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# Religious Beliefs and Constitutional Law in Bhutan: A Critical Study

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## ABSTRACT

*Although Democracy is an old concept which had its origin in Greece around the fifth century B.C.E it has only found its way into Bhutan only in the 21st Century along with the vision of the Fourth King of Bhutan. Bhutan is a new and a young Democratic nation who only adopted Democracy on 18th of July 2008. Thus, as any other Nation in the world, when Bhutan became a democratic country it became necessary for Bhutan to draft a Constitution of its own and as such a necessity for a constitution arose as well. In this research paper we are going to look at how and from where the Buddhist Law came to be from and we are also going to look at how it has been a factor in the drafting of the constitution of Bhutan and on what other basis was the Constitution of Bhutan based upon. Unlike in the rest of the countries of the world there are only a handful of constitutional cases in Bhutan since its adoption in 2008. The Judiciary as a separate body in the workings of a government is also a new concept in Bhutan and thus, we will also be looking in the Judicial Independence of the country as well.*

## I. INTRODUCTION

Druk Yul which is also known to the outside world as Bhutan is a small country in the Eastern Himalayas right in Between India and China which is two of the most populous countries in the world. It was shown by archaeological evidence that Bhutan was inhabited by the people dating back to 2,000-1,500 BC.<sup>3</sup> Bhutan was referred to by many names in the ancient times and 'Druk Yul' which means 'The Land of the Thunder Dragon' was one of the few. Bhutan was a name given by Westerners which is derived from the Sanskrit word 'Bhu-Uttan' which meant 'High Land or High Landers'.<sup>4</sup>

The country is surrounded by mountain ranges on all sides except for the small flat lands in the southern foothills. In the East, Bhutan borders with Arunachal Pradesh of the Indian State, in

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<sup>3</sup> History, Royal Bhutanese Embassy, New Delhi, India, available at: [https://www.mfa.gov.bt/rbedelhi/?page\\_id=38](https://www.mfa.gov.bt/rbedelhi/?page_id=38) (Visited on March 18<sup>th</sup>, 2022).

<sup>4</sup> A Brief Historical Background of the Religious Institutions of Bhutan, available at: <http://buddhism.lib.ntu.edu.tw/FULLTEXT/JR-BH/bh117506.htm> (Visited on March 18<sup>th</sup>, 2022).

the South with the Indian States of West Bengal and Assam, in the west with the Indian State of Sikkim and in the North with Tibet under China.

Bhutan is considered as the last Buddhist Kingdom in the world and as such Buddhism had a huge impact on shaping the life of the people, history, government, judiciary, culture, and so on. It has also contributed in the reformation of laws in the country as well. Although Bhutan has referred to many western jurisprudence and laws while drafting the constitution and other laws of Bhutan, it has its own set of Buddhist laws and cultures as well. There are a lot of Buddhist Law code such as the Ganden Phodrang Law code<sup>5</sup> and others written in the seventh century, although in this paper we will only be focusing on the legal order of Mangpo Kurwai Gyalpo and of Gyalpo Melongdong<sup>6</sup>.

Buddhism was brought to Bhutan by an Indian Buddhist saint Guru Padma Sambhava (Guru Rinpoche)<sup>7</sup> in the 7th century AD (747 AD) when he came to Bhutan and it took firm roots ever since. Around the early 13th Century with the advent of a spiritual master Phajo Drugom Zhinpo,<sup>8</sup> he brought along with him the Drukpa Kagyu tradition of Mahayana Buddhism<sup>9</sup> and sowed the seed for the later arrival of Zhabdrung Rinpoche<sup>10</sup>.

It was only with the arrival of Zhabdrung Rinpoche (precious jewel at whose feet one submits) in 1616 AD that the history of Bhutan started taking a vital turn. He founded unique Bhutanese identity that the Bhutanese still takes pride in today, unified Bhutan under one rule and brought the Bhutanese people under one faith of the Drukpa Kagyud (Mahayana Buddhism). He introduced the dual system of Government with the Je Khenpo (Chief Abbot) to look after religious affairs and the Desi, as the head of the temporal.<sup>11</sup> After the Zhabdrungs demise, the dual system of Governance lasted until 1907 although war and internal strife took place until the current Wangchuck (Royal Families Sur Name) dynasty took over Bhutan as the hereditary position of the Druk Gyalpo (Dragon King).<sup>12</sup>

The early process and the groundwork for modernizing and bringing Democracy to Bhutan was laid by the third Druk Gyalpo Jigme Dorji Wangchuck. Since then His Majesty the third has

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<sup>5</sup> The Ganden Phodrang in Tibet, Military Institutions and Culture between the 17<sup>th</sup> and the 20<sup>th</sup> Centuries at a crossroads of influence.

<sup>6</sup> Lungten Dubgyur, *The Wheel of Laws* (Office of Attorney General, Thimphu, 2nd edn., 2015 & 2021).

<sup>7</sup> Guru Padmasambhava is also regarded as the second Buddha.

<sup>8</sup> A Brief Historical Background of the Religious Institutions of Bhutan, *available at*: <http://buddhism.lib.ntu.edu.tw/FULLTEXT/JR-BH/bh117506.htm> (Visited on March 18th, 2022).

<sup>9</sup> It is the largest Buddhist Sect in the modern world founded around 300 BCE.

<sup>10</sup> Zhabdrung Ngawang Namgyel is the founder of Bhutan who ruled Bhutan for over 35 years.

<sup>11</sup> Ershadul Karim and Chhime Tshoke Dorjee, "Research Guide to the Legal System of the Kingdom of Bhutan" HGLSP 02 (2018).

<sup>12</sup> Royal Government of Bhutan (ed.), *History of Bhutan*, (Kuensel, Thimphu, 2006).

been credited with bringing and laying the foundation for a modern Bhutan. However, it was after the demise of the third King that the Fourth Druk Gyalpo Jigme Singye Wangchuck brought Democracy in the true sense of its name. It was during the reign of the Fourth King that he oversaw many legal and political reforms and brought about a Democratic Constitutional Monarchy in Bhutan.<sup>13</sup>

#### **(A) Statement of Problem / Research Problem**

The statement of problem that is discussed in this paper is whether Buddhism played a role in the drafting of laws in Bhutan and what were some of the connections between Buddhism and the laws in Bhutan.

#### **(B) Hypothesis**

This research paper will mainly focus on the connection between the prevalent law in Bhutan and how it affects or is connected to Buddhism. It is not uncommon that we see the association and link between religion and law. For example, the Hindu Law or the Sharia Law that has been incorporated from religious texts and beliefs. It is the researchers desire that the researcher will want to outline a brief connection between Buddhism, the Constitution of Bhutan and the prevalent laws here in Bhutan. Although there are many researches done and books written on this matter, there is no brief explanation to the topic so the researcher will outline a brief summary about the connection of law and Buddhism. The researcher will also discuss briefly about the concept of the constitution of Bhutan and how it came to be. To achieve this goal, the researcher will use various articles, bare acts and books available at his disposal to give a proper study to the topic at hand. The nature of this research will be a type of exploratory research where the researcher will dive in and find out facts and information from existing resources. The crux of this research however is to make a brief study about the religious beliefs and constitutional law in Bhutan and make it easily understandable whereby even a person who lacks law background can understand the connection properly.

#### **(C) Research Objectives**

The main objectives of this research are as follows:

- To find out the connection between religion and law
- To understand the origin and implementation of the Constitution in Bhutan
- To see what a Buddhist Law means and

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<sup>13</sup> MPC Publications (ed.), *11-11-11 a Tribute* (MPC Publications, Thimphu, Bhutan, 2013).

- To see the theory of state of origin from Buddhist point of view

#### **(D) Review of Literature**

##### **A./ BARE ACTS:**

- **Constitution of Bhutan:** The constitution is the supreme law of the land and affirms to the authority of legal precedent. All legal guidelines in force within the territory of Bhutan at the time of adopting this Constitution keeps till altered, repealed or amended via Parliament. However, the provisions of any law, whether or not made earlier than or after the coming into force of this Constitution, which can be inconsistent with this Constitution, will be null and void. The constitution was adopted in the year 2008 and it marked the end of absolute monarchy to that of a Democratic Constitutional Monarchy.<sup>14</sup>

- **Marriage Act of the Kingdom of Bhutan 1980:** Family law in Bhutan is a matter of customary law however that has been superseded and supplemented by the Marriage Act of the Kingdom of Bhutan. First and foremost, it states that irrespective of caste, race, status or wealth a person has the right to marry anyone or whomsoever they choose with the exception or prohibition of minors and consanguinity.<sup>15</sup>

##### **B./ ARTICLES:**

- The Thrimzhung Chenmo and the Emergence of the Contemporary Bhutanese Legal System<sup>16</sup>
- Constitution-Making in Bhutan: A Complex and Sui Generis Experience<sup>17</sup>
- Virtuous Beings: The Concept of Tha Damtshig<sup>18</sup>
- Gross National Happiness and the Heavenly Stream of Justice: Modernization and Dispute Resolution in the Kingdom of Bhutan<sup>19</sup>
- Law and Religion: Law and Religion in Buddhism<sup>20</sup>
- Research Guide to the Legal System of the Kingdom of Bhutan<sup>21</sup>

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<sup>14</sup> Constitution of Bhutan, *available at*: [https://www.nab.gov.bt/dz/business/constitution\\_of\\_bhutan](https://www.nab.gov.bt/dz/business/constitution_of_bhutan) (Visited on March 19<sup>th</sup>, 2022).

<sup>15</sup> Marriage Act of Bhutan, *available at*: [https://www.nationalcouncil.bt/assets/uploads/docs/acts/2017/Marriage-Act-of-Bhutan-1980\\_Eng.pdf](https://www.nationalcouncil.bt/assets/uploads/docs/acts/2017/Marriage-Act-of-Bhutan-1980_Eng.pdf) (Visited on March 19<sup>th</sup>, 2022).

<sup>16</sup> *Available at*: <https://www.researchgate.net/publication/239579025>

<sup>17</sup> *Available at*: <https://academic.oup.com/cjcl/article/7/2/359/5625569?login=true>

<sup>18</sup> *Available at*: <https://www.researchgate.net/publication/282870450>

<sup>19</sup> *Available at*: <https://www.researchgate.net/publication/282870481>

<sup>20</sup> *Available at*: <https://www.encyclopedia.com/environment/encyclopedias-almanacs-transcripts-and-maps/law-and-religion-law-and-religion-buddhism>

<sup>21</sup> *Available at*: <https://www.nyulawglobal.org/globalex/Bhutan.html>

- Keeping the Stream of Justice Clear and Pure: The Buddhization of Bhutanese Law<sup>22</sup>
- Of Texts and Dharma: Delivering Justice in Bhutan<sup>23</sup>

#### C./ BOOKS:

- The Wheel of Laws<sup>24</sup>: In this Book the author who is a Justice of High Court of Bhutan talks about the Buddhist concept of the state of human nature, the state formation as compared to western philosophies, about the constitution of Bhutan and the Constitutional Cases of Bhutan.
- Druk Gyi Gyalrab<sup>25</sup>: This book was written by the Grandson of the first King of Bhutan. It gives a chronological order of Bhutan's history and the reigns of the Desi (temporal rulers) of the past. It also gives a brief information about politics and religion of Bhutan and sheds light to how different Tibetan traditions came to Bhutan.
- The History of Bhutan<sup>26</sup>: This book was authored by Karma Phuntsho. It details out everything from Bhutan since the ancient times to the medieval then to sub-medieval and the modern Bhutan. This book has been written very intricately and beautifully. If you want to know any history of Bhutan then this is the book to read.
- Bardo Thoedrel<sup>27</sup>: This is a religious text where it generally talks about life after death but here the interesting thing is after death we are judged by the God of Death (Depicted in the Raksha Mar Cham in the annual festivals). There is a prosecutor and a defendant with each of us to guide us through the trial of whether we will be sent to heaven or hell or other relevant places. It generally talks about the concept of court system and the right to be heard (the principle of audi alteram partem).

## II. BUDDHIST CONCEPT OF THEORY OF ORIGIN OF STATE AND DISPUTE RESOLUTION

As compared to the western jurisprudence about state formation, human nature and social contract theory, Mangpo Kurwai Gyalpo is the first Buddhist King who has been chosen through the social contract theory. Mangpo Kurwai Gyalpo which roughly translates to The

<sup>22</sup> It was sent to me in my email by Richard W. Whitecross (A professor at Edinburgh Napier University, Scotland, UK) r.whitecross@napier.ac.uk.

<sup>23</sup> *Ibid.*

<sup>24</sup> Lungten Dubgyur, *The Wheel of Laws* (Office of Attorney General, Thimphu, 2<sup>nd</sup> edn., 2015 & 2021).

<sup>25</sup> Phuntsho Wangdi, *Druk Gyi Gyalrab* (Thimphu, 2<sup>nd</sup> edn., 2013).

<sup>26</sup> Karma Phuntsho, *The History of Bhutan* (Random House Group Limited, India, 2013).

<sup>27</sup> It is a religious Book or it can also be referred to as a religious text since there is a long and a short version of it. It is directly originated from the Vinaya Pitaka, which is a text or commentary written directly by Buddha's followers after what has been said by the Buddha.

Great Chosen One has been attributed with the Buddhist concept of just society, state, politics and justice. The writings about The Great Chosen One or Maha Samantha has been directly taken out from Kangyur Duel Wa (Vinaya Pitaka)<sup>28</sup> and it talks about the cosmological evolution, of how the world came to be, of how the people came to have desire and started hoarding foods as well as seizing properties as their own.<sup>29</sup>

There are also examples of dispute resolution sorted out by Gyalpo Melong Dong (King with a Round Mirror Face) in the Kangyur Duel Wa. The analysis of Gyalpo Melong Dong provides us with an interesting method of dispute resolution that is used in the Royal Court of Gyalpo Melong Dong. It gives a different perspective of how disputes were solved in the Buddhist context and how it is applicable according to the principles of western jurisprudence.

### **(A) Mangpo Kurwai Gyalpo**

According to the manuscript of Buddha the Humans before the time of Mangpo Kurwai Gyalpo or the Great Chosen One, they retained and stayed in a type of celestial form. They had no physical body and stayed in a wish fulfilling state where their mental and physical contentment were self-fulfilling as well. As time passed by, due to karmic deeds there was a formation of the Earth from the mass darkness, the sun came out when it was day and the moon and stars lit up the sky at night. With this even the human beings they gradually started losing their self-luminous celestial form and began transcending into physical forms.<sup>30</sup>

Even after transcending into physical forms they retained some self-fulfilling power and the food they ate tasted like pure butter and honey. But as the karmic deed came around people lost all ability or self-fulfilling powers. So, the rice plantation began among the human beings. At first people only ate the necessary amount of food but with time people thought to themselves, “Well now, why should I be bothered to gather rice in the evening for supper and in the morning for breakfast? Why shouldn’t I gather it all at once for both meals?”<sup>31</sup> With this came the human nature of greediness and laziness. People then began to seize properties and lands as their own and fenced and hoarded foods in stocks.<sup>32</sup>

Other people then began to do the same and chaos and destruction followed suit with the strong

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<sup>28</sup> Kangyur Duelwa is the original manuscript of the Buddha’s treatise and it has been directly translated to Chhoekey from Sanskrit. In Pali text it is also known as Agganna Sutta.

<sup>29</sup> Phuntsho Wangdi, *Druk Gyi Gyalrab* 19-20 (Thimphu, 2nd edn., 2013).

<sup>30</sup> The Legal Order of Mangpoi Kurwai Gyalpo: Legal and Philosophical Narratives, *available at*: <https://metopema20.wordpress.com/2015/07/23/the-legal-order-of-mangpoi-kurwai-gyalpo-legal-philosophical-narratives/> (Visited on March 21<sup>st</sup>, 2022) (Original Excerpt is taken from Khangyur Duel Wa).

<sup>31</sup> The Legal Order of Mangpoi Kurwai Gyalpo: Legal and Philosophical Narratives, *available at*: <https://metopema20.wordpress.com/2015/07/23/the-legal-order-of-mangpoi-kurwai-gyalpo-legal-philosophical-narratives/> (Visited on March 21<sup>st</sup>, 2022) (The Agganna Sutta- On knowledge of beginnings).

<sup>32</sup> This is how ownership of things began in Buddhism according to the vinaya text.

and the more abled hoarding more and more while the weak were left in poverty and left with no property. It resulted in the culmination of bad karmic deeds and soon sexual organs began growing whereby people then came to be distinguished into male and female as well. Then people began labeling themselves and others as more handsome, fairer, more beautiful and uglier to watch and dirty. And then the people cursed and shunned each other saying what others had and were doing was of filth and animal like. All the negative human emotions arose and while the strong and abled hoarded more and more the weak were left with nothing and thus poverty became very rife, people began stealing, killing and harming of others were noticed as well.<sup>33</sup>

At first people began punishing the wrong doers with fist, then sticks and stones but nothing seemed to work while the crimes just kept rising and it was here that the state of Lawless Nature was observed. In the western Jurisprudence the state of lawless nature was only observed in the 16<sup>th</sup> century during the warring periods of Europe by English philosopher Thomas Hobbes.<sup>34</sup> After the nature of lawlessness was observed the people then held a great meeting or congruence where everyone agreed that the salvage nature that was prevalent hurt not only the poor, weak or the strong and wealthy but everyone equally and they decided to choose someone who was the most intelligent, the strongest one of all, the most handsomest and the most capable one to judge the people and give them stick where it was due and reward when it was due.

He was to be chosen as the judge and the right to rule and govern the people en masse was given to him as well. For all the service that he provided he would be given a share of the rice and this legitimized taxation in Buddhist law or history. He was to become the great chosen one through something akin to a social contract theory which was also propounded by the great English philosopher Thomas Hobbes. He said that if people are left free there will be anarchy and that they have to give up their rights to a certain ruler to rule over them all.<sup>35</sup>

It can also be said that the selective process of the Great Chosen One was democratic in nature since he was selected unanimously by the public at large. He is also known to be the first worldly Buddhist King.<sup>36</sup> After he was elected to be the great chosen one, he brought just social order to the society and he also gave and distributed land to those who hand nothing and those who were poor thereby implementing the principle of redistributive justice. He could do all

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<sup>33</sup> *Ibid.*

<sup>34</sup> Thomas Hobbes in his famous book “Leviathan” observed and wrote about the lawless nature of human beings saying human lives were short, nasty and brutish.

<sup>35</sup> *Ibid.*

<sup>36</sup> Phuntsho Wangdi, *Druk Gyi Gyalrab* (Thimphu, 2nd edn.,2013). (Lhoi Choejung)



those things through the consent of the mass and thus the principle of Buddhist philosophy such as the legal basis of restorative, re-distributive and corrective justice was established.<sup>37</sup>

### **(B) Gyalpo Melongdong**

In the legal order of Gyalpo Melongdong, he is credited with solving disputes in a unique manner. The way he resolves cases is such that even now in this era the courts use a similar method of decision making to adjudge and resolve a case. The narratives about Gyalpo Melongdong is also given in the Kangyur Duel Wa (Vinaya Pitaka). Kangyur Duel Wa has been originally translated from Sanskrit to Chhoekey and it is hard to understand and decipher especially by a common man which must be one of the reasons why the spread of such laws has not spread very far and wide.

Among the cases Gyalpo Melongdong has resolved the most famous and well known would be the case of Euguchen<sup>38</sup>. There are five cases in total but it all revolves around him. He is the main defendant in all the five cases. In the first case Euguchen borrows one ox from a neighbor. One day when the neighbor was having lunch, he saw Euguchen return and keep the ox at the usual place but without informing the owner that the ox was being returned. Later the ox was lost and he the owner blamed Euguchen for it.

In the second case, Euguchen wanted to know the depth of a river while trying to cross it so he asked a passing carpenter the depth of the river. The carpenter who was carrying a load of wood and an axe in his mouth, dropped his axe in the river while trying to answer Euguchens question and blamed Euguchen for the loss of his sole bread-earning equipment and asked for a replacement. In the third case, Euguchen comes across a horde of running horses and its owner running behind the horses to stop it. The owner upon seeing Euguchen asks for his help and while trying to stop the running horses with a stone, he accidently kills one horse and the owner asks for a replacement.

In the fourth case, Euguchen while visiting a bar becomes drunk and in a dark corner, he sits on a sleeping child thereby killing the bar lady's child unintentionally. The lady then demanded her child back. He was then taken to the royal court of Gyalpo Melongdong to be judged for all the above charges. In the fifth and final case, Euguchen tries to escape the court by jumping over the wall fearing for the consequences he might face but then he ends up killing a man that was weaving on the other side of the wall.

Gyalpo Melongdong uses 'Equal Fault Principle' in the first case because both the owner of

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<sup>37</sup> Lungthen Dubgyur, *The Wheel of Laws* 9 (Office of Attorney General, Thimphu, 2nd edn., 2015 & 2021).

<sup>38</sup> The defendant in the dispute resolution of Gyalpo Melongdong directly taken from the context of Kangyur.

the ox and Euguchen was in the wrong, the Gyalpo orders Euguchens tongue to be cut off for not informing the owner and at the same time ordered the owners eyes to be removed for not securing or making sure the ox was properly harnessed. The owner then pleaded that Euguchens tongue may not be cut off or that his eyes be removed as well since the fault lied in both of them. In the second case 'The Principle of No Fault' was used. Euguchen had the right to ask anyone for help although he had to be mindful and the carpenter had the obligation to or not to answer.

To sum up Gyalpo Melongdong used 'Cases Based on Merits Principle', 'Contributory Negligence or Victim Precipitation Principle', and 'Justice base on Right and Wrong' in rest of the remaining cases<sup>39</sup>. This is a few examples of Buddhist law that was prevalent since the time of Buddha as written in Kanguyr Duel Wa. Crimes are never ignored in Buddhism whereby the wrong doers are always punished as seen fit and it preaches the doctrine of equality amongst not just the humans but all the sentient beings. Both the narratives of Gyelpo Melongdon and Mangpoin Kurwai Gyalpo can be construed as a few sources of Buddhist laws.

### III. THE ARRIVAL OF ZHABDRUNG IN BHUTAN

Zhabdrung Ngawang Namgyel who was a Tibetan Buddhist Lama has been attributed as the founder of Modern Day Bhutan.<sup>40</sup> The arrival of the Zhabdrung was an important one because it shaped the history of Bhutan as it is and he was the one who brought about political change and the one who strengthened the hold of Buddhism in Bhutan. Zhabdrung Rinpoche was said to have arrived in Bhutan in the year 1616 AD<sup>41</sup> although the date has been debated by many historians.

Zhabdrung was a religious man who came to Bhutan because of a vision he saw in his dreams where he was asked to go south from Tibet and thus reached Bhutan. Pelden Lhamo (Mahakali) has also guided Zhabdrung reach Bhutan and is the Guardian deity of Bhutan as well<sup>42</sup>. Zhabdrung was the main bringer of law in Bhutan. He also treated politics and religion as different and thus built a dual system of government and imposed strict adherence to it. He compared religious law to a silken knot which gets tighter and tighter and the secular law which gets heavier like a golden yoke. He brought to the southern valleys (Bhutan) law and order

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<sup>39</sup> For More Details Refer, Lungthen Dubgyur, *The Wheel of Laws* 26-30 (Office of Attorney General, Thimphu, 2nd edn., 2015 & 2021).

<sup>40</sup> Zhabdrung Kuchoe – Remembering the Founder of Bhutan, *available at*: <https://www.bookmytour.bt/blog/zhabdrung-kuchoe-remembering-the-founder-of-modern-day-bhutan> (Visited on April 1st, 2022).

<sup>41</sup> This date has been set as the official date of the arrival of Zhabdrung in all the school textbooks in Bhutan.

<sup>42</sup> Dru Ge Nye, *available at*: <https://www.facebook.com/107922604331619/posts/palden-lhamo-and-bhutan-the-world-is-reeling-under-the-spread-and-threats-of-covi/158776015912944/> (Visited on April 1<sup>st</sup>, 2022).

through both religious conversion and through the exertion of political reforms. To put it in an idiomatic phrase, he brought, “law to the lawless south and handle to the handleless pot”.<sup>43</sup>

Most of the laws were uncodified during the reign of Zhabdrung but he did write a Chayig (Code of Law) which was based on the Buddhist scriptures of Vinaya Pitaka. The Chayig stated that the head of the state should be a Bodhisattava or a compassionate leader taking human embodiment.<sup>44</sup> This was the first law drafted for Bhutan as a nation. Before that there was no particular law as each region had its own law and religion that was followed. Zhabdrung was the one who unified Bhutan for the first time and unified Bhutanese under the Drukpa rule. He ruled Bhutan for almost 35 years and went into retreat while leaving behind his legacy and the political system he created.

It is apparent that Buddhism has always been an integral part of a Bhutanese and even the first laws implemented were Buddhist laws. The founder of Bhutan itself was a High Buddhist Lama from Tibet and even before the Zhabdrung there were so many Buddhist Kings and all the prominent figures of Bhutan were religious man such as Songtsen Gampo, Padmasambhava, the Tertons, Chagzampa, Barwa and others were all Buddhist kings or Buddhist practitioner.<sup>45</sup>

After the Zhabdrungs demise Bhutan went through a lot of internal strife and there was a total reign of 54 Desis<sup>46</sup> and the last Desi Chogley Truelku Yeshe Ngodup’s reign came to an end in 1905. With all the feudal wars and internal strife going on it was Jigme Namgyel<sup>47</sup> who once again fought and united the Country once more but it was only during the reign of the First King of Bhutan that peace really came and the country united as one.

#### IV. INTRODUCTION OF MONARCHY IN BHUTAN

With the start of a new century Bhutan also entered into a new era with new political system. After two centuries of theocratic rule with a lot of internal strife and civil war, Jigme Namgyel sowed the seed for the unification for Bhutan. It was however during Sir Ugyen Wangchuck’s reign that the last civil war came to an end and Bhutan was finally united as one under his rule. There was no one more suitable than him to become the one to lead Bhutan into a new path and everyone at the time knew that. The British also gave Gongsu Ugyen Wangchuck the title of Knight Commander of the Indian Empire in 1904 to show their respect for the assistance he

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<sup>43</sup> Karma Phuntsho, *The History of Bhutan* 267 (Random House Group Limited, India, 2013).

<sup>44</sup> The Bhutanese Soul, The Dharma King, *available at*: <https://yellow.bt/2015/06/23/bhutan-dharma-king/> (Visited on April 2<sup>nd</sup>, 2022).

<sup>45</sup> Karma Phuntsho, *The History of Bhutan* (Random House Group Limited, India, 2013).

<sup>46</sup> Temporal Ruler of Bhutan under the dual system of Government that the Zhabdrung introduced.

<sup>47</sup> Jigme Namgyel is the father of Bhutan’s first King Gongsar Ugyen Wanchuck.

gave to the Britishers during the negotiations between Britian and Tibet.<sup>48</sup>

The time for Gongsu Ugyen Wangchuck to finally succeed to the throne came in the year 1907 after the proposal has been put forward by Ugyen Dorji<sup>49</sup>. Gongsu Ugyen Wangchuck had earned the trust of the People by striving to unify the people and having succeeded in it. On 17<sup>th</sup> December, 1907, in the presence of John Claude<sup>50</sup> White, the 50<sup>th</sup> Je Khenpo (Chief Abbot), other prominent families, nobles and high lamas the ceremony to instill Gongsu Ugyen Wangchuck was taking place in Punakha Dzong. In presence of all the clergy and the officials the Historic Genja (Contract) was signed stating Gongsu Ugyen Wangchuck as the first hereditary King of Bhutan and thus became the official Ruler of Bhutan.<sup>51</sup> See figure below for a picture of the Genja. This Historic Genja is a social contract whereby a country has submitted its rule to a person to rule over them.

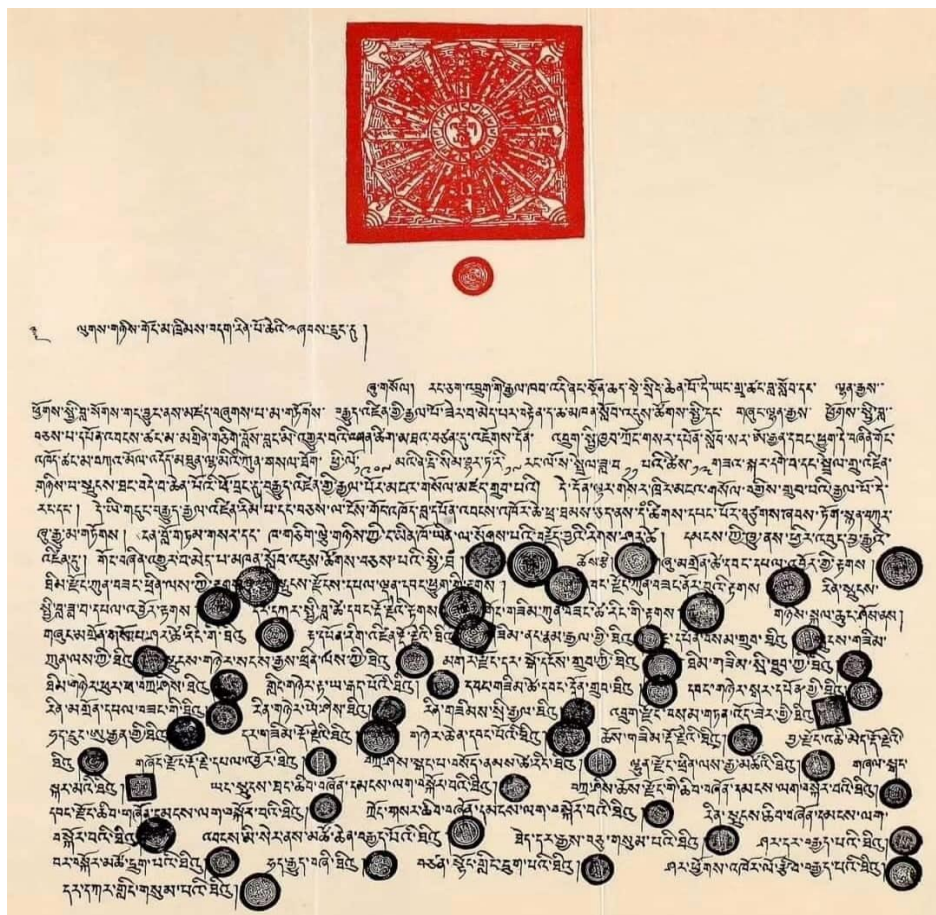


Fig. 1: The Historical Genja of 1907 of the installments of the hereditary rule and

<sup>48</sup> Druk Asia, Kings of Bhutan, available at: <https://www.drukasia.com/kings-of-bhutan/> (Visited on April 3<sup>rd</sup>, 2022).

<sup>49</sup> Ugyen Dorji was a Bhutanese politician who was a close advisor of the First King of Bhutan and also served as a chief minister.

<sup>50</sup> John Claude white was a British Political Officer stationed in Bhutan at the time.

<sup>51</sup> Karma Phuntsho, *The History of Bhutan* 545 (Random House Group Limited, India, 2013).

*enthronement of the First Druk Gyalpo through Social Contract.*

During the Ceremony the state clerk read out the contract and the oath of allegiance to the king from a scroll. Then the Zhabdrung's seal of Ngachudrukman was placed at the top of the document followed suit by the lamas, the officers, councilors, governors and representatives of the people. In total there was 50 different seals place on the document including the two at the top.<sup>52</sup>

**(A) The Kings of Bhutan:**

Gongsa Ugyen Wangchuck had secured a future for Bhutan when he became the first hereditary monarch of Bhutan and it was during His rule that Bhutan truly became one in true sense of the name. However, to maintain the power balance after securing it, it was the second King Jigme Wangchuck who made sure there were no political turmoil at the time. Although King Jigme Wangchuck opened schools and tried to introduce many reforms, it was his reforms of the tax system in the country and administrative reforms that he is most remembered of<sup>53</sup>. Under the rule of King Jigme Wangchuck every record of the tax was maintained meticulously and cut off unnecessary tax which made the people suffer. He has devoted most of his time in the reformation of taxes and keeping an intricate detail throughout the country<sup>54</sup>.

It was during the reign of the Third Druk Gyalpo of Bhutan Jigme Dorji Wangchuck that much needed change came in Bhutan. The formal system of justice was instituted in the late 1960's during the reign of the Third King and Bhutan had finally build a society based on the rule of law.<sup>55</sup> Soon after the ascension as the Third King of Bhutan he initiated the drafting of the Thrimzhung Chenmo (Supreme Law) and the late King who was also responsible for forming the new National Assembly made the draft to be discussed and scrutinize in the Parliament.<sup>56</sup> According to Dasho Shinkar Lam he was appointed as the secretary to the King and was always asked to carry a pen and paper or a note book to jot down any ideas regarding criminal and civil laws that came to the King<sup>57</sup>.

Some of the legislations that were streamline and formalized during the late Kings time were the laws regarding marriage, inheritance, livestock's, land and local resource management which were governed by customary laws and regulations. The third King is also regarded as

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<sup>52</sup> *Id.* at 547.

<sup>53</sup> Second King of Bhutan, *available at:* <https://www.heavenlybhutan.com/his-majesty-the-kings-of-bhutan/second-king-of-bhutan/> (Visited on April 5<sup>th</sup>, 2022).

<sup>54</sup> Karma Ura, *The Hero with a Thousand Eyes* 111-127 (Centre for Bhutan Studies, Thimphu, Bhutan, 1995).

<sup>55</sup> Richard Whitecross, "The Thrimzhung Chenmo and the Emergence of the Contemporary Bhutanese Legal System" RG 01 (2014).

<sup>56</sup> *Id.* at 04.

<sup>57</sup> Karma Ura, *The Hero with a Thousand Eyes* 230 (Centre for Bhutan Studies, Thimphu, Bhutan, 1995).

the father of Modern Bhutan for the institutions he established, for bringing in new political reforms, making sure that Bhutan was a member of the United Nations thereby making the country part of the global diplomatic circle and taking the first ever step towards the democratization of the nation.<sup>58</sup>

Bhutan was living in the medieval sense of period until the mid-20<sup>th</sup> century and only did the third King bring Bhutan into modernity in second half of the century. Just a year after ascending to his throne he introduced the Tshodue (National Assembly), then in 1965 the Lodoe Tshogdue or the Royal Advisory Council to advise the Government and the King. It also acted as a body of review and deliberated on the judicial appeals made to the King. The decentralization of power really came in the year 1969 when he removed the power of the royal to veto bills presented in a parliament, proposed that the king be subject to a vote of no confidence and gave power to remove the King to the parliament with just two-third majority of the vote.<sup>59</sup> With all this changes the country was heading towards democracy.

The third King of Bhutan envisioned a democratic nation where both democracy and monarchy could co-exist and it came to fruition when his son The Fourth Druk Gyalp Jigme Singye Wangchuck initiated the process of first ever written Constitution of Bhutan. The Fourth King of Bhutan has contributed a lot in regards to political reforms and other reforms but what he is most remembered of is for the initiation of Constitution of Bhutan, for the introduction of Gross National Happiness and the co-ordination of the Five-Year development plan in Bhutan.<sup>60</sup>

During the drafting process the drafting committee used a number of constitutions around the world as references but produced a unique set of legal documents which set the cornerstone of Bhutan's administration. The constitution laid out a formal procedure for a constitutional monarchy withing a democratic system.<sup>61</sup> On November 30, 2001 the drafting of the constitution began and on March 26, 2005 the first draft of the constitution was complete. In 2006 when the constitution was being finalized The King surprised everyone when His Majesty announced that he will be abdicating the throne to make way for the young crown prince to take helm of a new democratic Bhutan. The King at the time was only 51 years old when he abdicated the throne but it was drafted in the constitution that a monarch can rule till the age

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<sup>58</sup> Third King of Bhutan, *available at*: <https://www.heavenlybhutan.com/his-majesty-the-kings-of-bhutan/third-king-of-bhutan/> (Visited on April 6<sup>th</sup>, 2022).

<sup>59</sup> Karma Phuntsho, *The History of Bhutan* 592-593 (Random House Group Limited, India, 2013).

<sup>60</sup> Bhutan's 20-year economic development and transition to democracy: An assessment of India's role, *available at*: <https://www.orfonline.org/research/bhutans-20-year-economic-development-and-transition-to-democracy-an-assessment-of-indias-role-64630/> (Visited on April 8<sup>th</sup>, 2022).

<sup>61</sup> Karma Phuntsho, *The History of Bhutan* 595 (Random House Group Limited, India, 2013).

of 65 years so this was the reason why everyone was surprised by the decision.

The young King Jigme Khesar Namgyal Wangchuck immediately took over although the official coronation was only celebrated in 2008. Under the reign of the Fifth Druk Gyalpo the process of parliamentary democracy gained quick momentum and mock elections were also held to make people understand the process of voting in a democracy with new electronic voting systems. Adoption of Democracy was perhaps one of the most significant turn of events in the history of Bhutan. Finally, the voting began and two parties participated in the elections. Druk Phuensum Tshogpa the won a landslide win securing forty five out of forty-seven seats while the PDP (People's Democratic Party) faced a crushing defeat even though the party was led by the Kings uncle. The election went fairly smooth and on 18<sup>th</sup> July, 2008 the newly elected parliament and the King formally adopted the Constitution and thus Bhutan formally became a Democratic Constitutional Monarchy.<sup>62</sup>

## V. THE CONSTITUTION OF BHUTAN

The fourth Druk Gyalpo of Bhutan is the architect of the Constitution and it was his vision that Bhutan should have a 'Mother Law' for a democratic Bhutan. The public on the other hand they were not sure if the constitution and democracy was what it needed especially since people enjoyed peace and prosperity under the current reign of the Monarchs.<sup>63</sup> To legitimize the constitution there was a plan about holding a referendum for it although the referendum never came. Rather a public consultation by His Majesty the Fourth King was taken as something of a referendum. However on 18<sup>th</sup> July 2008 when the constitution was finally signed and promulgated, the legitimacy of the constitution was reasserted when the King said that the Constitution was placed equally before the twenty Dzongkhsgs (Districts) with blessing from each and every citizen.<sup>64</sup> To quote the King, "*Each word has earned its place with the blessings of every citizen in our nation. This is the People's Constitution.*"<sup>65</sup>

The Constitution among many things is known for its brevity<sup>66</sup> containing only 35 Articles with 352 Sections and a total word of about 13,966 characters including both the glossary and the schedule.<sup>67</sup> To talk about why the need for the constitution arose it could be said that it was

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<sup>62</sup> *Id.* at 596.

<sup>63</sup> Karma Phuntsho, *The History of Bhutan* (Random House Group Limited, India, 2013).

<sup>64</sup> Sonam Kinga "The Constitution – the King's Gift: Difiling and Sanctifying a Sacred Gift", available at: <https://fid4sa-repository.ub.uni-heidelberg.de/2634/1/05TheConstitutionbySonamKinga.pdf> (Visited on April 6<sup>th</sup>, 2022).

<sup>65</sup> Kuensel, 30 November 2001, available at: <https://www.google.com/search?q=Kuensel%2C+30+November+2001> (Visited on April 6<sup>th</sup>, 2022).

<sup>66</sup> Venkat Iyer, "Constitution Making in Bhutan: A Complete and Sui Generis Experience" 7 No. 2 *TCJCL04* (2019).

<sup>67</sup> The Constitution of Bhutan.

because of His Majesties vision and the determination to strengthen liberalization and democratization of the nation and secondly because of the popular belief in the west that democracy was the best form of government and that people throughout history in other nations had fought for it<sup>68</sup>.

### **(A) The Drafting Committee**

During the drafting of the Constitution it was decided that the members of the drafting committee would be from all walks of life. On 22<sup>nd</sup> September 2001, a royal command was passed to the chairman of the Council of Ministers to nominate and select members of the drafting committee. It was finally decided among the Chief Justice, the Prime Minister, the chief abbot of the monastic body that there would be in total thirty-nine Drafting Committee members.<sup>69</sup> The thirty nine members that were constituted to be the drafting committee included a representative from each of the 20 districts elected by the people, two members from the clergy, seven members selected from the Royal Advisory Council, five nominated by the Government followed by 3 lawyers and then finally the Chief Justice of Bhutan as the Chairman of the Committee.<sup>70</sup>

The guidelines that was set for the Constitution was also the vision of the Fourth King. There were 10 specific matters that the king wanted the constitution to cover.<sup>71</sup> The drafting committee adopted their own methods and procedures to accomplish the task while keeping in mind the country's long and proud history by being mindful about the religious, cultural, social and political values and institutions. However, the drafting committee faced a lot of challenges and thus they also sought the advice of a foreign expert, a constitutional lawyer Kottayan Katankot Venugopal<sup>72</sup> who was also the advisor of the draft committee.<sup>73</sup> The drafting committee was then tasked to refer around one-hundred other constitutions around the world which was later narrowed down to 20 and particularly focused on them. It was also based mostly on the Thrimzhung Chenmo of 1960s initiated by the Third Druk Gyalpo.

Western concepts such as the judicial review and the separation of power has also found its place in the constitution but in the final product of the constitution, the Indian constitution was

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<sup>68</sup> Available at: <https://academic.oup.com/cjcl/article/7/2/359/5625569?login=true> (Visited on April 6<sup>th</sup>, 2022).

<sup>69</sup> *Id.*, at 16.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Id.*, at 15. (The 10 specific matters that the king wanted the constitution to cover can be found in the above given link)

<sup>72</sup> Also served as the 15<sup>th</sup> Attorney General of India and is founder of M K Nambyar SAARCLAW Centre For Advanced Legal Studies at the NALSAR Law University.

<sup>73</sup> Venkat Iyer, "Constitution Making in Bhutan: A Complete and Sui Generis Experience" 7 No. 2 TCJCL16 (2019).



the most influential one which was apparently evident as well as noticeable.<sup>74</sup> Availability and records with regards to the sources that were adopted during the drafting of the constitution is hard to obtain and so cannot be ascertained as to what extent each of the sources have been used or referred to for the drafting of the constitution. But in general, it can be seen that the influence of the philosophers and especially of law and politics were really visible, for example separation of powers and consultant authorities. But even with all this it is worth noting that the presence of the philosophies of Buddhism and inherent traditions of Bhutan remained as an important quality of the constitution. The king proclaimed and pronounced Buddhism to be the sacred legacy of Bhutan in the Constitution.<sup>75</sup>

### **(B) The Philosophy and the Supremacy of the Constitution:**

From the institution of monarchy since 1907 until 2008 it was a rule of the monarch but that changed when the sovereignty and the rule of the government was handed down to the people from the King. The moment since 1907 all led to it. It is necessary to understand the philosophy behind the constitution for its proper interpretation.<sup>76</sup> In this however the Buddhist context cannot be lost. The constitution is a means of providing freedom co-existing within the country while to the external world it shows that we are a sovereign nation under a common rule and belief. According to former chief justice of Bhutan the philosophical basis of the constitution is ‘international freedom with external symbiotic existence.’<sup>77</sup>

Bhutan went for a written constitution although countries such as the UK had a long-standing democracy, rule of law and freedom although they use an unwritten constitution.<sup>78</sup> Even in Bhutan the law proved to be adequate without a constitution. However, the fourth King of Bhutan provided a number of practical objectives for written constitution. For instance, His Majesty said that it was for the protection of the sovereignty and security of the country and promotion of the national interest and the welfare of the people. It was also a type of immutable principle of the constitution when the country was declared as Democratic Constitutional Monarchy, meaning that no one could change this fact not even the King himself after it has commenced. It is a historic moment for Bhutan because it was a shift of power and the right to

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<sup>74</sup> The reason must be because Bhutan always had good ties with India since the past but the more noticeable reason could be because the advisor to the drafting committee was an Indian Lawyer.

<sup>75</sup> Venkat Iyer, “Constitution Making in Bhutan: A Complete and Sui Generis Experience” 7 No. 2 TCJCL96 (2019).

<sup>76</sup> Lungten Dubgyur, *The Wheel of Laws* (Office of Attorney General, Thimphu, 2nd edn., 2015 & 2021).

<sup>77</sup> Sonam Tobgye, *The Constitution of Bhutan: Principles and Philosophies* (this phrase was taken from this book although I got it from a different source.)

<sup>78</sup> The Pros and Cons of an ‘Unwritten’ Constitution, The Lawyer Portal, *available at*: <https://www.thelawyerportal.com/blog/the-pros-and-cons-of-having-an-unwritten-constitution/> (Visited on April 10<sup>th</sup>, 2022).

rule the country from the Monarchs to the people of the country. The form of government was rigid and unchangeable until maybe only by a national referendum. This in turn makes it justifiable for a written constitution in the country.<sup>79</sup>

In a nutshell the simple philosophy and the vision of the Constitution of Bhutan is expressed in the Preamble. The people of Bhutan solemnly pledge to strengthen the sovereignty, 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.<sup>80</sup> In the words of His Majesty, *“It is my duty, as the king, to strengthen the nation so that the people can develop in security and peace, and the nation becomes more prosperous and secure than before.”*<sup>81</sup>

During the drafting of the constitution some things such as the philosophy and culture of Bhutan could not be ignored since it was considered as sanctified to Bhutanese people. These norms included the avoidance of harm of not just other human beings but all the sentient beings<sup>82</sup>, to avoid alcohol and drugs, to live and pursue simple, virtuous and dutiful life, to avoid the use especially beyond the limit bad substances, and to finally protection of our environment. This concept was all manifested in the concept of GNH formulated by the Fourth Druk Gyalpo. To avoid any abuse of power the King expressed firmly the importance of checks and balances. The King also emphasized the constitution drafters to make a law where the rule of law will be respected, where participation in politics is encouraged and where good and healthy governance of a nation is promoted. This were some of the concept that is enshrined in the GNH which is present in the Constitution.<sup>83</sup>

The Constitution of Bhutan is regarded as the mother of all laws, it is considered as the supreme law of the land although how far it is considered to be supreme is a bit vague. There is however an interesting article in the constitution. Article 1 section 9 states that, ‘This Constitution is the Supreme Law of the State’<sup>84</sup> and makes it clear that it is the supreme law and this is complimented by Article 1 section 10 of the Constitution which states that, “All laws in force in the territory of Bhutan at the time of adopting this Constitution shall continue until altered, repealed or amended by Parliament. However, the provisions of any law, whether made before or after the coming into force of this Constitution, which are inconsistent with this Constitution,

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<sup>79</sup> Law and Justice in Bhutan<sup>[1]</sup>: A Review of the Book The Constitution of Bhutan: Principles and Philosophies, The Druk Journal, available at: <http://drukjournal.bt/law-and-justice-in-bhutan%E2%80%A8-a-review-of-the-book-the-constitution-of-bhutan-principles-and-philosophies/> (Visited on April 10<sup>th</sup>, 2022).

<sup>80</sup> Lungten Dubgyur, *The Wheel of Laws* (Office of Attorney General, Thimphu, 2nd edn., 2015 & 2021).

<sup>81</sup> Addressal of the inaugural ceremony by His Majesty the King on 13<sup>th</sup> November, 2001.

<sup>82</sup> In a Buddhist philosophy everyone is considered equal even the animals.

<sup>83</sup> Venkat Iyer, “Constitution Making in Bhutan: A Complete and Sui Generis Experience” 7 No. 2 TCJCL15-16 (2019).

<sup>84</sup> The Constitution of Bhutan, Article 1 Section 9.

shall be null and void.”<sup>85</sup> This makes it clear that no law is above the constitution of Bhutan and this article it seems to have been inculcated and included so there won't be any conflict of interest between the constitution and other laws and even if it did the law of constitution will be upheld.

### **(C) The Shortcomings and the Peculiarities of the Constitution:**

Even though Bhutan has embraced modernity even in the constitution it still embraces its culture and religious traditions strongly. The constitution for example even states that Dzongkha is the national language<sup>86</sup> and that everyone can read and write in Dzongkha. It also gives certain legal duties on the monastic bodies to promote the Buddhist legacy the right to appoint the Chief Abbot (Je Khenpo) is also vested in the King just as was in ancient times and the constitution also states that adequate funds be provided by the state to the monastic bodies.<sup>87</sup> Despite all the privileges the Buddhist institutions enjoy the constitution states that religion and politics are separate and that they be kept and remain separate, further stating that religious personalities and institutions shall remain above politics.<sup>88</sup>

There are a number of features in the Constitution that may seem striking to some foreign readers. According to Venkat Iyer<sup>89</sup> some of these features are:

- That a King is obliged to retire the post by the age of sixty-five,<sup>90</sup>
- That a King can also be coerced into abdicating the throne,<sup>91</sup>
- Prohibiting the enthronement of anyone who is deemed incapable,<sup>92</sup>
- To swear an oath by the royal family whenever a new king is crowned,<sup>93</sup>
- The monarch has the power to command institution of a bill in the parliament,<sup>94</sup>

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<sup>85</sup> *Id.*, Article 1 Section 10.

<sup>86</sup> *Id.*, Article 1 Section 8.

<sup>87</sup> The Constitution of Bhutan, Article 3 (Spiritual Heritage - as the title suggests this article tends to protect culture especially religious heritage of Bhutan.).

<sup>88</sup> *Id.*, Article 3 (3) (The Clergy are prohibited by law from voting in any elections).

<sup>89</sup> Author of the research, Constitution-Making in Bhutan: A Complex and Sui Generis Experience.

<sup>90</sup> The Constitution of Bhutan, Article 2 Section 6.

<sup>91</sup> *Id.*, Article 2 Section 20 & 21.

<sup>92</sup> *Id.*, Article 2 Section 3 (e).

<sup>93</sup> *Id.*, Article 2 Section 5.

<sup>94</sup> *Id.*, Article 2 Section 16 (d).

- A requirement that the government keep at least 60% of the country's land covered in forest at all times,<sup>95</sup> as well as a prohibition on members of parliament defecting or crossing the floor,<sup>96</sup>
- Where the government is required by law to reserve foreign currency which can meet the expenses of at least 1 year,<sup>97</sup>
- A Prime Minister is now allowed to hold office for more than 2 tenure,<sup>98</sup> and
- It was mandated that the Preime Minister holding the office present the country situation report to both the parliament and to His Majesty.<sup>99</sup>

If people, especially with a Euro-centric liberal democratic view goes through the constitution they might raise questions to some of the provisions. The Fundamental Duties constitute one such clause, which enumerates all of our responsibilities, covering the responsibilities to ourselves, our environment, community, and our commitments to our own land. But what it fails to do is it fails to point out what would happen if the person fails to uphold the said duties. There is this other article which is related to judiciary which states that a judge can serve a bench for only a decade or till we reach the age of 65, just whatever arrives sooner.<sup>100</sup> The justification stated for the limited scope of the law was that it was put as a measure to avoid wrongful appointment of judges.<sup>101</sup> This are some of the provisions which seems odd but there may be more.

#### **(D) Constitutional Cases**

The Constitution of Bhutan was adopted and implemented pretty smoothly without much hitch. Around 2 years after the adoption of the Constitution in Bhutan the first case related to the constitution arose. The parties to the first constitution case was between the Opposition Party and the Ruling Government. The case was filed after the opposition party felt that they could not challenge the actions of the government in the parliament. The apprehension was that the revision, alteration and imposition of taxes was passed by the parliament without legislation as required in the constitution. It was required by the constitution that any taxes, fees and other

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<sup>95</sup> *Id*, Article 5 Section 3.

<sup>96</sup> *Id*, Article 15 Section 10.

<sup>97</sup> *Id*, Article 14 Section 7.

<sup>98</sup> *Id*, Article 17 Section 2.

<sup>99</sup> *Id*, Article 10 Section 10.

<sup>100</sup> *Id*, Article 21 Section 6 (b).

<sup>101</sup> Venkat Iyer, "Constitution Making in Bhutan: A Complete and Sui Generis Experience" 7 No. 2 TCJCL21-22 (2019).

forms of levies shall not be imposed or altered except by law.<sup>102</sup>

It was important that there had to be a judicial intervention to see the legality of the case. It was later decided by the High Court and later on appeal by the Supreme Court that the actions of the government was arbitrary and ultra vires to the Constitution.<sup>103</sup> Since the case was filed by the opposition leader who represented a political party and who was also a member of the National Assembly, there arose questions about whether he could file a case regarding legislative issues. The case set a precedent to and locus standi when the opposition presented article 18, section 1<sup>104</sup> of the constitution which gave the locus standi to present a case before a court.<sup>105</sup>

Again in 2012 the first writ case was decided by the High Court of Bhutan in a case between Texmaco Rail & Engineering Ltd. Based in Kolkata Vs. Mangdechu Hydroelectric Project Authority. The writ petition filed before the High Court sought for an ad interim injunction for an alleged unfair treatment and collusion for a contract signed with Mangdechhu Hydroelectric Project Authority. The applicant submitted the writ as per Article 21, Section 10<sup>106</sup> of the Constitution, saying that despite satisfying all of the prerequisites, the tender bid wasn't really launched and that rather this Authority was favoring the other two bidders namely M/S PES Engineers Private Limited, Hyderabad and OM Metals Infra Project Limited, New Delhi for unknown reasons.

However, after framing the issues by the court, clarification of bids, preliminary examination of bids, thorough technical evaluation and reading the annexes it was finally decided by the court that the Respondent's Project Management given all the problems implicated in the controversy, fulfilled all procedural fairness and natural justice principles. The management proved thorough records that they had indeed conformed to all the applicable rules. The court's decision highlights the necessity of adhering to the principles of natural justice, fulfilling the criteria for a sound judicial decision and to exhaust all administrative resources before appealing to higher authorities for judicial interpretation.<sup>107</sup> These are just few cases but important cases in regards to the Constitution because it proves in a way the proper functioning of the democracy although it was just adopted as a young and new concept that was just

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<sup>102</sup> The Constitution of Bhutan, Article 14 Section 1.

<sup>103</sup> Lungten Dubgyur, *The Wheel of Laws* 141 (Office of Attorney General, Thimphu, 2nd edn., 2015 & 2021).

<sup>104</sup> Article 18, Section 1 of the constitution states that, "*The Opposition Party shall play a constructive role to ensure that the Government and the ruling party function in accordance with the provisions of this Constitution, provide good governance and strive to promote the national interest and fulfil the aspirations of the people.*"

<sup>105</sup> Lungten Dubgyur, *The Wheel of Laws* 145 (Office of Attorney General, Thimphu, 2nd edn., 2015 & 2021).

<sup>106</sup> Article 21, Section 10 of the constitution states that, "*The Supreme Court and the High Court may issue such declarations, orders, directions or writs as may be appropriate in the circumstances of each case.*"

<sup>107</sup> Lungten Dubgyur, *The Wheel of Laws* 187-202 (Office of Attorney General, Thimphu, 2nd edn., 2015 & 2021).

incorporated in Bhutan.

## **VI. BUDDHISM AND LAW**

Kinley Dorji who was an editor of the only national newspaper at the time in 2004 stated that, “Buddhism is not just our religion; for most of Bhutan Buddhism transcends our culture and our daily lives.... Let us eschew this tendency to introduce new laws and requirements just because the rest of the world is doing it.”<sup>108</sup> Buddhism is just a step shy from being a state religion of Bhutan. In the constitution it states that Buddhism is a Spiritual Heritage of Bhutan<sup>109</sup> and it seems it was planned like that since the 1960’s so that the culture and religion can be upheld.

The contemporary Legal System is very new but according to a text prepared by the Royal Court of Justice it was stated that the Bhutanese had a long history instituted since the time of the Zhabdrung and even though the first set of law that was codified in 1652 was based on the teachings of Buddhism it kept the philosophies of both Buddhism and natural justice as it was originally set and it has remained that way even now.<sup>110</sup> Even the structure of the court is kept in line with culture and it has not had much western influence. Inside any of the Bhutanese court we can see three masks, the one in the middle as the representation of the Lord of Underworld as the Judge, the mask at the right side as the prosecutor and the mask hanging on the right as the defendant.<sup>111</sup>

The masks come from the story of Raksha Mak Cham, where we are judged by the God of Death or Yama. There is a prosecutor and a defendant with each of us to guide us through the trial of whether we will be sent to the Buddha realm or hell or other relevant places. This has been implemented in the court.<sup>112</sup> This story is familiar to most of the Bhutanese people because it is performed in the annual festivals through a depiction of mask dances. From here we can see that Buddhism has been inculcated in many forms of daily lives.

The legal principles of separation can even be seen in the dual system of the government introduced during the time of Zhabdrung as stated above but the real separation of power began only in the 1950’s in to the executive, judiciary and the legislature and thus is very recent. As it is apparent to see that the relationship between judiciary and religion is being promoted it is not easy to draw the lines as to how much of the constitution is influenced by Buddhism except

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<sup>108</sup> Stated in Kuensel (National newspaper) in 2004.

<sup>109</sup> The Constitution of Bhutan, Article 3 Section 1.

<sup>110</sup> Richard Whitecross, “Keeping the Stream of Justice Clear and Pure: The Buddhicization of Bhutanese Law” 2(2) *JFBS* 10 (2014).

<sup>111</sup> This is just providing a picture of any court in Bhutan.

<sup>112</sup> As mentioned in the Buddhist text the Bardo Thoedrel.

for the implementation of GNH<sup>113</sup> in the constitution. It seems on one hand that they wanted to embrace culture and religious references although it mostly recognizes the secular, and often nonindigenous sources of law.<sup>114</sup> In a paper mentioned in by Richard Whitecross in one of his works<sup>115</sup> (Most Probably a paper written by Justice Lungten Dubjur.), it has been set out at length at how the Bhutanese criminal court procedures are based on the principles found in Buddhism. The paper also argued that almost all the principles of fair trials were enshrined in the Raksha Marcham specifically the habeas corpus.

The right of being represented by a legal counsel, uninterrupted hearing, knowing the charges, prosecution of crimes, defense through rebuttal, production and establishment of evidence and ratio decidendi were all present in the Raksha marcham according to the arguments put forward in the paper.<sup>116</sup> However according to Richard Whitecross this claim to open trial can be questioned because according to him during a major criminal case in Bhutan concerning prostitutes and pimps in Phuentsholing that attracted a high degree of public attention, the trial was held in camera ‘to protect privacy’. Furthermore, public access to the modern law court was very recent as well and the right to call on a jabmi (legal representative) was only extended to the people in the 1990’s following an adverse criticism by the International Red Cross.<sup>117</sup> It is clear that the Bhutanese people have been under the influence of Buddhism and that their culture streams from it although sometimes with regards to judicial law it is difficult to draw the bridge between secularism and religion.

## VII. CONCLUSION

Bhutan has a unique set of legal system which is a blend of age-old tradition and modernity. As it is with democracy in Bhutan most of the laws prevalent in the country are relatively new as well but it is visible to see that the implementation of the constitution and its laws are going in the right direction. It is said the while exiting the court in Phuntsholing, the court user will come across a large painted text just above the entrance, ‘Let Truth be Supported by Justice’.<sup>118</sup> It is indeed true that till now we have seen that most of the truth has been supported by Justice and it is also the peoples expectation everywhere in the world as well that truth be supported by justice.

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<sup>113</sup> The Constitution of Bhutan, Article 9 Section 2.

<sup>114</sup> Richard Whitecross, “Keeping the Stream of Justice Clear and Pure: The Buddhicization of Bhutanese Law” 2(2) *JFBS* 14 (2014).

<sup>115</sup> Head of Law in Edinburgh Napier University in United Kingdom.

<sup>116</sup> Richard Whitecross, “Keeping the Stream of Justice Clear and Pure: The Buddhicization of Bhutanese Law” 2(2) *JFBS* 14 (2014).

<sup>117</sup> *Ibid.*

<sup>118</sup> Richard Whitecross, “*Of Texts and Dharma: Delivering Justice in Bhutan*” 77 *RG* 23 (2016).

The Constitution of Bhutan is simple to understand and brevity is a strong characteristic as well. The constitution does say we are free to practice any religion although it is a bit vague since it just says that Buddhism is the Spiritual Heritage of Bhutan and that the Druk Gyalpo is the protector of all religion of Bhutan.<sup>119</sup> It does not really specify that all religions is equal and that we can practice any religion so this need to be written clearly. It would be great if the constitution was amended so that it lets its citizens hold dual citizens as well and not have a self-centric approach where only a citizen is enshrined with all the fundamental rights.

All the necessary details and information have been briefly outlined for a reader to understand it in simple terms. Everything starting from a few origins of a Bhutanese Law to the rule of theocracy in Bhutan, to the unification of Bhutan by the current monarchs and the adoption the Constitution has been given in a summarized form. No particular law other than the constitution has been discussed properly and it gives a formal sense of introduction to those that are either unfamiliar with the history of Bhutanese legal system or the general framework of the legal system. It is amazing to see that all through history starting with a single text of law it has come to the current generation of legal collection where we are rich in knowledge about the rights surrounding ourselves and the security and safety those rights give each and every one of us.

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<sup>119</sup> The Constitution of Bhutan, Article 3 Section 2.