} November 2004. We received the copy of the corrections of the draft submitted to His Majesty\textsuperscript{234} by the Council of Ministers on 19\textsuperscript{th} January 2005. The Legal Committee incorporated relevant changes based on their recommendations and comments.\textsuperscript{235} After the submission of the improved draft, a special session of the Council of Ministers was convened on 21\textsuperscript{st} March 2005. It was the last formal discussion on the draft.\textsuperscript{236}

The process of correcting the draft generated discussions to resolve the differences with positive decisions and created awareness to challenge or confirm its accuracy and general fairness with objective criticisms and dynamic reviews.

**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.

\textsuperscript{230}Dasho Tashi Phuntsog and Drangpon Rabjam Rinzin Wangdi worked hard in Drongkha. 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 assistant has been assisting in the compilations and corrections.

\textsuperscript{231}Drangpon Lungten Durbgyur, Drangpon Rabjam Kinley Namgay, Gembo Tashi, Pelden Wangmo and Ugyen Tshering.

\textsuperscript{232}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.

\textsuperscript{233}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”.

\textsuperscript{234}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. Damcho Dorji has been of great help to me during the corrections.

\textsuperscript{235}Refer Kuensel dated 23 March 2005.
With the distribution of the draft to the people on 26th March 2005, the voice of nation spoke and His Majesty beckoned us through the pages of the draft invoking and endowing hope and abiding aspirations for the enduring glory of Bhutan. Such unprecedented opportunities unveiled to make Bhutan a great and glorious nation in the world. It is His Majesty’s enduring message for the best interest of the people, their security, and sovereignty of the nation to fulfil his unfailing trust and unwavering confidence to build Bhutan into a promising and functioning democracy with responsible and accountable Government based on the popular will and choice of the people. Democracy assures participation, whereas rights protect dignity. However, democratic principle of representation and participation cannot demean and detract from the economic necessity of prudence and other provisions of 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 has 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 also look at the draft. It was a wise initiative of His Majesty to put our 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 several discussions and some positive recommendations, and also created awareness amongst the people.

Public Consultation

His Majesty the Fourth Druk Gyalpo commenced the process of public consultation from Thimphu on 26th 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 24th 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 concluded the public consultation at Trongsa on 24th May 2006. The draft Constitution was translated and read in three dialects namely Dzongkha, Tshangla and Lhotshamkha.237

Speaking to the people during the public consultation, His Majesty the Fourth Druk Gyalpo said that the draft Constitution has been distributed to them twice. His Majesty 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

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237Drangpon 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 Dahal translated the draft Constitution in Lhotshamkha and Dasho Karma Sherpa read it. The Dzongkha version of the Constitution was read by Dasho Tashi Phuntsog.
persons who commented on the draft Constitution during the consultation process. Public consultation process further sensitized the public through various medium\textsuperscript{238}, created awareness and helped them understand the concept and purpose of a Constitution and Constitutional Democracy, besides their direct and indirect contributions. Some of the comments received led to corrections and modification in the language of the final document. The incontrovertible evidence, however, was that every citizen knew most of the words used in the Constitution.

**Challenges**

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 ourselves 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, the legal and political sovereignty, etc are considered and incorporated;
(f) To incorporate the doctrines relating to freedom of choice with general will, greatest number, greater good, common good, well-being, social, political and legislative morality, rights and duties. It has been 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. Moreover, we had to ensure checks and balances;
(h) To decentralize and distribute power at the policy, supervisory and operational levels under the implied principles of the delegation of power. Omnipresence of any individual at different levels would derogate happiness living under shared power;
(i) To identify types of constitutions, which is rigid to establish values and be flexible to survive and to thrive 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 has been an intellectual consideration 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 that hears honest views contributed to the making of the Constitution. His Majesty graciously commented that the draft was of good standard;

\textsuperscript{238}Bhutan Broadcasting Service conducted a series of forum discussion on the theme “The Making of the Tsathrim Chhenmo” in order to educate the general public on the important political process.
After unveiling the draft Constitution, we were inundated with comments and drafts 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, we evaluated them most carefully as Gandhiji said, “Adaptability is not imitation”; 

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 made us to contemplate and re-visit the provisions; and 

Taking balanced views submitted by the agencies and individuals and incorporating them into the draft to avoid institutional bias and strengthen institutional integrity.

The Constitution is the triumph of truth and virtue over vitriolic criticisms and lurking suspicions. Therefore, we were cautious and conscious of the sacred responsibility. 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, doctrine 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, celebration of democracy and well being of the nation. It 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 our public institutions.

Our 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.

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. “Palden 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 sovereignty and security of the Kingdom of Bhutan. The Constitution creates self-determination to live her life in the manner that she 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. The values, tradition and culture of Bhutan and other core constitutional values have formed the basis of our Constitution. 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. It should inspire our future generations, the ardent love for their country, an unquenchable thirst for liberty, and greater 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 us all according to wise laws, protect us and defend the people, repulse common enemies and maintain us in everlasting accord. The freedom and liberty under the Constitution is the constituent of Gross National Happiness, and sovereignty of the people and Bhutan are absolute. Our Constitution embodies hope for survival and reassurance for our 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 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 financially240 to the drafting of our 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;

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.

Monday, January 27, 2014

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240 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.