



# Bhutan Law Review

*Volume XIX February 2023*

---

Bhutan National Legal Institute  
Thimphu, Bhutan

## THE PLEDGE

The *Sublime Golden Light*, venerated by the entire community of people, gods, and assembly of *Bodhisattvas*, the dearest, most kind, most precious wish-fulfilling one;

The emanation of the divine bodies of the *Four Great Kings*;

The symbolism of might, prowess, and stamina;

The reflector of charisma, excellence, and good fortune.

Through the virtues of the *Dharma*, He has become the King of humans;

The achiever of complete happiness, virtue, and displayer of transcendence;

Provider of happiness and well-being to every living being on the land;

Freeing the land from fear, and contagious diseases;

Who lights the great Torch of *Dharma* and illuminates the lands;

Who preaches perseverance, power, strength, glory, and excellence;

Blessed with great power of compassion, superior knowledge, and blessings;

The King of Virtues- the Essence of *Bodhichitta*.

On the Royal 43<sup>rd</sup> Royal Birth Anniversary of His Majesty Jigme Khesar Namgyel Wangchuck

The Bhutan National Legal Institute takes this most treasurable time to offer our prayers and pay our deepest respects to His Majesty the King for His selfless service, peerless and perfect leadership.





# BHUTAN LAW REVIEW

Volume XIX. 21 February 2023

## Contents

Preface	i
Exposition of Constitutional <i>Kuthangs</i>	1
<b>Pema Needup.</b> Legal Aid: An Integral Component of Access to Justice	15
<b>Thongjay.</b> Justice as a Mutual Advantage	27
<b>Kinzang Chedup.</b> The Thesis of Continuity in Development Psychology	41
<b>Janchu Dorji.</b> The Role of Law Enforcement Officials in Ensuring a Drug-Free Bhutan	76
<b>Pempa Shingdan &amp; Nima Dolma Tamang.</b> An Inclusive and Sustainable Legal Aid in Bhutan: Institutional and Policy Reforms	86

## PREFACE

Bhutan is a unique country. It is governed by intangible values customary to our nation, its traditions, and its ancestry. Our values of *Damtsig*, *Ley Judre*, and the belief in the cyclic existence of *karma* make Bhutanese cultural and social heritage unique and distinct. The concepts of *Gross National Happiness* and other intangible social virtues make Bhutan a unique national landscape. Moving with this distinct and unique national heritage, ‘competitive edge’ and the creation of ‘knowledge and experience capital’ is essential to ensure ‘knowledge continuity.’ As ‘organizational competitiveness’ and ‘organizational excellence’ rests on how each individual uses their knowledge, skills, and experiences to create knowledge capital, the use of legal academia as support for an enhanced way of social and legal interactions is very significant. Theoretically, the effective management of knowledge assets in organizations involves the integration of two processes – the transfer and retention of knowledge between employees in the organization. This aspect is growing as an important medium of ‘knowledge-culture exchange.’ Research and data, data integration, and creation of data and a ‘knowledge pool’ will begin to serve Bhutan as an effective way to harness information. Transformation of institutions and ‘transformative thinking’ should be accompanied by critical thoughts of professionalism and professional continuity. While continuity is ‘one of the important pillars of national development strategy,’ it reckons to build on better foundations with a professional approach.

Ordinarily, ‘continuity’ should serve as the fountain through which institutional and national excellence is exhibited. Conceptually, the thoughts of idealism and perfectionism are idealistic and relative, but it carries an important value in themselves. It helps to mold the thought mechanism of a person or an institution for that matter, and ensure that the tasks are completed professionally – both procedurally and substantively. The spirit of ‘workmanship’ should not be the cyclic spin of the ordinary ‘wheel of human progress.’ As the ‘wheel’ moves, it should be able to cover distances which are previously un-treaded: thus marking a new footprint of nation-

building. Contemplatively, ‘it is easier said than done.’ Unless the thinking and contemplative practices imbibe various important concepts of the continuum of progress, moving the wheel in the ‘spheres of sameness’ cannot lead to new progressive dimensions. It [may] only wear the wheels- by moving it without a progressive element. The important ideals of the *progressive dimension* are a significant element of development.

Bhutan has unique institutions of governance. His Majesty the Kings has pioneered a very unique development philosophy of *Gross National Happiness*. More than any other aspect of it, it entails the development of Bhutan and its societies with values- traditional, human, and non-human values. While the concept of ‘value’ can be multifaceted and happiness can be relative depending upon our own thought models and thought processing parameters, the *Gross National Happiness* paradigm has a set of values that is relevant for a progressive nation. These values, concomitant with values enshrined in our development pursuits, can enable a better development perspective. In 2023, terminologies such as ‘agility,’ ‘adaptive design,’ information architecture,’ ‘cutting edge,’ and ‘digital economy’ have become significant development parlance. Theories like ‘dynamism,’ ‘interactive’ and ‘fast’ describe the development of these terminologies.

In the same line of development thinking, from a legal perspective, the *Bhutan Law Review* serves as an essential academic tool for the development of law, legal academia, and legal literature. Under the visionary leadership of Her Royal Highness Princess Sonam Dechan Wangchuck, the *Bhutan Law Review* began to form a repository of legal literature and academia. It serves to anchor the law to the legal profession and acts as a way for the profession to disseminate legal information and strengthen the basis of legal academia and legal literature. The institution of the *Bhutan Law Review* enables to chart the line of development and progress in the untrodden aspects of the law. It embellishes the firm fountain of critical legal thinking, analysis, and academic argument. It tries to gap the bridge of legal education – and educate the authors and readers. Consequentially,

in the pursuit of Justice and strong legal academia and thinking, the *Bhutan Law Review* was able to recognize and expose the issues of the law, legal thinking, and application of the laws amongst other judicial and legal anomalies through an academic lens. This is to strengthen and enhance the impetus of the laws so that it significantly stirs interest in legal academia and robust discussions on the laws so that laws become a centrifugal force of change and dynamism. We aim to secure the *Bhutan Law Review* as an active agent of legal, social, and other aspects of information: so that it drives a change that is relevant, contemporary, and academic. This legal periodical is the expressional basis of talent, inspiration, and support combined to produce a legal publication that has an enormous impact on the legal profession, and how we discuss law and the legal lens through the perspective of legal dynamics.

Seemingly, across the world, *Law Reviews* and *Specialty Journals* are blooming. It is a growth industry. It is the foundation for the growth of an academic mindset, and research-oriented pursuit in the study of law. Presently, the concept of non-doctrinal writing—basically writing on interdisciplinary subjects and theoretical subfields, including law and legal histories, is gaining momentum. This is to ensure that discussions in the law reflect our social-legal contexts, and enhance the dynamics of various socio-legal factors to make the academic pursuit comprehensive. Aside from providing the opportunity and place to publish legal academic articles and writings, the *Bhutan Law Review* intends to provide a handy legal resource for students, practitioners, legislators, Judges, and legal professionals to learn the knowledge of the law and legal doctrines. These aspects help to connect various aspects of legal understanding and interpretations. It offers an invaluable and indispensable resource for the legal profession—so the legal profession uses academic pursuit as one channel to enrich the law and enhance the legal system. The best legal systems are based on the various academic proponents: by offering a descriptive reflection of various legal conditions.

Some legal academicians and legal professionals argue that laws have to be complex. On the other hand, some argue that laws have



to be simple, effective, and efficient. However, these arguments are premised on the various aspects of legal thinking, including the stages of development of legal thought and thinking. Thus the *Bhutan Law Review* provides a forum for discussions of the law that are clear, simple, and to the point. It fosters understanding amongst the legal laity and makes the law better. It looks to better the laws through 'legal information' and 'disciplined analysis of the laws.' By helping to contribute to the corpus of legal knowledge, it expands the area of critical review and to some extent provides, literary criticism[s] on the various aspects of development, including law, Justice, *rule of law*, and other changing legal paradigms. The writings of the *Law Reviews* as in other countries are intended to create a specialized form of knowledge – so that it serves as a medium through which people and the law connect. Contextually, it is a specialized forum to highlight the increment of knowledge, allow legal innovation, and proliferate the legal academy. It enables the specialization of competence, provides clarity of legal scholarship, and exposes itself as a strong edict for clarity. It allows clear legal scholarship and provides an opportunity to advance the vocabulary of the laws as a means to develop a congruent identity between the author and the readers.

Precisely, the idea and the capacity of the *Bhutan Law Review* is its ability to translate legal doctrines through legal scholarship-including the complexity and the murkiness of the laws. It provides the basis for the orders of the Court, the advice given by the lawyers, the practice of the legal profession, and the pursuit of philosophies more than the law. As agreed by the circles in the legal profession, the doctrines of legal philosophy that the *law is for the people* should be expanded by translating the abstract theory of the law at the expense of practical scholarship. Scholarship should provide a newer vision for legal thoughts and stimulate newer legal thinking to guide the positive development of the laws to fulfill the aspirations of the people. Laws should be responsive and to some extent, calibrate the human dimensions. In Bhutan, there are only two *Law Journals* in the country. These *Law Journals* are academic standpoints for periodic discussions on important aspects of legal development

and compare laws as an important institution for a robust legal environment and Justice. The *Bhutan Law Review* as an academic periodical is expected to enhance legal academic, readership, and legal and other socio-legal writings that strengthen legal information and add to the pool of legal knowledge resources. It attempts to consolidate legal doctrines, and legal philosophies based on rigorous logic, to deliver law as a direction in ordinary people's lives.

More simplistically, the law directs and guides people into the limelight of positive thoughts and actions. These aspects of human interactions, basically allow the development of a virtuous line of actions- dispelling the negative expression of human behaviourism. It provides opportunities by publishing discussions of the law that are clear, simple, and to the point. It allows clarity of information through the legal institutions, fosters understanding among this legal laity, and makes the law better. It tries to expound and explain the 'conceptions of fairness' through the purposive understanding of the law, and its effects. Upholding and promoting the sacrosanct principles in the *rule of law* and the concepts of *due process* of the law- thus characteristically guides the ordinary conscience of laws, and the legal system and helps to improve the magnitude of the previous legal practices. It helps to create the law understandable, helps in the development of the law, and in particular fields, the specialties of the particular field of laws.

Bhutan is in the stage of transformation. This provides a platform of change by adjusting the proportions through various legal, administrative and other [models] of change- through which it carries the tradition of legal information and the culture of robustness. This aspect of legal changes and the upscaling legal demands of the time are best expressed through the varying channels of the *Bhutan Law Review*. It echoes the aspiration of the legal system and gives the legal profession an opportunity to participate as an important academic contributor in the practice of law. Such contributions aid in the development of legal resources and enrich the legal academia through which laws articulate the common aspiration of the people and the legal system. It thus enables an understanding of the various

experiences in research, writing, editing, and critical thinking, to collaboratively enhance and fulfill professional expectations of the legal profession.

As the nation progresses, the role of *Law Review* plays an important role in the perpetuation of the traditions of judicial and legal scholarship. It provides a concomitant time to participate in the broader intellectual life of the profession. By helping to keep current on the developments in the law and, indeed, in many other disciplines that intersect the legal enterprise, the Bhutan National Legal Institute, through the institution of the *Bhutan Law Review* continues to aspire to legal intellectual scholarship and academic contributions. The efforts of the *Judiciary* to continue to grow intellectually are on the rise despite their strenuous hard work to navigate the judicial life. The *Bhutan Law Review* as an important institution in the legal profession entails and provide the opportunity to immerse in the tradition of legal discourses. Legal discourses for that matter is a ‘comprehensive discussion’ on a legal topic or legal thought. These pursuits connect the interdependence of the legal profession. This is best captured by Chief Justice Rehnquist who expressed the interdependence of the various parts of the legal profession very graphically:

*I like to think of the profession of law as a multi-legged stool one leg is the practicing bar, another leg is the judiciary, another leg is the academic lawyers, another leg the government lawyers. No leg of the stool can support the profession by itself, and each leg is heavily interdependent on the others.*

As agreed in the academic circle, the process of dialogue through the lines of academia provides a great deal of intellectual stimulation to the judicial function and also serves as a significant discipline in the judicial process, development of critical legal thinking, and legal analysis.

Just as research in the social and natural sciences addresses a wide array of theoretical, methodological, and substantive concerns,

so too does legal scholarship enhanced and strengthened by legal academics. Like in other national *law reviews*, we also endeavour to encase a *Law Review* that channels legal ideas: from normative to descriptive, from narrow doctrinal analyses to large-sample-size statistical investigations. In some jurisdictions, [they] advocate legal reform; while others intend solely to add to the store of academic knowledge. And yet in all these variations in approach, in all these diversity in purpose, effect, and even intended audience, many, if not most, of these studies evince a common characteristic: a concern, however implicit, with empiricism - basing conclusions on observation or experimentation - and inference - using facts we know to learn about facts we do not know. This also provides scope for empirical legal scholarship for new legal and judicial interventions. The *Bhutan Law Review* amasses various legal and academic experiences in law and social sciences. We aptly consider that law and legal theory are two important aspects of legal dynamism and *rule of law*.

Closing the gap between law on paper and law in practice requires well-functioning legal institutions. These institutions should be able to discuss various aspects of legal developments: academic, legal theory, and legal experimentations. Effective and equitable legal institutions operate as safeguards for the protection of rights and advance a matured solution to the dynamics of change. Well-functioning legal institutions are important to elicit voluntary compliance by signaling legitimacy. By reducing transaction costs and increasing the predictability of behaviour and certainty of process, they underpin credible commitment, which is needed to modernize socioeconomic relations. These institutions must operate in an integrated fashion with the cadre of private lawyers, academics, and civil society engaged in legal activity - the so-called *legal complex*. They also require an appropriate enabling environment, including legal mandates, functional institutional systems and rules, and financial, human, and material resources. Meanwhile, they need to be physically and financially accessible to the population, while resonating with peoples' needs and perceptions of fairness in order to generate trust. To act as an effective check on power, balance, and

fulfill the demands of the people and society, remaining accountable and effective is key.

First, it is through law and legal institutions that states seek to order the behaviour of individuals and organizations so that economic and social policies are converted into outcomes. Second, the law defines the structure of government by ordering power - that is, establishing and distributing authority and power among government actors and between the state and citizens. And third, the law also serves to order contestation by providing the substantive and procedural tools needed to promote accountability, resolve disputes peacefully, and change the rules. In encapsulating the above principles and aspirations, and building an academic bridge in the pursuit of the academic literary genre, the *Bhutan Law Review* intends to serve as the opportunity for all those who participate in its publication to improve their academic and professional credentials and enhance both their legal and soft skills.

The articles for the *Bhutan Law Review* since then had been a 'filtered' approach by the authors. Basically, the approach of the *Bhutan Law Review* was on the thematic aspect of the discussions. However, this approach restricts the 'area of legal discussions' and 'constricts legal opinions and ideas,' which to some authors, are characteristically more expanded. In pursuit of this, the *Law Journal* intends to adopt a mixed approach to topic discussions to allow the free flow of legal information. Legal information, which is centered toward a specific discussion point, restricts and narrows the 'proliferated area of legal discourses.' To ensure that the *Bhutan Law Review* is relevant, timely, and responds to the legal information, assessment, and discussion needs of the people, the articles are collected to reflect the legal academic prowess as well as the interests of the authors. The authors form the critical mass of human academic resources. They are able to portray academic and legal literary skills - thus enabling a comfortable zone of academic achievement. The articles of the *Law Journal* are published in hard copies and are also published online. This is to facilitate readership, reduce the burdens on the costs of the printing services and allow

the *Law Review* to gain access to international readers. This helps to expand academic coverage and enhances participation by writers from the international community.

The international community, mostly consisting of academicians from institutions that the Bhutan National Legal Institute shares institutional linkages, have made great stride in enhancing the legal academic fields of the *Bhutan Law Review*. They were able to contemplate, research, and write on the aspects of the Bhutanese legal system; and the Bhutanese laws- thus reflecting the unique nature of the Bhutanese legal system and the laws, from an international perspective. We are able to assimilate various legal experiences and observations of the Bhutanese legal system and the legal profession. These experiences help to bring contrasting descriptions, and analyses and invite academic legal repositories so that we are able to use them in directing the use of law and the development of the legal system.

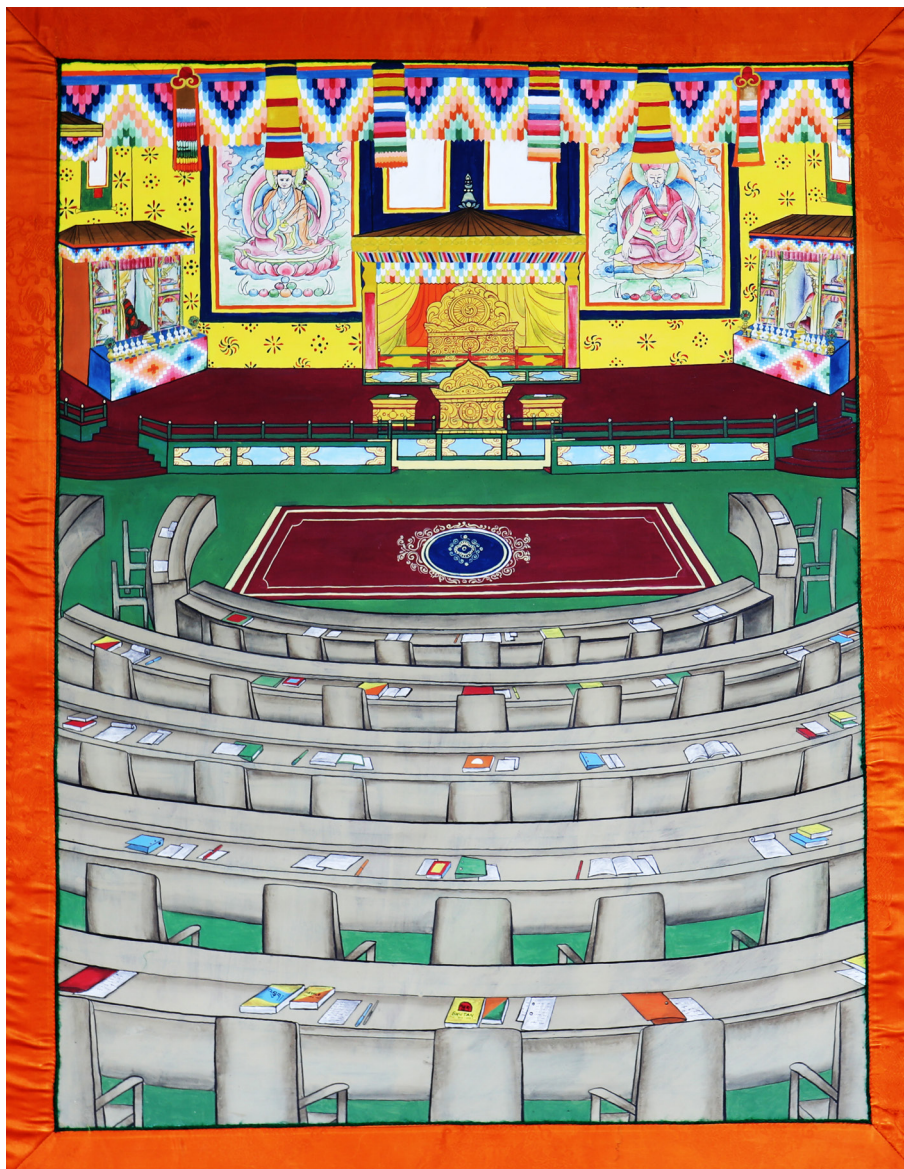
In the present volume, the *Bhutan Law Review* aspires to ‘correlate legal academic perspectives’ from various lines of legal thoughts and analysis. While we discuss the important aspects of legal aid, as a new system of judicial and legal service, the articles are able to reflect on very important aspects of national development priorities- including the theories of continuity, the laws on drugs, and other pertinent legal issues and discussions. This is to ensure that the *Journal* is able to serve a functional legal academic purpose- making it both relevant, purposeful, and academic. It has to be able to construct its own image and capacity as an independent legal and academic collection. It tries to evoke a serious academic legal direction that should be able to serve the aspirations of the people in making the discussions ‘by incubating’ systemic change. The *Bhutan Law Review* still has to undergo many changes to serve it. The service through legal information is only beginning to be appreciated as a task- which is both relevant and necessary in the judicial and legal system. The capacity of the *Bhutan Law Review* to pioneer change has to be initiated so that ‘there is change through information and academic analyses.’

In light of these very relevant and important changes, the *Bhutan Law Review* is devoted to publishing exceptional, timely articles that make innovative contributions to legal scholarship and wider audiences. The *Bhutan Law Review* as a portal for information and legal service intends to proliferate legal academic inputs and enhance legal efforts to sensitize and discuss important aspects of lawmaking and the legal system. These efforts since 2012, have been categorically aimed at enriching legal resources for the practice of the legal profession and spurring more innovation, and expanding access to justice. This *Law Journal* also helps to promote a view beyond the aspects of the laws and the legal profession and it constitutes our holistic attempt to gather professional ideas to strengthen various aspects of legal discussions. Today, we consider the *Bhutan Law Review* as one important channel of legal service and a conduit of conventional and modern legal wisdom. It tries to redesign legal thinking, analyses, and opportunities for the greater benefit of our society and make the law less complex and workable. Its aim is to proliferate intellectual resources to eliminate legal intricacies.

Through this, we hope to fulfill the dreams of the academicians, the judicial, and the legal profession. We would like to take this opportunity to thank the legal academia for the institution of the *Bhutan Law Review*. We have obliged the maximization of the legal academia for marrying their minds in a complex legal environment and fulfilling the aspirations of our people and the legal profession and the academicians. We aspire to lighten it as a symbol of academic refinement. We expect to pool the aspects of academic knowledge and connect legal scholarship to aid the practice of law. May the *Bhutan Law Review* serve as a vehicle for the ‘closer contact and understanding’ that might effectively unite the lawyers, the judges, the law students, and the law teachers in a ‘common effort for the solution of modern legal problems.’ We respect your intellectual contributions to aid and strengthen our laws and the legal system and enrich the legal academia in Bhutan. We toil to inspire our readers and enable them to become agents in the interest of Justice and the understanding of the law.



## *Article 12: National Assembly*





## THE EXPOSITION OF CONSTITUTIONAL KUTHANGS

The blessings of Liberty, Justice, the *Rule of Law*, and constitutional norms are the fruition of the best constitutional experiences and practices. *The Constitution of Bhutan* is the best reflection of cherished and timeless Bhutanese values of leadership, aspiration, and national goals. *The Constitution* represents the frameworks of Bhutanese legal, social, political, historical, and religious traditions. It best represents a system of polity and governance that respects the best social and legal conscience. While the *Constitution* acts as the *Supreme Law* of the land, it encapsulates and echoes the wisdom of best human aspirations based on principles of human dignity and common purpose. It reflects genuine human purpose that is guided by legal norms and standards: that are uniquely Bhutanese. The legal norms and standards are able to accommodate the metamorphosis of human aspirations through the aid of law and legal services. It supports the service of Justice, the foundations of *rule of law*, and propounds the theory of truth and legal positivism. It propounds a philosophical view of the nature of truth, legal realism, and jurisprudence. It connotes the rationality of the laws and legal understandings and establishes intelligible relationships to bring legal cognition, consciousness, and unity of legal content.

Today, many countries around the globe view the Constitution as a [simple] legal right document. Elsewhere and in many countries across the globe, peoples are beginning to use the Constitution as the legal basis to assert rights, demand Justice, and enforce the *rule of law*. More than a sacrosanct legal document, it is serving as a means to social empowerment, and to some extent, social discord. More than the premises of 'duties,' 'right' and 'right-based norms' with 'rights perpetuating modalities' begin to steer the doctrines of constitutions- into constitutional formalism- where *rights supersede duties*. These are aspects of varying social dimensions of the laws. In many countries, the virtues of laws are used to seek the expansion

of rights and pluralistic rights, through propagating a legal theory of expansionism and formalism. The concept of “*Constitutional Justice*,” legal pluralism, and ‘right-based approach’ is one of the fundamental precepts of constitutional law and norms prevailing today. The law of the constitution provides nations with the best legal, social, and political precepts. The content and nature of a particular constitution, as well as how it relates to the rest of the legal and political order, varies considerably between countries, and there is no universal and uncontested definition of a constitution.<sup>1</sup>

The *Constitution of the Kingdom of Bhutan* reflects and mirrors the best constitutional principles and norms. It signifies best legal support and national legal conscience, proposition and jurisprudence. Reflectively, it echoes the non-conventional aspect of truth, law, Justice, legal legitimacy and legal philosophy. It brings key changes to legal meaning, unveils the compendium of modern legal views and sets the postmodern theory of legal relationship, legal rights and duties. It enshrines the basic Bhutanese legal principles of coherence through a contemporary theory of jurisprudence. While principles and norms are existent, it has to exhibit their constitutional-legal powers to enable the administration of Justice and secure the *rule of law*. The constitutional norms are based on very important precepts of legal, social, political, and other rights. They begin to shape, how the *Constitution* is interpreted as the *Supreme Law*. As a legal, political, and social document, the *Constitution* is the apex legislation. The *Constitution* can be interpreted as a legal document, social instrument, and political instrument to secure the spirit of Justice, shared social values and norms, and direct the institutions of governance. While the *Constitution* remains as the apex legislation, unless interpreted in the interest of Justice, it can remain silent and muted. A muted *Constitution* may have a drastic effect on the administration of Justice, and basically, it may supplant ‘constitutionalism’ and ‘constitutional legal order.’ The precepts of the constitutions and their legal effects, have to be interpreted

---

1 The International Institute for Democracy and Electoral Assistance. (2014). *What Is Constitution: Principles and Concepts*. Constitution Building Primers.

[within] the contexts of legal, social, and administrative order so that 'any laws or administrative laws for that matter' resounds the important principles of Justice, equity, and fairness. However, the effect of constitutional law is comparatively 'silent.' The 'silent nature of constitutional law' and its 'constitutional legal principles' entails that it has to be evoked at relevant times to ensure that the application of the laws are constitutionally guided and spirited.

In the present generation and global legal order, the 'constitutional norm' that upholds the basic natural rights of a person is actively relevant. Unless any administrative or legal action is best guided by norms that respect human dignity, principles of humanity, and socio-legal principles, bare constitutional guidance can repudiate the pre-established norms of the constitution. *The Constitution of Bhutan* is a very sacred legal document. We call it legal document with the precepts that a legal document presupposes the existence of rights and duties, enforced in the interest of the nation and the people. The mutual coexistence of rights and duties, people, and the nation directs the mutual coexistence and cohabitation of social and legal principles. It should best respect and guide society to develop values that are respected and uphold the union of social and legal order on the mutuality of common values. The issue of 'non-legality, constitutional compromise, and non-social empowerment' in the long run, can lead to norms that can vitiate fundamental rights, duties, or other constitutional principles. The concept of 'constitutional norms and principles' are seemingly easy legal terminologies. The morphology of legal, social, and other terminologies can be developed, learned, as well as transferred as an oral legal tradition. An oral legal tradition and experimented and experiential legal traditions [have] vast legal and social differentials. These differentials will create a chasm in the administration of Justice and the legal principles should guide to secure the interest of socio-legal Justice. Justice can be the interpretation of norms, legal principles, and 'fitting the circumstances' to ensure that it reflects common social and legal conscience. The principles of the *Constitution* best direct the governance of the laws, administration

of Justice, and advance the *rule of law*. These principal constitutional instructions, as we call it, mirror the national constitutional norms and the paradigm of administration of Justice. The *rule of law* principle dictates how ‘rules with the laws’ form the foundational synthesis of Justice, legal, social, and legal infrastructural order.

With the advancement of various norms and traditions, the use of legal and constitutional norms to guide the values of the modern legal and administrative system has become pertinent. Our social and political system is best reflected in how laws are administered and how the *Constitution* guides the administration of laws and Justice. While ‘laws and Justice’ can provide varying differences including multifarious legal opinions, the pre-established legal order of the *Constitution* is simple: it requires the balance of norms and inherent rights. It should direct the solidification of norms based on fundamental principles of equity, good conscience, *rule of law*, and Justice. Equity, good conscience, and Justice are variables. It is relative and can be transformative by its ability to reflect the best legal instructions. Constitutional legal instructions are sacrosanct methods of strengthening the governance and *rule of law*.

The *Constitutions* balance and reconcile these legal, political and social functions in different ways. Two broad constitutional archetypes can be identified: *procedural* and *prescriptive*. The differences between these two types of constitutions relate to the nature and purposes of the document itself: A *procedural constitution* defines the legal and political structures of public institutions and sets out the legal limits of government power in order to protect democratic processes and fundamental human rights. A *prescriptive constitution* emphasizes the foundational function of the constitution as a ‘basic charter of the state’s identity,’ which plays ‘a key role in representing the ultimate goals and shared values that underpin the state.’ It provides a collective vision of what might be considered a good society based on the common values and aspirations of a homogeneous community. In addition to describing how the government functions, the constitution assumes [or attempts to impose] a broad consensus on common societal goals that public authorities must

strive to achieve. This is reflected in the emphasis placed on the constitution's social content and in the ideological shape of its legal and political content.<sup>2</sup>

Presently, the concepts of democratic constitutional norms involve the concept of '*protection of rights*.' Modern democratic constitutionalism has begun to go deeper through the waves of democratization. These constitutional norms are beginning to serve as 'important ideals of modern constitutionalism and legal security.' Whatever it once was, democratic constitutionalism is now a universal value, the benefits of which can, at least potentially, be shared by all of humanity. Establishing a democratic constitutional order is not easy. Throughout history, only a minority of states have succeeded. Those who set themselves the task of establishing such a constitutional order must be mindful of the social and political, as well as the technical and legal challenges they face. By establishing a democratic constitutional order, society is attempting to do something that can be considered remarkable.

In principle, constitutionalism, by making all citizens parties to a great bargain [an agreement of the people or a social contract], makes the state into a public entity [*res publica*]. With modern notions of accountability, it consolidates administrative, legal, and constitutional powers. It establishes constitutional order and the philosophies of constitutionalism. This predicates good governance, the hierarchy of norms, and the institution of plurality. It is said that 'We must never forget that it is a *Constitution* we are expounding . . . intended to endure for ages to come, and consequently, to be adapted to the various aspects of human affairs.'<sup>3</sup> With the emergence of the *Constitution*, constitutional law has become an important source of national law to fulfill the deepest hopes and dreams of the Bhutanese people.<sup>4</sup> *The Constitution* will develop and evolve over time, but what is unchanging are the values it holds.

---

2 Ibid., p.4.

3 United States. (n.d.). *The Court and Constitutional Interpretation*.

4 Wangchuck, S.D. (2011). *The Raven Tells a Story*. UNICEF.

This is the heart of the *Constitution*. It is our people who give the *Constitution* the life, as they must decide to live by the truth and values written down in the document. It is a way for people to participate and create a common future to achieve our national goals. *The Constitution of Bhutan* is not only a gift from His Majesty the Fourth *Druk Gyalpo* Jigme Singye Wangchuck, it is the collection of the finest values and ideas to create a system of government that would ensure the best chance for Bhutan's progress and stability.<sup>5</sup> It is the statement of faith in a great leader's vision and hopes for Bhutan's future as a nation. It is the culmination of clairvoyance, divine thinking and aspiration. The values that the Bhutanese *Constitution* hold is unparalleled to other constitution[s] as it reflects the 'true nature of Bhutanese leadership, society, people, governance and polity.' The document is a reflection of Justice, distilled through the wisest legal, social, political and national thinking. It reminds as well as obliges every Bhutanese to serve to the purpose of our values, rights, duties and national goals. *The Constitution* shows the path to development,<sup>6</sup> democratic polity and *rule of law*. It reflects how we [should] exist as a nation, how we have to excel in the world of competitive nation-building and how we can secure harmony, unity, good governance and sovereignty to promise a future that rests on the genuine aspiration of our leaders.

His Majesty the Fourth *Druk Gyalpo* is a personality unparalleled. He is the symbolism of wisdom, good governance, virtue, Justice, *rule of law*, compassion, leadership, benevolence and the spirit of divine thinking and analysis. His Majesty the Fourth *Druk Gyalpo* has been the vision of Bhutan; and the *Constitution* as the gift and emanation from the *Golden Throne* is both sacrosanct and divine. Comparatively, it is as heavy as the mountain and precious as gold. It is an incomparable document and it signifies Bhutanese laws, leadership, and compassion that best defines the innate values of *Gross National Happiness (GNH)*. *The Constitution* recognizes the relative nature of happiness and with each individual aspiring for

---

5 Ibid, p. 13.

6 Ibid. p.19.

happiness as a means to fulfillment, it provides us the balance of values and priorities that will enable and enhance the greatest good of all - unity, well-being, and contentment.<sup>7</sup> Recollecting the wisest commands of His Majesty the Fourth *Druk Gyalpo*:

*It is the cherished goal of the people of Bhutan to build a self-reliant and prosperous nation.*<sup>8</sup>

Further, His Majesty the Fourth *Druk Gyalpo* on *His Royal Address* to the Nation on the occasion of *National Day* at Mongar in 1980 commanded that:

*Our greatest strength lies in our people. United as one, there is no goal that cannot be achieved and no problem that cannot be overcome.*

In this *Royal Address*, His Majesty the Fourth *Druk Gyalpo* iterated the national policy of Bhutan to remain a sovereign and independent country and to develop and achieve economic self-reliance, prosperity, peace, and happiness for our people. In light of these golden words, the *Constitution of Bhutan* has been built on the principles of sacrifice, determination, loyalty, and unity to serve the people of Bhutan.

Further, His Majesty the Fourth *Druk Gyalpo* said:<sup>9</sup>

*As long as the people and government work together, hand in hand with one thought and direction, with a willingness to make sacrifices, show loyalty, and dedication dearer than our own lives, then there is no objective that cannot be achieved...*

In stating the deeper roots of the Bhutanese nation and the people, His Majesty shared that we believe that the roots of the people must be carefully nurtured and traditional value fostered so that material

---

7 Ibid., p.25.

8 Royal Address of His Majesty the Fourth *Druk Gyalpo* during the presentation of Credentials by Ambassador of India to Bhutan on 10 October 1980.

9 *Royal Address to the Nation* in 1981 at Samtse.

change does not destroy the cultural identity of the people. More so, the timeless values and ideals of rich and ancient culture must inspire and sustain us through life to enable to meet its many challenges. In light of [all] these aspirations and speeches of His Majesty the Fourth *Druk Gyalpo*, we are able to consolidate the firm foundations of the *Constitution of Bhutan* to create a legal document to embark on a collective voyage of cooperation and national governance with the vision of creating a new order based on mutual respect, equity and shared benefits. On the occasion of the *Silver Jubilee* celebrations of Sherubtse College, Kanglung in 1993, His Majesty reiterated His belief that the greatness of a country is determined by its people. The people's productiveness and character are determined by the quality of education they receive. On the occasion of the *National Day* celebration at Wangdue Phodrang in 2001, His Majesty shared that Bhutan has decided to draft a *Tsa-Thrim* for the Kingdom of Bhutan. His Majesty the Fourth *Druk Gyalpo* shared that one of the most important responsibilities of a King is to enable the people to govern and look after the country through the establishment of a dynamic political system.

Aligning the best constitutional mandates at that time, His Majesty commanded that while drafting the *Tsa-Thrim* it is of utmost importance that we safeguard our nation's security and sovereignty, ensure our people's well-being and establish a democratic political system that will best serve the interest of our country for all time to come. More so, it is the sacred responsibility of the King, the government, and the people of twenty *Dzongkhags* to bring forth a *Constitution* that will serve the best interests of our country. Fundamentally, it is important for the government and the people to work closely together in bringing forth a *Constitution* that will fulfill the aspirations of the Bhutanese people, promote our national interests, safeguard Bhutan's security and sovereignty and provide a strong foundation for a political system that is most suitable and beneficial for both the present and future well-being of our people and the country.<sup>10</sup> These words of His Majesty the Fourth *Druk*

---

10 *Royal Address to the Nation* at Samtse during the *National Day* in 2002.



*Gyalpo* echo the national aspirations and constitutional mandates. Today, it is the unifying document that guides us to follow a path that will ensure a peaceful and balanced coexistence and progress as a nation.

These are constitutional mandates and aspirations. These aspirations have to be translated into credible legal and social instruments through the aid of Justice and Justice Institutions. Fundamentally, the words of the *Constitution* are echoed in the best precepts of national laws, and legal and non-legal interventions. These primary guidances should dictate the balance between constitutional aspirations, legal and social norms, and administrative norms to ensure that we promote a national legal norm based on respect for the law and preponderance of the *rule of law* theory. While [all] theories may not be suitable to dictate the legal practicalities based on national and international political, economic and legal systems, but the best interest principles of the *Constitution* and the people must prevail to allow systemic governance and strong polity based on popular will. The *Constitution* is an organic document premised on principles of liberty, equality and Justice. It is the synthesis between individual freedom and social Justice. It is the testator of the future. It reflects the Bhutanese constitutional jurisprudence and equal protection of the laws.

*Natural Justice* is an important component of the *Constitution*. *Natural Justice* also rests on the basic postulate of the *rule of law* that “Justice should not only be done but it must also be seen to be done.”<sup>11</sup> It expounds the doctrine of *substantive legitimate expectations* based on the principles of rationality. Moreover, the constitutionality of *reasonable restriction* and new dimensions to freedom, public order and administration of Justice are also becoming a new legal norm. In pursuant to various changing socio-legal norms, the *Constitution of Bhutan* is a very dynamic legal document to secure Justice, enhance *rule of law*, and promote the happiness and well-being of

---

11 Pandey, J.N. (2008). *The Constitutional Law of India*. Central Law Agency, Allahabad.

the people. *The Constitution* provides us with a constitutional era that is evolutionary with the emphasis that:<sup>12</sup>

*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.*

It also draws cherished historical foundations and considerations for the future well-being of the people and the nation. As part of the constitutional prerogative, the *National Assembly* forms an important organ of the *Parliament*. Historically, the *National Assembly* was an important part of national lawmaking processes. It consolidated the political and legal reforms and the erstwhile *Tshogdu* represented the *National Assembly* of today. The *National Assembly* was a forum to discuss national interests, public welfare, developing political consciousness among the people so that they could play an active role in governance and decision making.<sup>13</sup> The *National Assembly* represents the collective wisdom and voice of the people. It leverages national decision-making and voices the concerns of the people so that the national decisions are the collective aspirations of the people in the national interests. His Majesty the King during the *Public Consultations* in 2006 at Trongsa shared that:<sup>14</sup>

*Whatever laws we make in our country and whatever kind of Constitution we have, in the end, it is the people who have a vital role to play. Therefore, during the election, as we know that people are given the 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.*

The *National Assembly of Bhutan* is an important *House* of lawmaking and decision-making. It houses forty-seven *Members of the Parliament*. The members represent the popular conscience of the people and they are their respective voices. It is an important

---

12 Tobgye, S. (2015). *The Constitution of Bhutan: Principles and Philosophies*. Royal Court of Justice.

13 Ibid.,p. 233.

14 Ibid.

element of governance and the decision-making process. The *Constitution of Bhutan* does not elaborate extensively, but the *Legislative Rules of Procedure, 2017* provides the rules of lawmaking, and the *Code of Conduct* provides the *principles of decorum* in the administration of the businesses of the *House*. These provide the area to execute decorum and parliamentary *House* principles that proscribe and prescribe *ethics, behaviourism*, and unparalleled *parliamentary professionalism*.

On careful scrutiny of the various constitutional sections of the *National Assembly*, the principles under it echo equality of representation, proportionality, and rural-urban reapportionment. It provides fair and equal opportunity for representation without any bias for the rural or urban areas.<sup>15</sup> In the pursuit of Justice and enhanced *rule of law* in the *House*, the *Speaker* plays a vital role in presiding over the meetings of the *House* and conduct of the proceedings.<sup>16</sup> As the head of the legislative arm of the State, he has the duty to embrace constitutional norms, rules of procedures, and administrative powers and functions.<sup>17</sup> He should direct the discussions in the *House* so that it balances the priorities of the proceedings. The constitutional norms in the Bhutanese *Parliament* and in the *National Assembly* allow Bhutan to discuss very important aspects of development. It is the *House* through which Bhutan proposes, changes, alters, or rescinds national priorities. The *National Assembly* is a critical element of the government and the decision-making process. It enshrines the principles of opportunity, decision-making, and equal representation.

As a tribute to His Majesty the Fourth *Druk Gyalpo* on His 60<sup>th</sup> glorious Royal Birth Anniversary, the Supreme Court of Bhutan and the Bhutan National Legal Institute, under the noble guidance of

---

15 Ibid., p. 236.

16 The Speaker has to ensure that the *Legislative Rules of Procedures* are observed and the debates are reasonable, in the national interests, and there is order in the *House*.

17 Tobgye, S. (2015). *The Constitution of Bhutan: Principles and Philosophies*, p. 236.

Her Royal Highness Princess Sonam Dechan Wangchuck initiated the paintings of 34 *Kuthangs* corresponding to the 34 Articles of the *Constitution*. Each *Kuthang* captures the essence of the Article, its significance, and its purpose. The *Bhutan Law Review* aspires to embrace and emulate such profound representations of wisdom and methods in its successive volumes as a continued tribute to His Majesty the King, His Majesty the Fourth *Druk Gyalpo* and the *Tsa-Wa- Sum*. In this Volume, the *Journal* captures *National Assembly* under the *Constitution* to reflect the sacrosanct constitutional premises and religious significance of the Article.

1. The National Assembly shall have a maximum of fifty-five members, elected from each Dzongkhag in proportion to its population, provided that no Dzongkhag shall have less than two members or more than seven members, for which purpose Parliament shall, by law, provide for each Dzongkhag to be divided into constituencies through appropriate delimitation, and for the voters in each constituency directly electing one member to the National Assembly.
2. The number of elected members from each Dzongkhag shall be reapportioned to reflect the changing registered voter population after every ten years, subject to the limitation of a minimum of two and a maximum of seven members from each Dzongkhag.
3. At the first sitting after any general election, or when necessary to fill a vacancy, the National Assembly shall elect a Speaker and a Deputy Speaker from among its members.
4. The Druk Gyalpo shall, by warrant under His hand and seal, confer *Dakyen* to the Speaker.
5. The National Assembly shall assemble at least twice a year.

From the perspectives of hagiography, the 55 members of the *National Assembly* as enshrined in the *Constitution* signifies the 25 disciples of *Guru Rinpoche*, seven hierarchs of *Lord Buddha*, *Sixteen*

*Deities of Excellent Conduct, and Seven Royal Treasures.* The precepts or the *Legislative Rules of Procedure* as enshrined as a concomitant value to the *Constitution* provides the best virtues of *Sila, Samadhi* and *Prajna*. It requires the virtues of good conduct and the principle of equality and reciprocity. It also envelopes the best precepts of concentration and wisdom. In such instances, we can recall the virtues obtained in Discourse of མེང་གེ་མ་རྒྱུ་པ། or *Simha's Questions* which states:

*One comes to possess mindfulness by being undecieving.*  
*One becomes intelligent by contemplating meaning.*  
*One comes to act according to the Dharma by having reverence.*  
*One becomes wise by knowing the characteristics of phenomena.*  
*The voice of Brahmā is obtained by speaking truthfully.*  
*The voice becomes pleasing by abandoning harsh words.*  
*One pleases beings by relinquishing senseless talk and slander.*  
*By surrendering the mind to the purpose of awakening in order to liberate all beings.*  
*They attain the embodiment of all qualities and will thus be held dear.*  
*If one trains in being impartial*  
*To all beings without exception,*  
*And if the mind is cultivated in that impartiality,*  
*One will become an all-surpassing victorious one.*

These are valuable principles for good governance, administration, and deliberation in the *House*. These instructions will enhance judgment, morality, truth, collegiality, purposiveness, impartiality, and triumphs in decision-making. These political-religious virtues are essential for modern governance and administration of good judgment and enforce disciplines in the interest of national dialogues. They are essential to uphold national interest impartially, understand the nature of developments in the country and contemplate good qualities and be responsible and instrumental personalities in the *National Assembly*.

# LEGAL AID: AN INTEGRAL COMPONENT OF ACCESS TO JUSTICE

PEMA NEEDUP\*

**Abstract :** Access to justice is multifaceted. Legal aid is essential to guaranteeing equal access to a fair trial and justice system. Legal aid means providing free legal services to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before an authority. Legal aid is not a charity or bounty but is a constitutional obligation of the State under section 6 of Article 9 of the *Constitution of Bhutan 2008* to fulfil the cherished rights of the citizens provided under sections 15, 16 and 21 of Article 7 of the *Constitution*. But the legal aid system should not be abused especially by those who have the means and it should not be misconstrued by those recipients as favouring their cases. Legal aid has no bearing on the outcomes of his or her case; it will solely depend on the facts and circumstances of each case. This article describes the development of legal aid in Bhutan and the nature and scope of legal aid services offered by the Legal Aid Center.

## I. Introduction

It was rightly said by Justice Blackmun in *Jackson v. Bishop*<sup>1</sup> that “*The concept of seeking justice cannot be equated with the value of dollars. Money plays no role in seeking justice.*”<sup>2</sup> Access to justice has never been cheap. One has to pay a hefty amount at each step while seeking justice.



\* Director General, Bhutan National Legal Institute (BNLI), Thimphu.

1 *Jackson V. Bishop*, 404 F.2d 571 (8<sup>th</sup> Cir. 1968) was a case decided in 1968 on the Eighth Circuit Court of Appeals of the United States by then Judge Harry Andrew Blackmun.

2 Mallikarjun, Dr. G. (2013). *Legal Aid in India and the Judicial Contribution*. <http://www.commonlii.org/in/journals/NALSARLawRw/2013/13.pdf>

If access to justice is integral to the rule of law; legal aid to the poor and weak is indispensable for fair and equal access to justice. Legal aid is necessary to protect the rights of the vulnerable population. Until and unless the indigent person is not legally assisted, he is denied equality in the opportunity to seek justice. Because legal aid is a torchbearer for poor people who cannot afford legal proceedings. Therefore, as a step towards making the legal service serve the poor and the deprived; the Bhutan National Legal Institute has been entrusted to establish the Legal Aid Center.

In this article, the author highlights the importance of free legal aid as an integral part of justice under the principle of equality before the law and different facets of the legal aid services provided by the Legal Aid Center.

## **II. Historical Background of the Legal Aid Movement**

Although, the term “*legal aid*” was first coined in 1919<sup>3</sup> the concept of legal aid first came into existence nearly 700 years before, in the historic Magna Carta of 1215 and henceforth it was developed into what it’s today with many welfare schemes to come in sync with the ongoing socio-economic development of the society.

The earliest legal aid movement appears to be from 1851 when some enactment was introduced in France to provide legal assistance to the indigent. In Britain, the history of the organized efforts on the part of the State to provide legal services to the poor and needy dates back to 1944, when Lord Chancellor, Viscount Simon appointed the Rushcliffe Committee to enquire about the facilities existing in England and Wales for giving legal advice to the poor and to make recommendations as appear to be desirable for ensuring that persons in need of legal advice are provided with the same by the State.<sup>4</sup>

---

3 Legal aid was first coined by Reinald Herber Smith in his book “*Justice and the Poor*” in 1919, which instated that legal aid should be provided to the poor and underprivileged as it is the basis of a legal system.

4 Mir, S. M. (2019). *Justice cannot be equated with the value of dollars!* <https://>

The study shows that civil legal aid in the United States began in New York with the founding of the Legal Aid Society of New York in 1876, a private and charitable program created largely by lawyers. In the following decades, the legal aid movement caught on in the urban areas of the United States. By 1965, virtually every major city had some kind of program.

In the aftermath of independence, many states in India introduced the concept of legal aid for needy people. The *Bombay Committee* which was constituted by the Government of Bombay under the chairmanship of Mr. N.H. Bhagwati in 1949 was the beginning of legal aid development in India. In 1960, the *14<sup>th</sup> Law Commission Report* emphasized providing equal justice and free legal aid to the poor, underprivileged and socially disabled person.

Justice is the primary source of peace in the Kingdom of Bhutan. And in its pursuit of justice, Bhutan has invariably cherished protecting and promoting the rights of a citizen to ensure legal and socio-economic justice for all sections of society. Bhutanese are fortunate that Bhutan is a welfare state where everything from education to health has been provided free of cost by the government for decades. Although, the concept of legal aid evolved much later, however, the traditional mediation system (*Nangkha Nangdrig*) has been in existence since time immemorial as an expansion of free legal aid.

The need for legal aid was foreseen decades ago under the *Civil and Criminal Procedure Code of Bhutan 2001*,<sup>5</sup> which emphasizes that an indigent accused be provided with legal aid for one's defence in the interest of justice. Further, *the Constitution of the Kingdom of Bhutan 2008*<sup>6</sup> provides the basis for legal aid under the Principles of State Policy. It envisages legal aid as a sacrosanct legal premise based on the principles of equality and justice.

---

thekashmirimages.com/2019/07/03/justice-cannot-be-equated-with-the-value-of-dollars/

5 *The Civil and Criminal Procedure Code of Bhutan 2001*, s. 34.

6 *The Constitution of the Kingdom of Bhutan 2008*, Art. 9(6).



Due to various constraints including the absence of a dedicated system of financial and human resources allocation, and more so due to the absence of a clear legislative framework and designated authority to administer legal aid services in Bhutan, the provision of legal aid did not materialize. However, the ROYAL AIDJUST (Aid for Justice) under His Majesty's Secretariat has been providing legal aid to the recipients of *Kidu*.<sup>7</sup> In addition, the National Commission for Women and Children (NCWC) and Civil Society Organizations (CSOs) provide legal aid services to vulnerable people, including children and women.

The *National Legal Aid Symposium*<sup>8</sup> in 2014 was essentially the beginning of the legal aid development in Bhutan. The delegates from Bhutan and outside Bhutan also shared their experiences on how Bhutan could develop its legal aid framework. This Symposium culminated in charting a course for institutionalizing an effective legal aid system in Bhutan. As a follow-up to this, several activities on legal aid were carried out by relevant stakeholders leading to the current establishment of the Legal Aid Center.

### III. Concept of Legal Aid

Legal aid is defined as “*free or inexpensive legal services provided to those who cannot afford to pay full price.*”<sup>9</sup> Legal aid is a provision of assistance to the needy, who cannot afford legal services. Legal aid implies giving free legal services to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before an authority. It is the method adopted to ensure that no one is deprived of professional advice and help because of a lack of funds.

<sup>7</sup> *Kidu* is a Bhutanese state welfare grant provided only by His Majesty the Druk Gyalpo to the poor and vulnerable groups. *Kidu* also comes in the form of free legal aid services.

<sup>8</sup> The *National Legal Aid Symposium 2014* was organized by the Bhutan National Legal Institute in partnership with the Office of the Attorney General with technical and financial support from the United Nations Development Programme (UNDP, Bhutan).

<sup>9</sup> Garner, B. A. (1999). *Black's Law Dictionary*. 7<sup>th</sup> (Eds.), p.903.

## IV. Objectives of Legal Aid

Legal aid service is not a luxury rather it is a necessity.<sup>10</sup> Legal aid is inevitable to ensure rule of law and justice for poor litigants. Legal aid is not mercy but is a justifiable right of poor litigants.<sup>11</sup> Those indigent people often do not understand the legal processes and complexities of the law and lack equitable access to legal counsel, which affects the administration of justice. In such a situation, legal aid can help the needy to better understand legal and Court processes enabling the exercise of their rights to settle disputes, seek remedies for grievances, and enjoy equal protection of the law. In essence, legal aid is aimed at minimizing the gap created by economic and social disparity.<sup>12</sup> Therefore, the main objective is to provide equal justice to the poor, downtrodden and weaker sections of society.

## V. Legislative Basis for Legal Aid in Bhutan

In Bhutan, legal aid is not a new concept,<sup>13</sup> it is already provided in the *Civil and Criminal Procedure Code (CCPC) 2001*. Section 34 of CCPC provides that only an indigent accused shall have legal aid provided for one's defence where the interest of justice so requires.

Article 9 Section 6 of the *Constitution of Bhutan 2008* directs the State to make efforts to adopt policies to provide legal aid to secure justice and that it should not be denied to any person because of economic or other disabilities.

10 Kubota, A. (2022). *Is legal aid service a luxury or a necessity?* <https://kuenselonline.com/is-legal-aid-service-a-luxury-or-a-necessity/>

11 Singha, B. (n.d). *Legal Aid Empowers the Critically Disadvantaged People of Bangladesh*. [http://nlaso.portal.gov.bd/sites/default/files/files/nlaso.portal.gov.bd/publications/9b8d5bde\\_e471\\_4708\\_997f\\_168f9db5cf05/Legal%20Aid%20Empowers%20the%20Critically%20Disadvantaged%20People%20of%20Bangladesh.pdf](http://nlaso.portal.gov.bd/sites/default/files/files/nlaso.portal.gov.bd/publications/9b8d5bde_e471_4708_997f_168f9db5cf05/Legal%20Aid%20Empowers%20the%20Critically%20Disadvantaged%20People%20of%20Bangladesh.pdf)

12 Bhutan National Legal Institute. (2022). *Legal Aid Inception Document*.

13 At some point in time, a legal aid fund was established under the auspices of the Judiciary, but the fund was not operational chiefly due to insufficient funds and also was largely unknown to legal practitioners or the public. It also lacked clarity on the mechanism for rendering legal aid, service providers, regulators and the scope of legal aid.

Section 9(g) of the *Jabmi Act of Bhutan 2003* provides that the Jabmi Tshogdey shall arrange legal aid to an indigent person [*Pro Bono*] in the prescribed manner. Further, section 8(f) of the *Jabmi (Amendment) Act of Bhutan 2016* provides that the Jabmi Tshogdey shall provide pro bono legal aid to an indigent person in addition to funding support from the State.

Section 151 of the *Child Care and Protection Act of Bhutan 2011* provides that a child who conflicts with the law shall have the right to a legal representative. Further, Section 180 provides: ‘*If a child or the parents or guardian of the child is an indigent person, the State shall provide legal assistance to the child in all the proceedings of the case for one’s defence where the interest of justice so requires.*’

Section 27(4) of the *Domestic Violence Prevention Act of Bhutan 2013* provides: ‘*The Protection Officer shall assist the victim to avail free Legal Aid and relief provided under the relevant law.*’

Section 86 of the *Evidence Act of Bhutan 2005* provides that an accused has the right to a Jabmi and if a person cannot afford a Jabmi, the State is required to provide one.

## **VI. Establishment of Legal Aid Center**

*The Constitution of the Kingdom of Bhutan* mandates the state to provide legal aid services to indigent persons. However, several unanswered questions delayed the introduction of legal aid in Bhutan. After several years of discussion, the most important issue about “which institution” should spearhead legal aid in Bhutan has been now settled forever.

The Institute established the Legal Aid Center on October 19, 2022, following the Royal Command dated June 17, 2022.<sup>14</sup> Along with the inauguration of the Center, the *Legal Aid Inception Document* and the *Legal Aid Rules 2022* were launched.

---

<sup>14</sup> The President of BNLI, Her Royal Highness Princess Sonam Dechan Wangchuck and Chief Justice of Bhutan Lyonpo Chogyal Dago Rigzin graced the inaugural ceremony.

To many, the idea of legal aid might seem like something of a luxury; to others, it might come across as impractical that the state should spend public resources on helping ‘criminals’ and the most vulnerable. However, experience from around the globe suggests that legal aid is indispensable to our constitutional right to a fair trial, and it also helps make legal processes move faster and more efficiently, thereby saving valuable court time and resources.<sup>15</sup> Many believe that through the provision of legal assistance, decisions will be in favour of the recipients of legal aid services. Such perceptions are misleading. Legal aid has no bearing on the outcomes of their cases. The rationale of legal aid is to ensure that all indigent and vulnerable people have equal access to the justice system.

## VII. Types of Legal Aid Services offered by the Center

The Center provides legal advice, legal assistance and legal representation.

- **Legal Advice** - Legal advice<sup>16</sup> provides professional or formal advice to a client in resolving a legal problem. In civil cases, legal aid services include only legal advice and assistance, with legal representation being granted only if required in the interest of justice.
- **Legal Assistance** – Legal assistance<sup>17</sup> includes writing court submissions, filling up legal forms and drafting.
- **Legal Representation:** Legal representation<sup>18</sup> means representing a legal aid recipient before the Court by a lawyer

15 Kubota, A. (2022). *Is legal aid service a luxury or a necessity?* <https://kuenselononline.com/is-legal-aid-service-a-luxury-or-a-necessity/>

16 Legal advice will be offered by Law Clinics of Jigme Singye Wangchuck School of Law at Pangbisa in Paro and by the staff of the Center

17 Legal assistance will be provided by the paralegals and the staff of the Center.

18 Cases will be represented by private lawyers certified by the Bar Council of Bhutan and the Legal Aid Volunteers. Both private and government lawyers can also register with the Center as members of the Legal Aid Volunteer (LAV) to render legal aid services without claiming payment of fees. For instance, lawyers from the Office of Attorney General and the Ministries can represent the legal aid cases upon approval from their respective agencies and provided they have no conflict of interest with that particular case.

hired by the Center. And the one representing the case will provide legal advice and assistance. However, currently, in criminal cases, legal aid is only available to an indigent accused charged with offences that are a felony in nature.<sup>19</sup>

In addition to three services, the Center also provides legal information and education.

### **VIII. Criteria for Providing Legal Aid**

Legal aid is only available to indigent persons.<sup>20</sup> All applicants must qualify for both *means test*<sup>21</sup> and *merits test*<sup>22</sup> for all types of legal aid services in both civil and criminal cases. However, children in conflict with the law and persons with permanent physical or mental and social disabilities are also provided with legal advice and legal assistance regardless of his/her financial capacity, when the interest of justice so requires.

---

19 As a matter of fact, legal aid is critically important at the time of investigation by the Royal Bhutan Police or by the relevant law enforcement agencies. However, it is limited in its scope and coverage considering the resource constraints. Currently, 119 private lawyers and 78 paralegals are registered with the Bar Council of Bhutan. Of the total twenty Dzongkhags and fifteen Dungkhags, only a few Dzongkhags have law firms. Most law firms are based in Thimphu. However, the Center shall endeavour to expand the scope of legal aid to all criminal cases in future.

20 An indigent person means a person who cannot provide the necessities of life (food, clothing, decent shelter) for himself/herself and one without sufficient means to afford a lawyer.

21 The *means test* determines if an applicant is eligible for legal aid by examining his/her income and disposable capital. The *means test* will determine the applicant's financial capacity. The income threshold is based on the per capita poverty line set by the National Statistics Bureau of Bhutan (NSB), which is published every five years.

22 Under the *merits test*, an applicant must show that he has a good reason to bring or defend his case under the law. The Center will then determine whether or not the case has merits. If the Center is of the view that his case has merits and the chances of success are not very low, legal aid will be extended.

## **IX. Matters Ineligible for Legal Aid**

Section 36 of the *Legal Aid Rules of Bhutan 2022* stipulates that legal aid shall not be granted in the following matters:

- Election petitions under the Parliamentary and Local Government Elections;
- Judgment enforcement proceedings and proceedings where the only question to be brought before the Court is time and mode of payment (including liquidated damages and costs);
- Insolvency proceedings;
- Foreclosure of mortgages;
- Transfer of property and conveyance, except where such transfer of property or conveyance is incidental to or arises out of a matter where legal aid is granted;
- Civil and criminal defamation; and
- Any other matters as deemed appropriate by the Center.

## **X. Grant of Legal Aid Service**

The Administrator of the Center is responsible for granting legal aid services which will only be granted once the Administrator is satisfied with their financial assessment and legal merits. The Center shall take all reasonable steps to determine the eligibility of the applicant within five working days from the receipt of the application. The Center shall provide a written notice of legal aid granted to the applicant and in case of refusal, the applicant can appeal to the Review Committee of the Center whose decision shall be final and binding.

## **XI. Denial of Legal Aid Service**

According to section 49 of the *Legal Aid Rules of Bhutan 2022*, an application made for free legal aid can be rejected on the following basis:

- If the household per capita income exceeds the poverty line set by the National Statistics Bureau of Bhutan;
- If the net worth of the household disposable capital exceeds the minimum amount determined by the Center on a case-by-case basis;
- If the applicant does not fall under Rule 31;
- If the Center observes a lack of merits in the applicant's case;
- If sufficient detail has not been provided to ascertain eligibility because of the applicant's failure; or
- For any other cause where it appears unreasonable that the applicant should receive legal aid in the particular circumstances of the case.

## **XII. Legal Aid Fund**

The State shall grant adequate funds to the Center which shall be the cost of legal aid services and any other expenses which are required to be met by the Center. However, the legal aid shall not cover the costs for court fees, bail bonds, appeal bonds and other expenses which are beyond the scope of legal aid service.

## **XIII. Conclusion and a Way Forward**

Attorney General Robert Kennedy in 1964 said, *"The poor man looks upon the law as an enemy, not as a friend. For him, the law is always taking something away."*<sup>23</sup> Hence, legal aid is not a charity or bounty but is an obligation of the State and the right of the citizens. Legal aid is a key element of access to justice. No one should be left behind because of resource constraints. *"Justice for all"* should mean justice for everyone, not just those who can afford it. Access to legal aid translates into access to justice for the poor, the marginalized, and

---

23 Robert Francis Kennedy was an American lawyer and politician who served as the 64<sup>th</sup> United States Attorney General from January 1961 to September 1964, and as a U.S. Senator from New York from January 1965 until his assassination in June 1968.

the disadvantaged. Therefore, the Center shall strive to strengthen the rule of law and ensure equal access to justice. In so doing, it is important to provide legal assistance to those most in need, as changes in the socio-economic environment and the increasing complexity of the law often make access to justice difficult for ordinary citizens, especially vulnerable groups.

Free legal aid services are not for all and sundry. The applicants must pass both the *means* and *merits tests*. For now, legal aid shall be limited in its scope and coverage and shall be provided only in certain civil matters and criminal cases of a felony in nature considering the resource constraints. To ensure that the needy receive appropriate and quality services, service providers and their performance shall be closely monitored by the Center through the respective Courts and the Bar Council of Bhutan. The Center shall also develop appropriate regulations, strategic documents and action plans for the progressive implementation of legal aid.

Moving forward, the Center shall endeavour to expand the scope of legal aid to all criminal cases in the future. Legal aid is critically important at the time of the pretrial stage. The Center shall strive to provide access to prompt legal aid services to all indigent accused in the future. In the long term, a formal legal framework is needed for the effective operation of the Center, and for regulating the service providers and applicants as well. The next priority would be to strengthen the Secretariat of the Center. And the Center may consider setting up regional Centers to ease the workload of the existing Center. In the future, legal aid could be provided primarily by lawyers recruited by the Center, as full-time employees. It may be considered an ideal arrangement because of its cost-effectiveness and sustainability. The creature of the Center will not serve the purpose if services are not availed by the people. For that purpose, the Center shall devote to advocacy programs to create massive awareness building of beneficiaries. To ensure effective service delivery, the Center shall develop an online application system which saves time and costs for the applicants.



To ensure effectiveness and efficiency in service delivery, the Center shall work through a well-coordinated inter-agency collaboration. Among other things, relevant stakeholders must assist the Center in identifying indigent and vulnerable persons and facilitating the legal aid application process so that the Center can make the correct and final decision. As a shared responsibility, all stakeholders must play their part in achieving the noble goal of enhancing access to justice for needy and vulnerable segments of our society rather than leaving it to the Institute and the Center alone.

# JUSTICE AS A MUTUAL ADVANTAGE

THONGJAY\*

**Abstract:** Justice is an element that is defined by the coexistence of fairness, truth, and equitable circumstances. The concept of Justice is expansive: it depends on ‘each’ circumstance that [makes] a fact or a law that gives rights or responsibilities. It is a mixture of philosophy, legal realism, legal formalism, and enquires into the nature of law and moral philosophies. The philosophy of Justice cannot be dictated and made by law: it culminates through the ‘natural theory’ of substantive realism- which respects best human conscience. As said by John Rawls, it is the first virtue of social institutions. Mapping the concepts of Justice requires to understand the theory of legalism, and utilitarianism that best respects the ‘utility of laws, human conscience, and Justice.’ As proclaimed by Martin Luther King Jr, he said that injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.

## I. Introduction

In an ideal situation of nature providing abundantly for all the needs and desires of humanity, requiring no labour for anyone, the concept of justice would not have been thought of as there would be no need to divide and allocate property. Defining ownership would be superfluous and to demarcate any resource as mine and yours would be irrelevant and Justice would be useless<sup>1</sup> like one could not be said to have committed an injustice by taking too much air at the expense of others, for it is never the case. The human race would be one family without discrimination against the welfare of others or of oneself. However, such an ideal situation neither existed nor would emerge in the future. We live in world of conflicting and competing interests. We are always faced with the division between

---

\* Thongjay is the Judge at the Royal Court of Justice, Dagana.

1 Hume. D. (n.d.). *On Justice, Living Philosophy*.

us and them. No one is more concerned for others' needs than his. The virtue of Justice then gains its existence only from being needed for the use of society.<sup>2</sup> No human being is self-sufficient and can never isolate [themselves] from any possibility of social involvement.

Although the purpose of Justice would be then to provide happiness, security and civil order; in situations where self-preservation is necessity, the laws of Justice would be suspended. Even a virtuous man would use whatever means at his disposal to preserve his life when attacked. Here, his regard for Justice is then replaced by his need for defence and security. Similarly, for countries at war, the concept of Justice would offer no advantage as this virtue is no longer of use to them. Hence, the survivability of relevance and importance of concept of Justice is then dependent upon its utility<sup>3</sup> though manner of conceptualizing its utility is again subjective as well as objective. For example, all people during different times and at different places have built their houses differently: by their respective reasons and customs. However, all houses have primary features of roof, walls and windows though diverse in shape, figure and materials. Likewise, Justice though has primary requirement of equality, has been conceptualized to mean different to different theorist, for example, fairness to John Rawls was impartiality and to Roemer, mutual advantage.

The goal of this paper is to discuss Justice as a *Mutual Advantage (JMA)* in three ways- explicatory, critical, and evaluative with conclusion as to whether it helps us in understanding the concept of Justice.

## II. Nature, Origin and Theorists of JMA

*JMA* is one of two major principal contractarian theories of Justice as opposed and differentiated from *Justice as Impartiality (JI)*.<sup>4</sup>

---

2 Ibid.

3 Ibid.

4 Zaluski, W.A. (n.d.). *Game-Theoretic Analysis of Justice as Mutual Advantage*, p. 1.

*JMA* and *JI* are two main ways of understanding Justice within the contractarian approach. Over the time, contractarianism has been arguably considered as the dominant methodological framework for analyzing and justifying the concept of justice.<sup>5</sup> Brian Barry defined contractarianism, also referred to as constructivism, as the doctrine according to which, justice is what would be agreed on in some specified kind of situation.<sup>6</sup> *JMA* being contractarian approach, its rules would be then justified only if it is agreed by in a defined decisional situation.

Arguably, *JMA* is said to have been fully articulated for the first time by Thomas Hobbes. The most renowned contemporary proponent of *JMA* is David Gauthier.<sup>7</sup> Many philosophers have tried to show that acting morally is in each individual person's best interest.<sup>8</sup> In that sense, there would be no need for morals as people would do the right thing, no matter what, thereby the moral principles are then a subset to rational principles for choice. However, reference to the relevant theories by different theorists and discussion of the same is desirable before *JMA* is conceptualized.

### **A. Thomas Hobbes account of JMA**

As mentioned above, Thomas Hobbes is arguably the first theorist to articulate and discuss the concept of Justice from the contractarian perspective. His theory of social contract is designed to be a method of justifying political principles or arrangements by appeal to the agreement that would be made among suitably rational, free, and equal persons. He demonstrated that the reciprocal relationship between political obedience and peace by stating that subjects should not dispute the sovereign power and under no circumstances should they rebel.

---

5 Ibid., p. 2.

6 Barry, B. (1989). *Theories of Justice*. University of California Press, Berkeley, p. 268.

7 Zaluski, W. (n.d.). *A Game-Theoretic Analysis of Justice as Mutual Advantage*.

8 Mariel. (2010). *Wondering and Wandering: Morals By Agreement*.

For Hobbes, the issue of Justice is rather simple. If there is no covenant between individuals, then no right has been transferred, and every man has right to everything (i.e. the state of nature) and consequently no action can be unjust. While on the contrary, in the state of nature, there is no such thing as justice or injustice.<sup>9</sup> The notions of right and wrong, Justice and injustice, have no place.<sup>10</sup>

He argued that each of us, as a rational being, can see that a war of all against all is unfavorable to the satisfaction of people's interests, and can agree that not only peace is good, the way or means of peace are also good. Therefore, people seek peace with others willing by laying down part of their "right to all things," by mutually covenanting to submit to the authority of a sovereign. Once, a covenant is made, then to break it is unjust and the definition of injustice is no other than *the non-performance of the covenant*. Injustice is then breaking a valid covenant and whatsoever is not unjust is just.<sup>11</sup> Here, the perimeter of what is to be just and unjust is established, once covenants are made amongst individuals, and a commonwealth is formed, and a failure to follow the decree of the covenant, renders one's actions unjust by definition. His essential argument in social contract theory is that the rational people understand they are better off to live in a world of cooperation and will "surrender every one of [their] natural rights," with the exception of self-defence, to a sovereign in order to escape the state of nature.<sup>12</sup>

## **B. David Hume's account of JMA**

Hume's theory of Justice consists of three components such as a theory of the origins of Justice, rules of Justice, and artificial virtues. However, it is a theory of the origins of justice, which is based on the principles of self-interest and mutual advantage that has come

---

9 Patricia, S. (2007). *The Cambridge Companion to Hobbes's Leviathan*, p.147.

10 Ibid., p. 120.

11 Ibid., p.120.

12 Wilfrid, J. W. (2003). *The dimensions of ethics: an introduction to ethical theory*. Peterborough, Broadview Press, Ltd., p.125.

to occupy centre stage in contemporary interpretations of Hume. On this account, his theory of Justice as a whole is now routinely classified as a theory of 'Justice as mutual advantage'.<sup>13</sup>

Hume argued that Justice is only possible amongst creatures of roughly equal strength implying the exclusion of the weak and defenseless from the protection of justice. Further, it entails the idea that justice is a type of bargain, in which might make right. The logic is that if others have nothing to offer us, or things we can take from them independently of what they decide or want, then we have no duties of Justice, strictly speaking, towards them.<sup>14</sup>

According to Hume, the motive for behaving justly is self-interest, and the criterion for a just set of rules is a mutual advantage. Here, the rules are just if everyone is better off with them than with no rules.<sup>15</sup> It explains the terms of Justice as the outcome of a self-interested bargain, or settlement of some kind, in which the amount received by the parties under the settlement must reflect their relative bargaining power. Hence, for him, Justice is fundamentally a matter of mutual advantage.<sup>16</sup> The rules of Justice emerge spontaneously from the interaction of individuals who are pursuing their private interests.

Martha Nussbaum critiqued that according to Hume, the much weaker, whether in body or in mind, is simply not part of political society, not subjects of justice. Buchanan says that in Hume's theory our rights depend entirely on our capacity to harm others. Those who cannot harm others, or cannot retaliate to the harm done against them, are entitled to nothing because they have nothing to offer, nothing with which to bargain. However, mutual advantage

---

13 Salter, J. (2012). Hume and Mutual Advantage. *Journal of Politics, Philosophy and Economics*. Mancept Working Papers Series, 11(3), pp.302-321.

14 Ibid., p.2.

15 Ibid., p. 7.

16 Convention. (2007). *Standard Encyclopedia of Philosophy*.

is only part of Hume's theory which explains the origins of the institutions of Justice in a general sense.<sup>17</sup>

### C. David Gauthier's Account of JMA

David Gauthier is the contemporary proponent of *JMA*. In his book *Morals by Agreement*, he argues that "under certain conditions, it is self-interestedly rational for an individual to be disposed to choose in accordance with a fair cooperative arrangement rather than choose directly utility-maximizing actions."<sup>18</sup> It is not the unfolding of natural interaction to the fully just cooperative interaction of moral beings. But it relates to the market where rational utility-maximizers transform into moral persons. This demonstrates morality development and acceptance of the moral code without dependence on the institution.<sup>19</sup> It is "not of absolute standards but of agreed constraint" which can justify moral conduct to the rational self-interest of all individuals as they are now.<sup>20</sup> He firmly based his theory upon the rational behaviour of an individual. He rejects any distinction between prudential and moral reasoning arguing that a person has no reason for accepting constraints that are independent of their interests. The constraints which individuals voluntarily impose upon themselves are the basis and the only basis of morality.

In a perfectly competitive market, there would exist a moral free zone as the costs and benefits of action are internalized into those responsible for them. However, the existence of free riding in a pre-market place prevents cooperative interaction from taking place. This leads to both a "prisoner dilemma" and sub-optimal conditions

17 Salter, J. (2012). Hume and Mutual Advantage.

18 Moore, M. (1991). *Reviews, David Gauthier, Morals by Agreement*. Oxford, Clarendon, p. 707.

19 Williams, G.(1998). *The Problems of David Gauthier's attempt to derive morality from rationality*. Libertarian Alliance. London, p. 1.

20 Gauthier, D. (1986). *Morals by Agreement* Oxford University Press. New York, p. 2.



for all. Under these circumstances, morality develops which suggests that a cooperative surplus could be developed from which everyone could benefit provided a mutually beneficial agreement could be reached and complied with. Such cooperative surplus entices individuals to desire a co-operative framework of interaction, and thereby, code of morality is created.<sup>21</sup>

In short, his theory is grounded in Thomas Hobbes' theory of social contracts which suggest that moral standards are derived from social contracts with one another and the state.<sup>22</sup> However, he takes further step from Hobbes by focusing on human as rational agents who can critically assess and reflect upon their choices and possible outcomes, and desire to maximize utility. It is these rational people who will realize that it is in their best interest to respect social contracts and behave morally.<sup>23</sup>

However, his account of contractarian morality differs from other theorists as it relies on game and bargaining theory. Game theory is defined as "... a systematic study of interdependent rational choice... used to explain, to predict and to evaluate human behavior..." where the decisions made and the outcomes of choices are influenced by the choices of others.<sup>24</sup> His theory is also explained by using the prisoners dilemma, a game theory scenario demonstrating a fundamental issue in society. There are times when people, acting rationally and respecting agreements, end up worse off than those who break agreements. According to Gauthier, social contract is a means to escape this prisoner's dilemma. He identified two strategies, people choose when faced with structural problem of interaction to either confess that appears to be a rational choice or refuse to confess that appears an irrational choice, as straightforward utility maximization or constrained maximization. A person with

---

21 Ibid.

22 Cudd, A. (2007). *Contractarianism*.

23 Waluchow, W. (2003). *The dimensions of ethics: an introduction to ethical theory*. Peterborough. Broadview Press, Ltd.

24 Verbeek, B., & Morris, C. (2004). *Game Theory and Ethics*.

a straightforward maximizer attitude will choose to maximize personal outcomes while considering the likely strategies of the others involved. The effect of his actions on others is not a priority. On the contrary, a person with constrained maximize attitude will have a mutual understanding or contract and make decisions which maximize each others' outcomes. Here, a constrained maximizer will always be in a better position after an agreement is reached though some individuals may receive more benefit than others. Under these principles of minimax relative concession, individuals will cooperate and abide by social contracts when they see their concessions as reasonable compared to those made by others, which again explains the rationality of acting morally without external enforcement mechanisms.<sup>25</sup>

### III. Conceptualization of JMA

Even though many philosophers presented ideas that are close to JMA, contractarianism as the foundation of the concept remains the same while not all philosophers would agree on all points of *JMA*.<sup>26</sup> However, for a better understanding of the concept of *JMA*, the investigation into the philosophical assumptions and rules of justice that justifies justice as a mutual advantage is indispensable.

#### A. Philosophical Assumptions of JMA

The decisional situation generating the rules of Justice for *JMA* assumes that:

- a. A rule of Justice is valid if it would be accepted in the Humean circumstances of Justice under which rational egoists with rough equality of power are faced with moderate scarcity of goods.
- b. The parties to the social contract are assumed to be *homines*

---

<sup>25</sup> Ibid., p. 2.

<sup>26</sup> Zaluski, W.(n.d.). *A Game-Theoretic Analysis of Justice as Mutual Advantage*, p. 2.

*oeconomici*.<sup>27</sup> They are individuals with no social basis, who are only able to relate to one another as competitors and are concerned only with their own well-being. Economic interactions between them are perceived as symmetrical relations of exchange between two equal commodity owners. Decisions are based either on their own needs or the profit they can make.<sup>28</sup>

- c. *JMA* assumes no veil of ignorance is required as the social contract is among the real persons who are fully informed and know their utility though distinguished by their bargaining forces, preferences and choices. Agreements that suit may be concluded and compiled.

## B. Rules of Justice

The normative postulates of *JMA* are as enumerated below:

- a. No Justice-based duty to take actions which impose costs on us and do not yield any benefits. Justice-based actions are acceptable only in so far as they work, when followed by all, to each person's advantage. Therefore, any actions for merely for good of society as a whole. For example, purely redistributive transfers are incompatible with *JMA* as it results in imposition of cost upon some and benefits to others.
- b. No Justice-based duties towards persons who cannot reciprocate. For example, *JMA* does not consider Justice-based duties towards the mentally handicapped person.
- c. No Justice-based duties towards the future generations as they cannot offer us anything in return.
- d. Content of Justice-based duties depends on each person's

---

<sup>27</sup> Ibid.

<sup>28</sup> Biesecker, A. (n.d.). *The feminine twin in economics*.

bargaining power. Larger the bargaining power is lesser in substance the Justice-based duties are.

- e. The only Justice relevant situation is that of a division of co-operative surplus. If the approach is liberal in division of co-operative surplus, then a person has negative duty of not harming those who are powerless and negative duty of not harming others in extreme scarcity. If the approach is non-liberal in division of co-operative surplus, then a person has no such negative duty.

In short, theories of *JMA* are based on the assumption that individuals are rational maximizers driven to pursue their own self-interest. Being based on rationality, fully rational agents are completely informed agents with consistent preferences given a stable environment. Difference in amount of information can lead to being unequal rational as their behavior would then differ, leading to different conclusions. However, it is also assumed that information is equally available to all and there is no need for a distinction between information and availability of information.

Hence, Justice is outcome of interactions between rational individuals. An agent is expected to participate in an interaction only if she expects to benefit from it. *JMA* describes a bargaining procedure between rational individuals, and when all interacting do the same; their interactions promote each individual's benefits as well as the common good. Here, both agents have more to gain by voluntarily participating in the co-operative procedure than they lose by constraining their self-interest as individuals with conflicting interests participate in the production of co-operative surplus<sup>29</sup> which is mutually beneficial.

---

29 Gauthier, D. (1986). *Morals by Agreement*. Oxford University Press, New York, p. 130.

#### IV. Criticisms of JMA

*JMA* has been strongly criticized from the viewpoint of its philosophical assumptions. The conception of instrumental rationality and self-interest as an account of human motivations are said to be too weak to solve so-called compliance problem. The assumption is devoid of any certainty as to whether it is rational for *homines oeconomici* to comply with an agreement they concluded.<sup>30</sup> At all times, compliance would not always be the rational option. For example, blowing up the aeroplane or killing the last hostage. Here, the person failed in one's task and is now acting irrationally. *JMA* of Gauthier, for example, does not afford each individual an inherent moral status in relation to her fellows. As such animals, the unborn, the congenitally handicapped, and others fall beyond the morality tied with mutuality<sup>31</sup> as they cannot reciprocate in contracting for mutual benefits.

*JMA* of Gauthier asserts that the agreements should only be respected if it is agreed in an environment in which neither party to the agreement is made worse off by the others presence.<sup>32</sup> However, with the element of non-coercion in initial bargaining position, compliance approach of either narrow or broad will lead to rationality and irrationality choices. This fails to appreciate that sufficient incentives to coerce may continue to exist even when the coercers are deprived of increased strength in the bargaining position. Margaret Moore attributed Gauthier's argument that it is self-interestedly rational for the individual to be moral is less obvious and straightforward.<sup>33</sup> The translucency assumption of Gauthier, which claims that individuals can detect the dispositions of others,

---

30 Zaluski, W. (n.d.). *A Game-Theoretic Analysis of Justice as Mutual Advantage*, pp. 3-4.

31 Gauthier, D. (1986). *Morals by Agreement*, p. 268.

32 Williams, G. (1998). *The Problems of David Gauthier's attempt to derive morality from rationality*. Libertarian Alliance. London, p. 4.

33 Moore, M. (1986). *Reviews, David Gauthier, Morals by Agreement*. Oxford: Clarendon, p. 710.

not of course with complete certainty but with very high degree of accuracy, is critical assumption. Pretension by straightforward maximizer to be constrained maximizer (parties of *JMA*) is highly probable, and can breach or not to keep the agreement if it is not utility maximizing to do so. Further, possibility of threshold assumption requiring the threshold number of people with same disposition to act in same way is not explained by him. Even if it was explained, it would be irrational for one to be a constrained maximizer if rests of the population are straightforward maximizers.

The normative postulate that flows from the theories on *JMA* does not distinguish between collective and individual rationality. It does not address the issue that not all agreements are worthy of cooperation, and its exclusion of certain groups, i.e. visible minorities, women, children and disabled people, who have historically been viewed as dependent and irrational.<sup>34</sup>

Roemer argued that *JMA* is no Justice. According to him, although it is possible to launder preferences and endowment so much to reach a just allocation as outcome in bargaining problem, doing so ends up being a roundabout way of specifying Justice as impartiality.<sup>35</sup> Roemer further asserts that justice as an ideal bargaining outcome and Justice as a social contract is not equivalent as a social contract may involve people making concession to each other not because they rationally must but because they (ethically) should by virtue of living in a community with others.

## V. Evaluation of *JMA* and Conclusion

To ask what Justice is a philosopher's question. We argue about Justice, yet the very fact that we argue presupposes a level of mutual understanding. This is because, we argue about facts and truths, but we know that Justice has something to do with treating like cases

<sup>34</sup> Ibid., pp. 3-4.

<sup>35</sup> Roemer, J. (1996). *Theories of Distributive Justice*. Harvard University Press, p. 92.

alike. Rawls claims that Justice is the first virtue of social institutions, as truth is of systems of thought. In classical approaches, evident from Plato to Rawls, the concept of Justice is always construed in logical or etymological opposition to the concept of injustice.

It is also evident since at least as long ago as Plato's time, which the philosophers have considered the possibility that Justice is at bottom a system of rules that members of society follow for mutual advantage. Hume was of opinion that Justice is based on conventions of trust and mutual agreements which actually aim for the maximization of public utility. The public utility is the sole origin of Justice. He mentions about the interests of the society which require the contracts (convention) to be carefully fulfilled in order to secure mutual trust and confidence of each other.

Justice as mutual advantage sees Justice as essentially a matter of the outcome of a bargain. There are times when two parties can both be better off by making some sort of agreement. Justice, on this view, concerns the distribution of the benefits and burdens of the agreement. The proponents of Justice as mutual advantage argue that moral norms are those that rational and self-interested persons would accept in regulating the pursuit of their self-interest. Even international relations require that rules of Justice be observed for mutual advantage.

No philosopher is widely regarded as having succeeded in developing a viable theory of justice. Whether the concept of Justice is conceived of as mutual advantage or anything else, for that matter, all contemporary theories of Justice begin by proclaiming that all people are to be treated as equal. Any theory of Justice as a mutual advantage or Justice as an ideal bargaining outcome must present the ideal bargaining problem, whose outcome is to be distributive and should have a just solution. The laundering of both resource endowments and preferences would be necessary to render the players appropriately 'equal' in the bargaining problem whose outcome could be described as just.



Above all, *JMA* gives us the background of thought that can help us try to apply principles of rationality we use in our everyday lives to the profound ethical choices that serve, in some way as the anchors of our identity.<sup>36</sup> *JMA* shows it is irrational for individual self-seekers to maximize utility in certain conditions. It asserts no distinction between moral and prudential reasoning. *JMA* helps us in understanding Justice as rational prudence where cooperation of other people is a condition of our being able to get what we want.

---

36 Forste, W. E. (2011). Review of *Morals by Agreement* by David Gauthier. *The Journal of Transhumanist Thought*, 14.

# THE THESIS OF CONTINUITY IN DEVELOPMENT PSYCHOLOGY

KINZANG CHEDUP\*

**Abstract :** ‘Development continuum’ and ‘progressive continuity’ is an important aspect of national metamorphosis. With His Majesty’s command to reiterate the perspective of ‘continuity’ of our nation-building efforts, the article intends to reflect various concepts and strategies to enforce these nation-building perspectives. It echoes the very important aspects of knowledge creation and the composite modality of development. In this aspect, the article intends to qualify the continuum of development perspectives through the use of economic strategies. It tries to evaluate economic plans, knowledge creation and management, innovation and service-oriented policies to standardize development foundations based on professionalism and professional work culture.

## I. Introduction

The idea of *‘progress and continuity’* are two important growth phenomena. Centuries ago Adams Smith came out with the ‘literature on economics’ and drew treatises on the *‘plan of the work.’* Emphasizing economic growth and professional work culture, His Majesty the King in the 115<sup>th</sup> *National Day Royal Address* commanded that *‘continuity’* is a quintessential element of progress. While continuity can mean the ‘sustenance’ of development, it should mean progression and step-wise as well as developing a calculative development pyramid. The architecture of development lies in step-by-step progress. It should build on the progress and inch towards the betterment of the past progresses. Continuity is a cumulative aspect of progression. The conceptualization of ‘continuity and change’ represents the ‘periodic change of things’ based on time. While time is an endless cycle of empty space that self-regulates to

---

\* Researcher, Trainer and Legal Officer at the Bhutan National Legal Institute.

determine and accommodate change, 'time' has to be 'interspersed' with increasing returns. These economic terms and analyses are models for the contemporary theory of change and represent an invaluable source of change that is built on technology, sociology, and political science. The concept of lock-in and increasing returns discusses the mechanism of institutional development and change that rests on the economic principles of returns to scale.<sup>1</sup>

Changes have social and cultural continuity. 'Social change' and 'cultural change' are part of 'development changes' that are anthropological. 'Development and change' and the precepts of 'continuity' essentially predict that it does not presuppose that change is continuous, but *progress is a continuous process*. The 'theory of continuity' and 'continuity of change' has to be the catalyst for positive social, economic, and national change. Changes are a natural aspect of evolution and these evolutionary traits show that changes require positive directions, guidance, and *precepts for advancement*.<sup>2</sup> Changes are inspired by the different models of development. In Bhutan, the model of development is guided by the values of *Gross National Happiness (GNH)*, and these paradigms guide how Bhutan develops and coexists with values external to development. Modern forces of development and progress are determined by economic literature and forces. In the recent example of the development of the QWERTY typewriter keyboard, it is empirically guided by education in technology and the popular reference for '*patterns of continuity*'.<sup>3</sup> This shows that the 'theory of continuity' requires various inputs from classic studies, based on sound economic history and rational development principles. Continuity should not mean sowing the old same seeds for a long time. It should mean, changing the seeds, while agricultural practices are at the same time improved. Value addition should be the hallmark of continuity and

- 1 Boas, C. T. (2007). Conceptualizing Continuity and Change: The Composite Model of Path Dependence. *Journal of Theoretical Politics*. Sage Publications, London.
- 2 Preston, C. (n.d.). *Social Continuity and Change and Social Theory Snapshot*.
- 3 Boas, C. T. (2007). *Conceptualizing Continuity and Change: The Composite Model of Path Dependence*.

it should unlike other traditions and traditional mores, generate a systematization of improvement.

In basic terms, we have to understand the term continuity, progression, and development change. While change is a process that is continuous, continuity ordinarily means it persists, continues to exist, always in the same form, and with the same value.<sup>4</sup> This theory is obsolete. Every change has to be functional. In recent times, it has been understood that change is the opposite of continuity. However, change is part of the same cycle of continuity; a transformation that is mutable and constant. Ideologically, the concept of change is permuted with the idea of energy. Change is theoretic-based. The concept is both relative as well as constant. Change is dependent on transformative conditions.<sup>5</sup> The transformative conditions have to be shaped based on national, economic, political, and universal values. These values determine the outcome of the change as well as the direction of the pivot of change. Continuity should be the definite determinant and should reflect the positivist approach to transformation based on values we share and aspire to. While theoretical and practicality may sometimes remain parallel: they should intersect through the *commonality of change*. The commonality of change is the basic genesis of progress, and time only serves as a measure. If we look at the continuity of time: winter gives way to spring and so does summer replace spring. These seasonal constructs are natural phenomena: no one can change them. Inherently, the seasons decide what we sow, what improved seeds we sow as well as what sort of yields we expect in the coming summer. Time gives us the scope to extend our conscious decisions: and permits us to evolve, and as trees grow naturally from seed, unlike it, nature may not be able to nurture them so that they grow healthy.

The 'prism of continuity' has to be based on the concept of continuous growth and expansion. It can be economics or the form of mental modeling. Continuity and change are both essential

---

4 Maxbill. (1953). *Continuity and Theory of Change*.

5 Ibid. p. 72.

foundations of a progressive society and an expanding economy. It has to adapt to the dynamism and the plurality of change so that change is an ordered process of positive evolution. We have to 'edit out' the classical theory of change and progress; and replay it with modernism and modern social and economic theories so that we are appropriate, corrective as well modern in thinking through the economic paradigms. The economic paradigms—that guide how each nation develops and expands yearly have to categorically underscore the parlance of modern economic justice. Modern thinking has become multifaceted. It is a day of expansion of human thinking and thought modeling; where each individual decides their economic and professional circumstances molded on the theory of continuous progress.

Internationally, the world has become a stage of competition. It is marked by competitive marketing process to develop each individual countries; and in some parts it is ravaged by war: marking a serious contrast to positive change. Evolutionary tactics of change which builds on the principles of resilience and adaption are giving better economic as well as social returns. They posit that change is adapt to and adapt to means continuing to evolve and respond to modern challenges. In every aspect of existence: it is accosted by challenge which is economic, social, and legal. These paradigms of challenges restrict the dimension of 'expansive thinking' and conscientiously influence us to revolve around our ordinary evolution tracks and traits. It does not give us any opportunity or mental expansion to develop, change and evolve. The pursuit of continuity has to be determined through a prism lens. From every direction, the same thing should look different.

## **II. The composite model of continuity**

The concept of 'standard' is an empirical fact. All standards vary and evolve. It is not static but continuously moves and changes. The standards are not the same pendulum that swings to rotate the watch around the clock. The idea of 'path dependent,' states that our

progress is based on the path we travel, the path we have modeled. The art of development science is concerned with consistency as well as change. These reins in on how continuity, development, stability, and progress are not distinct within their own polarities, but they are methodological and empirically tested. We are not here to discuss various metaphysics of change: but the metaphysics of human mentality and the metaphysics of development that agrees with the aspect of reality and conscientious reasoning. There should be a dialogue between realism, formalism, and theoretic of existence. For a simple reason, a person traveling from **point A** to **point B** should not only carry his idea of traveling, where, he moves his legs to carry himself forward, but he must carry the basic sustenance with him so that he survives the journey as well as the journey is well organized with a directional destination.

The composite model of continuity is an expansive idea of inclusion and practical-based orientations. It should denote the difference between a man who unconsciously walks and who prepares and plans to travel on foot. Although both of them travel: there is a stark difference in their final destinations, walking processes, and gait. The way we walk shows if we will stumble or if we are progressive sprinters. This establishes the test of *differentiability*. It identifies and determines ‘how a person walks’ and ‘his conscious gaits’ and his ‘consciousness of the destination.’ Although the approach [may] seem to appear similar, the ‘ultimate goal with consciousness and mindfulness’ helps to establish *differentially*. A clear awareness of exactly what is happening as it happens and a tranquil understanding of the situation is an important component.<sup>6</sup> All natural as well as artificial things are ‘composite’ and contain different aspects and parts. Singularly, no individual entity or organization can build or structure itself skillfully. Unless [things] are carefully handled, the composite as well as the relativity of the objects can disintegrate naturally or through a wrong move. The same principle of natural physics applies to organizational and development culture. It also

6 Mahathera, G.H. (1991). *Mindfulness in Plain English*. Buddha Educational Foundation, Taipei, Taiwan.

goes with economic culture. Therefore, it can be agreed [that] all materials objects and non-objects are composite and universally dependent.

For example, let us take the development of best agriculture practice in 2023. Let us say that, in 2022, we have imported the best hybrid rice seeds, that is adaptable to mountainous terrains and are able to grow on the slopes of the mountains. These agriculture practice requires the continued culmination of various aspects of modern agriculture practice. It has to undergo the continued practice of testing the 'rice grains,' 'rice plants' as well as ensure that it is a scientifically improved with tested variety of rice. One concept of improved productivity in Bhutan, keeping this continuum example, is the value chain development.<sup>7</sup> This symbolizes the strategic management aspect of rice cultivation and the process of the '*competitive strength matrix*.'<sup>8</sup> The various concepts of the '*growth-share matrix*,' determines if [thing] will be a cash producer or cash user. This basically predicts the nature of competitiveness and investment.<sup>9</sup>

In one aspect of the process of the '*continuum of improvement*' or the continuity in development theory, it relies on the 'business positioning' ideas: that provide a subjective assessment of how strong competitive advantage is created by a broad range of internal strengths and weaknesses.<sup>10</sup> Industry attractiveness that positions level of differentiation, cost positioning, financial strength, human assets, and public approval based on reputation and image enhances strategic thinking and maintains the same continuum of growth-

---

7 Ministry of Agriculture and Forests. (2019). *Improving Rice Productivity in Bhutan to Enhance Rice self-Sufficiency*. Thimphu, p.1.

8 In *competitive strength matrix*, it describes the dimension of push, caution and danger which involves investing aggressively, investing selectively and harvesting. Here they determine the likelihood of gaining and maintaining the competitive advantage. It involves the dimension of growth, competition and capitalization of the core competencies.

9 Dess. G.G., & Miller, A. (1993). *Strategic Management*. McGraw-Hill Series in Management, p.169.

10 Ibid., p. 173.

by reducing risks, enhancing integration, and diversification with *corporate entrepreneurship style of work*. In this context, again getting into the improved rice variety version in this paper, the use of a new variety of improved rice variety, requires the ‘composite flow’ of managing the rice ecosystem, holistically. A single-handed improved version of the rice variety would not be able to capture the aspirations of the pilot testing. It has to be many-pronged from the dimension of ‘nutrient management,’ weed control, and herbicide piloting with modern rice farming technology.<sup>11</sup> These integrated methods of agriculture demonstrate the intricate nature of the ‘theory of continuity.’ It espouses the best implementation plan, continued attention, and test-piloting through capacity development in agriculture through the lens of economic and agriculture sustainability. This composition is essential and intricate part of modern agriculture farming; and for that matter, the composite nature of continuity requires all aspects of planning, implementation, and repeated improvements.

### III. The use of a strategic economic plan

The concept of roadmap and mapping is an essential instrument to guide development. In aviation science, pilots primarily focus on forward motion. The four fundamentals [straight-and-level flight, turns, climbs, and descents] are the principal exercises that control the aeroplane through the six motions of flight.<sup>12</sup> The effective use of flight controls, the use of throttle to speed up, the rudder for change in directions and elevator pitch to keep the airplane stable so that it does not stall is an important science of flight. In the same principle of thought, analysis and economic and development maneuver, it requires the intricate science of planning, execution and forward movement. We have to borrow the concept of ‘altitude flying’ from flight science. It requires two things: pitch control, where the nose of the airplane is not tossed upright into the air and bank control,

---

11 Ministry of Agriculture and Forests. (2019). *Improving Rice Productivity in Bhutan to Enhance Rice self- Sufficiency*.

12 Airplane Flying Handbook. (n.d.). *Basic Flight Maneuvers*.



where the airplane does not tilt aggressively and dangerously. These are the basic ideas of safe flying.

The principles of safety and maneuverability apply to the science of *planning continuum*. Many years ago, economists have observed that economic planning played a significant role in the development of Singapore. They have agreed that planned development is a more efficient alternative.<sup>13</sup> There are various *Road Maps* that provide a systematic structured approach that will guide the development and implementation of various interventions.<sup>14</sup> *‘Getting the basics right’*<sup>15</sup> espouses that ‘imported ideas’ and ‘capturing what others have done’ significantly help so that a country becomes the base camp for entrepreneurs, engineers, managers, and other professionals who have a business to do in the region. This means as Lee Kuan Yew says, “*Need to train our people to provide First World standards of service.*” One guiding principle for survival, he says, “Singapore has to be more rugged, better organized, and more efficient than others in the region. New trade and investment patterns, higher value-added investments, with broad economic objectives with a target period to achieve them, was a significant mechanism to boost national confidence.” These examples relate to long-term economic interests and social-economic conditions, stable social conditions, good working and living environments, efficient infrastructure, and a pool of skilled and adaptable professionals are important for basic economic growth.<sup>16</sup> The foundations of a sound economy are the strong *rule of law*, independent *Judiciary*, and stable, competent, and honest governance that pursues sound macroeconomic policies.<sup>17</sup>

13 Huff, G. (1995). What is the Singapore Model of Economic Development. *Cambridge Journal of Economics*.

14 Department of Renewal Energy. (2019). *Energy Efficiency Roadmap*. Ministry of Economic Affairs.

15 Yew, L. K. (2000). *From the Third World to First: The Singapore Story: 1965-2000*. Times Media Private Limited.

16 Ibid., p. 91.

17 Ibid.

Certain countries are often cited and looked after as an example of development success. [These] countries exhibit policies and institutions that could be adapted for less successful countries in the developing world, thus constituting “role models” of development. These calls for various policy dimensions: *orthodox and heterodox*.<sup>18</sup> The difference between “*success*” and “*non-success*” strategies is said to be often the ability to employ restrictions successfully to develop productive capability.<sup>19</sup> Today, we require globalized economic policies that generate and build financial capacity and human capacity building to generate financial and economic returns. These aspects of growth are essential to promote other phases of growth: and economic stability and financial resourcefulness determine how we achieve other ‘non-economic points of growth.’ The economic planning processes have to be: based on policies of continued growth, eliminating macroeconomic growth bottlenecks, and substantial management of microeconomics at the national and institutional levels. This is to prevent the ‘frittering’ of economic resources from [small] gaps and loopholes that continuously erode the national economic capital. This can accurately be recalled from the Bhutanese adage parlance of ‘*a holed up a sack of gold would not take time to get emptied.*’ While economic policies can be comparable to a sack of gold: they definitely determine if we reap gold, silver, or for that matter, other metals of *low value*. The concept of *low value* is not just formalistic, it essentially establishes the broad parameter for *high-value economic returns*. In a global economy, market, trade, financial stability, and the ability to secure sound economic growth depend on the systematization of economic growth from the basement of *effective economic policies and plans*. While it is easy to theorize and be impractical, many examples show that theory has been the firm basis of practical experimentation of things: and the flight of imagination and non-realistic thinking has led to the development of sound scientific inventions. In many cases, the theories, as

---

18 Fosu, K. (2013). *Achieving Development Success: Strategies and Lessons from the Developing World*. United Nations University.

19 Ibid.

well as human thinking capacities, have to be employed, so that we are reading and experimenting beyond books of economics. These models require testing and re-integration with our national economic values: but they should spearhead a proliferation of best economic ideas to push growth. Experientially, the best way to expose the linear thought of radical economic ideas has to be accepted so that, it is tested within the limits of risks and challenges. *Economic testing* cannot ignore the limits set in by risk and challenges. *The ability of the country to be successful requires capability*.<sup>20</sup> The ability to successfully navigate requires a sound knowledge of the sea, the conditions of the sea in [that] specific area, effective navigation guides, with a strong ship with effective, efficient, and capable seamen. These analogies of navigation are practically relevant in the drafting of economic policies, and statutory economic guidelines. Unless we are familiar with the ideas, reality of national economics, and the best practice of economic trade contemporary to the times, the terrain may be tough or the waves may overpower the ship. While readers may castigate me for being too empirical as well as illustrative, I assert that there is no *natural way to perfection*. The ideals of natural perfection, and secret economic traditions, requires full awareness, harmony, and seriousness.

The concept of reality and '*rigpa*' that categorically emphasize the idea of practice are relevant to the principle of sound economics. The ideals of 'errors and answers' and the 'signpost in the magic land'<sup>21</sup> capitalize on the 'inward way' by listening, observing, and harmonics based on the theory of open mind and open heart. This is not a religious indoctrination or fallacy that are encountered in the science of sound, but a very adaptable example of how reliable signpost need to be studied to get the soundest economic directions. In other countries, what we have observed in European and western-cultured societies is the 'mere push for economic growth on market capitalism.' They sustain their push for growth based on the premise

---

<sup>20</sup> Ibid.

<sup>21</sup> These epithets are borrowed from Keith Downman's *Natural Perfection: Longchenpa's Radical Dzogchen* and *Singing Bowl* by Eva Rudy Jansen.

of professionalism, and work-output. The concept of human empathy and human understanding and human emotions at work is only now gradually penetrating their work culture and economic concepts. This is what I have practically experienced in developed countries, I [may] err in the statement. Bhutan in any pursuit be it in economics, social, political, or other dimensions of polity, has one very important added advantage. The national ideals of *Tha Damtse* and *Le Judre*: the non-parallel movement of karmic forces or non-equalization of the secret precepts of the matrix of reality, plays a formidable role. These concepts help to bind the common experiences and beliefs that shake [rigid] and one-dimensional attitudes practiced in other aspects of world governance.

In Bhutan, we have been guided by the best development philosophy of *Gross National Happiness (GNH)*. *GNH* stipulates that Bhutan is able to spearhead a development paradigm based on sustainability and the economic use of resources. This development paradigm cushions against the forces contrary to modern times and economic thinking. Further, we are blessed with the competitive advantages of political stability, farsighted leadership, and vibrant living culture with a strategic geo-economic location with access to regional markets.<sup>22</sup> A holistic growth-oriented policy<sup>23</sup> entails that there is a competitive fiscal policy, deficit reduction, market access, capacity building through competent education systems, and a well-regulated financial system. Development is the most contested ‘terminology’ in the field of politics, sociology, and economics.<sup>24</sup> Development is a diverse view: and it cannot be a single-dimensional approach to widely changing concepts. Defining development as well as its strategic objectives also enables the ‘divergent’ perspective on economic development, economic strategic plans, and economic development processes.

---

22 Royal Government of Bhutan. (2016). *Economic Development Policy*.

23 United States of America. (2010). *Roadmap for Growth*.

24 Galchu, J. (2016). *Changes and Continuity in the Conceptualization of Development: A Review*. Department of Civics and Ethical Studies, Faculty of Sciences and Humanities, Bule Hora University, Ethiopia.

In context to these, the use of a strategic economic plan differs from the objectives and definition of development adopted. While some aim at removing poverty, lessening disparities between the poor and the rich, and modernization of society, development, and the plans of development which is not unidirectional. It should encompass technology, sociology, economic, cultural, and political changes.<sup>25</sup> Unless [these] capacities and scopes are included, we would not be able to position the accurate nature of economic plan and development priorities. In many countries, the best aspect of economic development includes the social aspect of development, cultural aspect in addition to the economic aspect of development.<sup>26</sup> The continuum of 'sustainable' and 'development' are two specific areas of progress. While *developments* have to be sustainable, 'sustainability' has to be developed as a specific national invention. These two phrases are important aspects of continuity: which presupposes the strategy for long-term economic and developmental success. The 'economic roadmap' has to capture the broad and inclusive economic indicators- that reflect the contributions of *Gross National Product (GNP)* and *Gross Domestic Product (GDP)*. The *development gap analysis*<sup>27</sup> should be able to provide the deficit economic positions: the need for diversification, expanding the narrow economy, value-added products, and increasing foreign exchange, among other versatile national and economic indicators. The 'theory of continuity' in this part of the article is intended to draw national perspectives of continuity through the dimension of the economy.

---

25 Ibid., p. 65.

26 Ibid.

27 *The Economic or Development Gap Analysis* provide the understanding of possible gaps and deficiencies both in economic development activities, plans and forecasts- so that is comprehensive, holistic and economically advancing. It has to make realistic assumptions [with] a progressive indicators of growth. It should assess existing situations, general strengths and weakness in key economic sectors. It should identify possible areas of enhancement, areas of developmental concerns [with] strategic and resolute economic steps.

#### IV. Component of an effective economic plan

*Planning* must include and reflect the needs of the entire economy.<sup>28</sup> In other countries, in a *command economy*<sup>29</sup> government determines the most efficient use of land – that is principally, the use which delivers the greatest economic benefit.<sup>30</sup> Economists conclude that *planning* should pay more attention to the market while reminding us that other considerations may be as important. They state that:

*Updating national policy on economic development to... ensure that all direct and indirect benefits of development are fully factored into plan-making and decision-taking. This new Planning Policy Statement on Economic Development should stress the importance of taking account of market signals... Plans should, of course, continue to make clear where it is inappropriate for development, or certain types of development, to occur, in order to protect the environment and deliver social goals...*

Ensuring that planning is based on the consideration of spillover effects [a species of market failure], rather than trying to predict market demand. Planners should not be attempting to determine if there is sufficient ‘need’ for a given application – rather the applicant, who is bearing the risk, should be responsible for assessing that likely demand is sufficient to make the development viable...’

Bhutan imbibes the best economic practice and experiences of advanced market economies. Deducting, for example, how the Singaporean economy developed and survived to provide us with a lucid economic idea and framework gives us an important future

---

28 Government of Wales. (2013). *Planning for Economic Development – Towards a New Technical Advice Note*. Planning Division Welsh Government Cardiff, United Kingdom, p. 7.

29 A command economy is ‘an economy in which business activities and the allocation of resources are determined by government order rather than market forces.’

30 The task is carried out by a range of people, individually using specialist knowledge of various industries, and mutually coordinated through administrative mechanisms.

direction. Their idea of development is based on inherited economic intelligence, correct approach, and also traversing a razor's edge economic and development plans.<sup>31</sup> In this country, they adopted the economic impetus of versatility: based on integrity, intellect, energy, drive and application. There was a clear instruction for profitmaking. The key success, as they write, were the men in charge. They created the financial center, merging of banks to expand businesses, and promotion of the value of the Singaporean assets. They also stressed on the infusion of *foreign talent and a different mindset*.<sup>32</sup> They also introduced 'a fair and not a welfare' society.' [These], they were able to use personal motivation and personal rewards for a productive economy. They also 'used' the society's sense of fairness [very] equitably so that they did not offend the society's view of fairness, equality and ability. A '*competitive, winner-take all society*' was not all feasible; but finding the correct solutions through a pragmatic way, and getting the right balance was essential.

Home-owing society was the basis of the economic plan in Singapore. [This] was regulated by making adjustments, from time to time, to market conditions, affected wages, construction costs and price of land. From the relative analysis of best economies, it shows how big economies wrestled to fight expanding budgets: mostly in areas of social-economic welfare benefits. The *welfare economy*, as they say undermines people's direction of self-reliance. They become dependent on the state for their basic needs. The economic plans should stabilize social-economic pattern and balances. Low taxes, stable monetary practices, balanced budget encourage investment and high productivity.<sup>33</sup> The tax structure has to be internationally competitive and enable a virtuous cycle of economic development with low expenditure, high savings, low welfare and high investments. The economic plans are [fitted] with population matrixes. I bring this best practices into the light to mirror the [needful] and be

---

31 Yew, L. K. (2000). *From the Third World to First: The Singapore Story: 1965-2000*.

32 Ibid., p.99.

33 Ibid., 129.

simplicistic in our endeavours by recognizing the [basic] tenets of economic development plans.

No economic development happens without a clean government.<sup>34</sup> Corruption will not facilitate the system to work. It begins with *symbolism*. When the government commands the respect and confidence of the people, public servants, Lee Kuan Yew says, are able to hold their heads high and make decisions with confidence. The best guide to effective economic plans is comparable to an orchestra that exhibits *collaboration* and *understanding*. *Economic Plans* require to be realistic and diversified and understand both the important aspects of legal, social, and economic imperatives of a nation. Social impacts have to be understood in equal terms to understanding the economic policies. It should understand non-economic national impulses. It also recalls the strategic accord a country has to have with international communities to foster international partnerships. The planning models of economic development do not logically imply the concept of *command and control*. Traditionally, the planner's problem is to identify a relevant set of constraints on the growth of key economic variables. The constraints thus determine a presumably non-empty set of feasible plans. Planning models are useful as they form quantitative estimates of the various trade-off in preparing development policies. Planning models reflect the accounting regularities and conventions of national income and product accounts, balance of payments, and income and expenditure balances of the public sector.<sup>35</sup>

Introducing economic policies that integrate social policies helps to further social investment.<sup>36</sup> It should have systemic operational efficiency with addressing skills constraints. Any *Economic Plan* for that matter has to be continuous and build on the relevant

---

<sup>34</sup> Ibid., p 182.

<sup>35</sup> Gibson, B. (n.d). *Economic Planning in Developing Economies*. International Handbook of Development Economics, p. 3.

<sup>36</sup> Mehrotra. (2000). *Integrating Economic and Social Policy: Good Practices from High-Achieving Countries*. UNICEF Innocenti Research Centre, p. 9.



capacities. This premise a stable macroeconomic policy framework underpinned by a flexible exchange rate, inflation targeting, and credible and *sustainable fiscal policy*.<sup>37</sup> Basically, robust economic plans should capitalize on building the economy, advancing it, and integrating it to be internationally resilient and responsive. It should exhibit and corroborate with market forces so that it best expands and responds to categorical challenges faced in modern economies. The roots of the economy has to be strong. *The efforts to evaluate economic development policy have become a quagmire of good intentions and bad measures.* The spectrum of metrics in other countries are solely based on economic parameters. While wellbeing is a multi-dimensional concept, economic growth remains an important factor in driving or enabling improvements along many of these dimensions. It is vital for supporting continued improvements in material living standards, health, life expectancy, education and economic opportunity, and to help the government deliver on a range of economic, social and environmental objectives.<sup>38</sup>

One aspect of the *Economic Plan* could be the instance of promoting competition. Competition makes markets perform better and encourages inclusive economic growth. It induces producers to reduce costs, innovate, and widen the range of goods and services available to consumers. It allows a level playing field where small entrepreneurs and firms, apart from larger players, may operate and grow. Competition raises productivity, expands economic opportunities, increases people's real incomes, and improves overall welfare. It especially benefits the poor through job creation and lower prices made possible by the entry, growth, and expansion of efficient firms; and through greater variety and higher quality of goods and services. We have to be adaptable to the global economy

37 South Africa. (n.d.). *Economic transformation, inclusive growth, and competitiveness: Towards an Economic Strategy for South Africa*, p. 4.

38 Evert, T. et al. (2010). *Economic Growth and Environment*. Defra Evidence and Analysis Series Paper. Department of for Environment, Food and Rural Affairs, United Kingdom.

for goods, services, finance, and technology.<sup>39</sup> The two aspects of planning: quantitative and qualitative economic planning require the inclusion of broad parameters of the economic plan and social infrastructure development.<sup>40</sup> Investing in innovation is identified as one of the mechanisms to combat downtown economic spiraling.<sup>41</sup> Innovation is one of the important aspects of economic dynamism and business expansion. Information technology is also a key engine of growth.

In the United States of America, presently, they have planned a competitive, less concentrated, and more resilient economy that details a policy vision that promotes stable, steady, growth with lower inflation.<sup>42</sup> Affordable food prices, identifying supply chain vulnerabilities, expansion of small businesses, closing of loopholes, and putting supportive taxation practices, are a few economic plans to bolster the economy. In some countries like the Philippines, they focus on a knowledge society and economy.<sup>43</sup> One important aspect of their economic plan is the continuity of learning. This is to build 21<sup>st</sup> century knowledge, skills, and competencies. Lifelong learning is a priority strategy but especially focuses on digital skills training. Digital transformation is also a key aspect of national development. Many countries are focusing on economic recovery in light of the COVID-19 pandemic. They are focusing on innovation, skills, and productivity. Sustainable public finance is recognized as an important component of growth. To keep pace with future change and to ensure people return to sustainable jobs, creating an education centered on transferrable skills based on a flexible education approach that responds to evolving skills needs,

---

39 OECD. (1999). *The Future of Global Economy: Towards the Long Boom*. Paris.

40 Karlheinz, K. (1966). *Economic planning in theory and practice: The Experiences of Western European Countries*, Intereconomics, Verlag Weltarchiv, Hamburg.

41 OECD. (2009). *Policy Responses to the Economic Crisis: Investing in Innovation for Long-Term Growth*.

42 The White House. (2022). *The Biden-Harris Economic Blue Print*.

43 Philippines. (2022). *Updated Philippines Development Plan (2017-2022)*.

and lifelong learning is required.<sup>44</sup> These state how each national economy is shaped based on 'effective planning and action.' Unless our strategies are correct, our actions may appear always wrong. Our local 'economic responses' should be able to understand the various dimensions of economic law and economic responses [should] include dramatic changes in political and economic organizations.<sup>45</sup> This should be able to 'internalize' the global economic, legal power and political structures and practices so that responses are shaped by dimensions of legal, political and economic order.

The transformation or 'economic culture and practices' requires adaption, appropriation and vernacularization of international economic best practices that reorganizes various 'competing national economic interests.' It reactivates the 'good economic traditions' that are dynamic, pluralistic and nationally equitable. The connection between organizations: 'organization of economics' entails a synthetic and creative economic morphology. The concept of morphology here is the systematization of 'economic pursuits' and 'economic goals' that synthesizes with modern economic traditions and provides an arena for harmonious agreement of economic policies, and the concept of '*good value of economics*.'<sup>46</sup> The 'path of dependence' and 'adaptive expectations' are used to facilitate the analysis of other 'economic prototypes.' Here, the concept of scrutiny of the degree to 'which economic models' we follow is must so that it is efficient, flexible, and realistically change adaptive.<sup>47</sup> Initially, the idea of economic change and returns dominate the 'talks' that are not resistant to change. The capacity for 'bounded change' also includes the adaptability to an economic and development institution- that revises 'institutional values' with modern economic norms and traditions.<sup>48</sup>

---

44 Ibid.

45 Beckmann, B.K., & Franz. (2006). *The Dynamics of Change and Continuity in Plural Legal Order*.

46 Maxbill. (1953). *Continuity and Theory of Change*.

47 Boas, C.T. (2007). Conceptualizing Continuity and Change: The composite-Standard Model of Path Dependence. *Journal of Theoretical Politics*, 19 (1).

48 Ibid, p.52.

Modern ‘economic evolution theory’ attempts to explain economic changes arguing that the source of change is the ‘shift in production’ and ‘greater economic surplus.’ These aspects of ‘economic production theory’ only input production and general market and financial economies. While the development paradigm of Bhutan professes *GNH*, these important aspects of ‘growth with values’ sustain that economy with humanistic interventions, which are relevantly necessary.<sup>49</sup> The nature of social systems also determines the ‘nature of economics’ and development temperament. Economic and social theories are interdependent models of modern economic and social thoughts. It forms a collective economic behaviour- that moderates development consistency, economic dynamism, and adaptive equilibrium.<sup>50</sup> However, the ideals of a ‘robust economy’ purport that it evaluates the macroeconomic conditions that stabilize labour-market directions, promote state-owned enterprises, forced-government saving, enhance private sector development, infrastructure and housing development, manufacturing development, and a comparative advantage for financial and business transactions. Planning is an essential investment in [any] economic decisions. [T]his is a structural approach to development economics.<sup>51</sup>

The patterns of planning that establish a relationship between complex economies is relevant. It has to regulate the pricing system, correctly reflect relative scarcities, benefits and costs [that] are essential component of development economic psychology. External economies, public policy, investments designed to exploit the interrelationship of industries and services are important indicators of growth. Foreign trade, import substitution, combatting structural inflation, export promotion, balanced growth, maximizing growth principle, equilibrating forces, social equilibrium, wage gap,

---

49 Preston, C. (n.d.). *Social Continuity and Social Theory Snapshot*.

50 Bornstein, H. M. et al. (2017). *Continuity and Stability in Development*. The Society for Research in Child Development.

51 Huff, G. (2018). What Is the Singapore Model of Economic Development? *Journal of Economics*. University of Oxford.

unemployment, including population policy, distribution of income amongst various other economic dimensions including differentials in skills, income policy, taxes and saving to name a few.<sup>52</sup> These aspects of conglomerate-based planning that is inclusive and nationally responsive and underscore [all] the economic bases are important aspects of a good economic as well as development pattern.

## V. Change and continuity in development economics

Economic development is a social fact out of *development economic theory*.<sup>53</sup> In the development theory parlance, comprehensive economic and developmental planning, the *input-output model* is the most appropriate way of economic growth. It requires the collation of all blocks of economic development that supposedly build the economic baseline of the nation. The baseline of any economic development is the creation of economic and national economic building resources. Development occurs in an uneven manner in which different aspects of change leapfrog one another and play a game of continual catch-up. The accomplishments of each phase generate the initial conditions and challenges for the next phase. Creative evolution, redirection, and destruction constitute the essence of successful long-term development.<sup>54</sup> The simple classical growth model that exposes classical growth theory that is based on the 'continuum of increasing returns' seemed significantly trivial and ancient.

There are many aspects of endogamous growth principles and theories that are associated with externalities of production and innovation. And the most important aspect of development

---

52 Lewis, A.W. (1966). *Development Planning: The Essentials of Economic Policy*, Routledge Library Eds.

53 Babacan, M. (2015). *Change and Continuity in National Economic Planning: A Methodological Survey*. Department of Economics, Istanbul Ticaret University, Istanbul, Turkey.

54 Adelman, I. (n.d.). *Fifty Years of Economic Development: What Have we Learned?*

economics is the ability to enable change to perpetuate continuity. More specifically, be it in economics or other domains of growth, change, and perpetual growth is important economic paradigms. In Bhutan or elsewhere, the development paradigm rests on the following precipice. Let us take the simple example of [typical] *Road Network Expansion Project* in Bhutan. Here, it requires a systematic examination of many aspects of the construction project: the *Initial Environment Clearance (IEE)*, the *Environment Impact Assessment (EIA)*, and the *Economic Assessment (EA)*. These require a series of professional steps toward establishing a professional work approach. While this road construction will bring a change toward road landscape and networking, it has to be infused with the development theories of *professional change*, and the *professional change continuum*.

The concept of ‘continuity and progress’ is an epithet of progression and upscale of economic or social activity. Progress should always accompany continuity and [it] should be able to supplement the basic idea of cycle theory.<sup>55</sup> The concept of ‘change in continuity’ states that while change is a method of progression, it should naturally evolve to upgrade, and advance. These aspects of growth, be it in economic theory, social theory or political theory, has to become the strain of evolution- through which [things] evolve both naturally as well as artificially. If these traits cannot be developed on our own, the concept of adoptive as well as gradual adaptive mechanism and innovation has to be based on knowledge sharing, knowledge and experience innovation. The pursuit for better economic and ‘other conditions’ has to be perpetuated based on the ‘initial ground investments’ that should be used as the ‘launch pad for other robust, practically and nationally relevant innovations.’

For example, in road construction and networking, the method of development ethics and development economics in this aspect

---

55 *Business Cycle Theory* in which the dynamic propagation of ‘naturally evolving business cycles’ in which there exist innovation, opening up and then exhausting opportunities for profitable new investment.

require the careful calculation of different aspects and dimensions. In this aspect, 'road networking and construction' is the initial point of economic activity. The 'economic activity' requires the subdivision of [many] other aspects of work, which is professionally engineered. From an economic point, it should undergo the idea of the *Economic Internal Rate of Return (EIRR)*.<sup>56</sup> The *Evaluation Model* considers various conditions of road construction and maintenance strategies. More importantly, in the present Bhutanese context, talking of the progressive achievement of various economic milestones, *design elements* constitute an important design standard. The selection of the appropriate road design standard is critical to the overall efficiency of the road network to be installed, and certain elements will have a more rigid standard than others depending on the location of the road or road segment.<sup>57</sup> In this project, resource management objectives with other environmental considerations and economic evaluations also serve as a professional guide to professional road construction and networking processes. The 'road design criteria' involve: road width, number of lanes, lane width, design speed, size and type of vehicle, turnout spacing, traffic service, speed, and sight distance, and horizontal and vertical alignments are various scientific road construction considerations. [These] should provide professional construction opportunities as well as a professional road construction outlook. Road surfacing and average sediment yield calculate the wheel pressure of the cars vis-à-vis the pavement structure.<sup>58</sup>

These syntheses of ideas from various scientific factors and engineering characteristics allow 'better road construction techniques.' In the 1990s, road constructions involved slope cutting employing the ordinary 'bulldozing concept.'<sup>59</sup> In light of the

56 Economic Analysis of the Rural Roads Improvement Project in Cambodia.

57 Food and Agriculture Organization. (n.d.). *Watershed Management Field Manual*. FAO Conservation Guide Series.

58 Ibid.

59 In this concept, the side road cuttings were initiated by a bulldozer. It used to clear and grub the road construction area. The grubbing of the organic debris, for example tree stumps and inorganic debris like the stones and

various aspects of road construction and land reclamation practices that were adopted, and bringing this professionalization technique example, it underscores the narrative of professionalism, upscaling, upskilling and professional development.<sup>60</sup> Notwithstanding the nature of landscape and the innovation of road construction practices, [this] require the recollection of various modern scientific approaches to road construction so that the construction fits within the *Rules*<sup>61</sup> and scientific approach and interventions. So one aspect of professional output is the ability to manage best professional results within the [ambit] of the legal interventions. Many things has to be built on the foundations that are and were built on the past experiences, skills and knowledge base. The Three R principle in professionalism states *Responsibility*, *Risk Taking* and *Respect*.<sup>62</sup> To increase professionalism we ought to embrace responsibility, demonstrate respect, and practice risk-taking. Professionalism can mean a form of institutionalized perfectionism. More than any other aspect of the definition, professionalism means the use of specialized knowledge based on the highest principle of competency, honesty, integrity, accountability, and self-regulation.<sup>63</sup> The systemic components of what is 'professional' is constantly on the change. It includes consideration and an emphatic approach with courtesy. However, the concept is now evolving to include the concept of 'matured responsibility.' More importantly, it is based on unwritten rules of attitude, values, approaches, and communication styles.<sup>64</sup>

---

boulders were pushed down the slopes risking the people living downhill. As in Bhutan, most road construction used the straight blade bull dozers and earth is moved down with aid of gravity. In the summer seasons, the moved down earth generate the cascade effect of landslides, thus activating a catastrophic landslides in road construction areas. Equally with the benefits, road construction resulted in landslides and land degradations.

60 The *Sustainable Land Management Project (SLMP)* has greatly enhanced land protection and innovative farming practices. This helps to make Bhutan's farming communities' climate resilient and adapt to the changing needs.

61 *Road Construction Rules*, 2013.

62 Phelps, H.P. (2006). *The Three Rs of Professionalism*. Kappa Delta Record, p. 71.

63 Porcupile, W. D. (2015). *What is professionalism?*

64 Taylor, D. D. & Campbell, L.S. (n.d). *Professionalism at workplace*.



One of the expanding fields of professionalism is the emergence of the ability to ‘cope and carry on with the expertise.’ It is the ability to maintain and promote the best ideals of professionalism based on the theory of continuity and change. Development is the ability to progress change with continuity.

## VI. Evaluating the services

The lack of ‘systematic rigour’ is the root cause of services, be it legal social, or other services to fall short of the standards like efficiency, quality, and value that we could require and attain. The metrics for measuring the quality and the need for ‘quality movement’ and ‘standard for metrics’ are important parts of the solutions. The use of data, artificial intelligence, and other technologies are relevant for improving the quality and enhancing the quality service continuum.<sup>65</sup> In this context, we need to evaluate the continuum of professional services and analyze how these affect and lead to inefficient and low-quality services and perpetuate the continuity of these practices. In most aspects, the absence of ‘quality culture,’ contributes to the ‘vicious circle of issues.’ It affects ‘industry work environments’ and creates a vacuum of ‘non-quality standards’ which is not beneficial for the broader national work and capital industry.<sup>66</sup>

Evaluating the services has to be based on various categories of priority. It has to be assessed based on objective and measurable outcomes and standards. What we require today is the analysis of data, value metrics, and evaluation methodologies that demonstrably measures the services and the quality of services. We cannot ignore the subjective goals of the clients: and any better services would be rated ‘inefficient’ on the subjective gauging by the consumers of services. Unless these ‘variable contexts’ are included, it will not be objective and the assessment may be prejudicial. [These] may

---

65 Linna, W.D. (2020). *Evaluating Legal Services: The Need for Quality Movement and Standards Measures of Quality and Value*. Research Hand Book on Big Data. Edward Elgar Publishing Ltd.

66 Ibid., p.2.

prejudice the objective nature of assessments: and the works, for that matter, have to be relatively structured to exhibit coherence and standards. For example in the area of legal services, it is [must] to evaluate the legal services, access to law and judicial services, legal information, and basic legal service commodities.<sup>67</sup> In one essay, Richard Susskind has said that the evolution of the legal services must occur in a continuum, from bespoke services, to standardized, to systematized, cheaper and faster. They argue that standardization has been based on normative values rather than evidence-based practices that has metrics for evaluating the quality as well as the value of the services. This provides the fundamental processes and metrics to evaluate, improve and expand access to legal services.<sup>68</sup>

In any service for that matter, the concept of a ‘continuum of improvement’ requires data and technology. This is to establish standards and metrics for quality that assess the problems, evidence-based inspection, assessment of service delivery, and train of learning.<sup>69</sup> The systemic redesign of the workflow is necessary to ensure that humans and machines augment the progress of human activities. The strength of the machine should compensate for the weaknesses of human beings.<sup>70</sup> Professionally, there are [not] many robust methods to assess competency as well as allow the delivery of the services. The concept of ‘lean thinking’ and ‘lean approach,’ targeted at improving operational performance and attaining customer satisfaction, is permeating into the manufacturing industry globally where business leaders are implementing the approach

---

67 Linna, W.D. (2016). What We Know and Need to Know About Legal Start Ups. *S.L.C. Rev.*, 389, pp.396-399.

68 Linna, W.D. (2020). *Evaluating Legal Services: The Need for Quality Movement and Standards Measures of Quality and Value*.

69 One of the most important aspects of evaluation is the ability to use the knowledge gained from evaluation practices to allow the development of competitive edge in knowledge creation and knowledge transfer. Unless these lessons are used to proliferate and advance the use of ‘scientific methods’ to improve the services, evaluation methods can remain subjective to human interpretation and human interventions.

70 Davenport, T. H. & Ronanki, R. (2018). *Artificial Intelligence for the Real World*.

at different operational areas in their organization for operational improvement purposes.<sup>71</sup> The concept is slowly ‘permeating’ to all development sectors.

According to Gershenfeld, the competitive leaders from various sectors of the economy consider the lean approach as one of the central success factors such as Toyota for establishing high-quality products and continuous production flow, and Dell for providing customized personal computers in high volume. The lean approach is an outcome of manufacturing leaders acknowledging the importance of customers’ satisfaction and the necessity of responding rapidly to customers’ needs. The lean approach aims towards serving customers with the exact products or services demanded with higher quality, lower price, and shorter time period response.<sup>72</sup> In another field of study, the conceptual understanding of *Six Sigmas*<sup>73</sup> provides a linear understanding of product and service quality. It is a vision of service and product quality that looks at developing defect-free products and services and acts as the guiding management tool in the development-economic theory.

## VII. The sigma principles

The *Sigma Principle* integrates itself with leadership skills and styles, process management, and improvement endeavours.<sup>74</sup> The *Six Sigma Principle* states:

71 Smith, A., & Thangarajoo, Y. (2015). *Lean Thinking: An Overview*. Industrial Engineering & Management. Department of Mechanical Engineering, University of Melbourne, Victoria, Australia.

72 Ibid.

73 In applying *Six Sigmas*, organizations and teams seek to implement strategies based on measurement and metrics. However, this system has to be accompanied through matured leadership, and enhanced institution process. It work alongside other skills like experience, skills and knowledge to provide a mathematical calculation to the foundations of decision making.

74 The Council for Sigma Certification. (2018). *Six Sigma: A Complete step-by-step Guide*. Harmony Living, LLC, Buffalo, New York.

### **A. Customer-Oriented Improvement**

In this aspect, they take the *Voice of the Consumer*. This is to establish what the customer really wants and is a primary principle of improvement. It combines the knowledge of measurement with statistics, and process improvement methods to increase customer satisfaction and value. This helps to identify the areas of concern, prioritize on the work challenges, and engage in product and service developments. It builds on the concept of 'value stream.' The 'value stream process' helps to determine and identify the areas of concern, waste and improvement.

### **B. Continuous Process Improvement**

One of the major aspect of *Sigma Principle* is the continuous process of improvement. It identifies and prioritizes the areas of opportunity on a continuous basis. Once one [area] is improved, it moves on to another area of improvement.

### **C. Variation**

The process of continuous improvement requires eliminating the 'variation' in the process. It is agreed that [every] process has a variation: inherent variation. For example, in making a pizza, there is variation in the amount of the ingredients- based on the size and shape of the Pizza. So these variations are expected to enhance the '*ultimate customer experience*' in the pizzas.

### **D. Equipping People**

One of the most important aspects of building improvement is the equipping of people. It entails to engage and collaborates with the diverse expertise of their specific domain for problem-solving. Putting in the talent and experience inside the people with motivation is an essential component of '*equipping people*.' Without a strong motivational force, equipping people with talents would do little good contemporarily.

## E. Controlling the Process

Lean Production depends on processes that are capable of meeting requirements without rework — doing it right the first time. By integrating the tools and techniques of Six Sigma with lean manufacturing one can make and deliver high-quality, low-cost, customer-specified products on a sustained continuously on improving basis.<sup>75</sup>

## VIII. The six sigma methodology

The *Six Sigma* methodology which is abbreviated as *Define, Measure, Analyze, Improve, and Control (DMAIC)* is a roadmap for problem-solving in product-process improvement. While the *DMAIC* methodology may appear linear and explicitly defined, it should be noted that an iterative approach may be necessary. In the *Define Phase*, the leaders of the project create a *Project Charter*, create a high-level view of the process, and begin to understand the needs of the customers of the process. This is a critical phase of *Lean Six Sigma* in which teams define the outline of their efforts for themselves and for the organization's leadership.<sup>76</sup> In the measurement phase, it is critical throughout the life of the project and the team focuses on data collection to determine the start point or baseline of the process and look for clues to understand the root cause of the process. The data collection takes time and effort it's good to consider both at the start of the project. Another phase is the '*analyze phase*.' This phase is often intertwined with the *measure phase*. In this phase, the data is analyzed with the process in an effort to narrow down and verify the root causes of waste and defects. Once the data and the processes are studied, it is time to move on to solution development. A structured improvement effort can lead to innovative and elegant solutions. In the *control phase*, they begin to document exactly how they want to pass that structure on to the employees who work within the process.<sup>77</sup>

75 Sadia, S. (n.d.). *Introduction to Six Sigma*. Department of Statistic, Aligarh.

76 Prasath, A. & Beemaraj, K.R. (2018). *Six Sigma Concept and DMAIC Implementation*. ResearchGate.

77 Ibid.

## **IX. Reforms in work competencies**

### **A. Standard of Work**

There are four basic reforms to ensure that there is quality in the services. It actualizes the standard of work, systemic detection of error, review, and performance measurement.<sup>78</sup> While the standard of work states that ‘we have to create a process map’ to guide the works with a checklist and other resources. By using these tools, it can reduce variance and eliminate it, if there is any. For example, it is stated through research that in the service of law and the legal profession, lawyers tend to assert that their work is comparatively complex and process improvement is not relevant.<sup>79</sup> Although there are a diversity of opinions on the nature of judicial and legal works and their fields of expertise, it accounts that the need to complete the works and create opportunities to engage in continuous improvement is required and stressed. It introduces transparency and fosters a common and shared understanding of the work processes that lead to building a foundation for continuous improvement.<sup>80</sup>

### **B. Systematic Error Detection**

Be it in the field of law and legal practice or in another, a surprising number of tasks are subject to one point of human failure or the other. There is a systematic error detection requirements as part of the quality control process. [Even] if the error states are low, we should be able to assess the current methods of work, including resources. Such systematic error detection can help to produce high-quality results and enhance professionalism in the pursuit of excellence.

---

78 Linna, W.D. (2020). *Evaluating Legal Services: The Need for Quality Movement and Standards Measures of Quality and Value*.

79 Saks, M., & Benedict, A.R. (1977). Evaluation and Quality Assurance of Legal Services- Concepts and Research. *Law and Human Behaviour*, 373.

80 Linna, W.D. (2020).

### C. Review

The concept of review fosters a quality culture that engages ‘continuous improvement’ dynamics. It is based on ‘root cause analysis,’ finding the cause of the error and enacting countermeasures. The methods of review like ‘drug testing and medicines testing’ and the concept of ‘after-action reviews’ allows corporate governance and allows the scope for improvement in the future.’

### D. Performance Measurement

One of the idyllic ways to allow more professionalism and penetration of best quality control is the ‘performance measurement.’ While these aspects seemingly are clear and guided, these methods have higher chances of prejudice and misjudgment. These are based on the primary services and established baselines from where they eye to improve. In the best organizations, the metrics are robust, scientifically tested, and calibrated. The improvement of the diagnostic value of performance metrics requires a deeper understanding of the problems of the service consumers, their values, and the processes undertaken to resolve them.<sup>81</sup>

### X. Standard quality and value metrics

With globalization and competency-based interventions at many levels, the idea of standard quality and value matrix are both relevant and significant. They form the most important element of analysis for the enhancement of services. This is premised on individual competence, the product of services, the product of the ‘*entire system*’ and the ‘*wider implications*.’<sup>82</sup> This will help to change the pathway of the services- and enhance service delivery standards. The quality dimensions require *Quality Management Principles (QMP)* based on:<sup>83</sup>

---

81 Ibid., p. 10.

82 Ibid.

83 International Organization for Standardization. (2015). *Quality Management Principles*. Geneva, Switzerland.

- a. Customer-focus
- b. Leadership
- c. Engagement of People
- d. Improvement
- e. Evidence-based decision making
- f. Relationship Management.

These are professional values and standards that directly bear on professional service capacities. In every aspect, there should be quality and standards which should be rated based on assessment and service rating criteria.<sup>84</sup> It should have focused quality control mechanisms with a *Focused Quality Area (FQA)*. More importantly, it is stated by *Forbes Insights* that:<sup>85</sup>

*You need to define what quality means, define quality goals, disseminate these objectives, measure group and individual performance and then reward those who are making it happen.*

It poses the questions about what constitutes the most vital components of a true, comprehensive culture of quality. In this aspect of progress, they aspire quality vision, quality values and leadership.<sup>86</sup> In this aspect, it is agreed that customers define what quality is, and incentives are very necessary to carry on with quality. And the best quality is the ability to give the customers

---

84 Australian Children's Education & Care Quality Authority. (2017). *Guide to the National Quality Standard*.

85 *Forbes Insights* is the strategic research and thought leadership practice of Forbes Media, publisher of Forbes magazine and Forbes.com, whose combined media properties reach nearly 50 million business decision makers worldwide on a monthly basis. Taking advantage of a proprietary database of senior-level executives in the Forbes community, Forbes Insights conducts research on a host of topics of interest to C-level executives, senior marketing professionals, small business owners and those who aspire to positions of leadership, as well as providing deep insights into issues and trends surrounding wealth creation and wealth management.

86 Forbes Insight. (2014). *Culture of Quality: Accelerating Growth and Performance in the Enterprise*. New York.



what they want.<sup>87</sup> It requires the need for a shift from normative to empirical quality standards so that empiricism serves as a final area to build a culture of services and quality service protocols. It entails the development of quality and objective metrics by ensuring the work-product metrics. One of the important aspect of 'knowledge management' is the integration of data, information and knowledge.<sup>88</sup> More so, the conceptual progression from data to knowledge provides a linear relationship between qualities and helps to create a spiral of organizational knowledge creation. It exhibits externalization and socialization of processes [that] allows the right knowledge at the right place at the right time in the right format.<sup>89</sup> While 'knowledge management' can be partially part of the quality development process, it serves as an important aspect of development. Knowledge capture and sharing<sup>90</sup> create a basis and knowledge base so that there is knowledge creation, knowledge innovation, knowledge transfer, and knowledge sharing.

The 'quality aspect' of a development process- that connects [with] the continuum of development priorities, is serving as a very instructive model. 'Standard' and 'quality' are two separate aspects of development. It has to connect and leverage within its dimensions so that quality has to supports the standard. However, to build the initial basis of the quality, standardization processes in the official, as well as private work culture, have to be developed. This is part of the value creation in the continuum process. The role of a successful culture of *Knowledge-Creating* and *Knowledge-Sharing Organization* helps to develop a system of shared values and norms and create a system that seeks knowledge. This can be based on a shared culture of trust and respect. Experts emphasize

---

87 Ibid.

88 Uriarte, F. (2008). *Introduction to Knowledge Management: A Brief Introduction to the basic elements of knowledge management for non-practitioners interested in understanding the subject*. National Academy of Science and Technology, Japan.

89 Ibid., p. 13.

90 Awad, E. M., & Ghaziri, H.M. (2003). *Knowledge Management*. Pearson Education International.

that positive and shared group values that treat people well and empower them are critical from a business viewpoint.<sup>91</sup> In this pursuit, a knowledge-based strategic transformation is critical for the natural extension of strategic processes. It has to develop core competencies based on strategies with the questions of 'how,' 'what' and 'which.' More importantly, the process of staying ahead of the game, finding values from the intangibles, using employees as strategic knowledge assets, evaluating strengths and weaknesses, and using communication tools to enable widespread commitment and significant added value. The concept of innovation and strategic transformation should highlight *value-driven intellectual capital*.<sup>92</sup> Amongst many aspects, the practical aspects of 'right organizational culture,' 'management styles' and the 'human focus' is the most dynamic asset.<sup>93</sup> Next comes the questions of retention, igniting their interests, meaningful engagements, creating a full knowledge matrix, rewarding knowledge and, creation of knowledge. This requires creative effort. The concept of 'communities of practice,' the social model for knowledge creation and sharing and re-engineering the use of work-processes knowledge are also important.

## **XI. Use of development folder**

In one of the developing case scenarios at Rafael<sup>94</sup>, they discuss the concept of a *development folder*. In this, the use of continuity in the development aspect- the use daily log of activities associated with a singular project. The log includes the information and data, calculations, test results, and design considerations.<sup>95</sup> It is shared

---

91 Pasher, E., & Ronen, T. (2011). *The Complete Guide to Knowledge Management: A Strategic Plan to Leverage Your Company's Intellectual Capital*. John Wiley & Sons, Inc. United States of America.

92 The development of '*right culture*' and emphasizing its '*importance*' is important to ensure that we have to adapt to changing values in managing knowledge and experiences and provide core and high appreciation that customizes on competition and competitive values.

93 Pasher, E., & Ronen, T. (2011). *The Complete Guide to Knowledge Management: A Strategic Plan to Leverage Your Company's Intellectual Capital*.

94 The combat aircraft manufacturing industry.

95 Pasher, E., & Ronen, T. (2011).

that an individual report which was written during the process of the project is far better than it is written at the end of the project. This is called incremental documentation and it provides space for competitive methods and engineering techniques and forms a 'workbook.'<sup>96</sup> This process takes institutional self-discipline, helps to create extra insight, and enables the wider and more diversified use of the ideas in the documentation of the *Research and Development [R&D]*. The use of information technology and quality mentoring are essential to sustain these work habits, learn through experience, and provide professional preparations.

Pertinent to any service is the use of customer 'focus points.' This is to allow the harnessing of customer knowledge as part of the development strategy with the process of innovation. As part of this, project data management is an important aspect of project handling and data management.<sup>97</sup> This requires 'measuring and managing' intellectual capital and determining what we need as a society. These require an assessment of the current practice knowing what we have and assessing the *key success factors (KSFs)*. These require focusing on *R&D* and gaining improvements; and focusing on processes, human resources, and navigating the aspects of development through:<sup>98</sup>

- a. Financial focus;
- b. Customer focus;
- c. Human focus;
- d. Process focus; and
- e. Renewal and development focus.

This is to navigate with the broadened vision to encompass the [whole development picture] with the comprehensive parameters that customize 'mission with strategies' and 'indicators.' The use of navigator frameworks that provides the basis for setting performance

---

96 In the aerospace industry, they use the workbook system in which they collate all industry processes to allow the development of scientific data.

97 Project Development Manual. (2006). *Project Data Management*.

98 Pasher, E., & Ronen, T. (2011).

goals enables to establish of competencies of the nation and helps to manage intellectual capital and create responsible organizations. It helps to integrate innovation, create knowledge organizations and expansion of *Moore's Law*.<sup>99</sup>

## XII. Conclusion

The use of innovation and *R&D* that provides and enhances services is appealing to the society, enlarging the social consumer base, and inculcating innovation as part of the job is an important aspect of continuity in the development process. It can be assured that focusing on strategic discussions on innovation, exchange of perspectives, implementing knowledge management, and utilizing principles of 'intellectual capital' is an important precondition to fulfill the vision for a compatible society that looks to new sets of engineering parameters to significantly improve the chances of 'effective interventions.' In this course of action, keeping continuity as a focus of development- we should pioneer assessment, and derivation of intellectual capital goals, beginning with pilots, starting with small ones that have a high potential contribution, with effective knowledge-capturing mechanisms. The concept of *communities of practice [cop]* that build competencies, skills<sup>100</sup> and long-term strategies in the particular development stream. There should be a *knowledge management framework* that integrates knowledge taxonomy which maps knowledge gaps, and stakeholder analysis, and provides *learning organizational diagnostics (LOD)* so that we build skills and experiences and work attitudes based on information, knowledge and adaptable work processes.<sup>101</sup>

---

99 In this concept, Goordon Moore has predicted that the number of transistors in the chip board will double every two years, thus promising an exponential growth in performance and exponential decrease in size. This is mostly happening in the *Intel Corporation*.

100 Uriarte, F. (2008). *Introduction to Knowledge Management: A Brief Introduction to the basic elements of knowledge management for non-practitioners interested in understanding the subject*.

101 Ibid.

# THE ROLE OF LAW ENFORCEMENT OFFICIALS IN ENSURING A DRUG-FREE BHUTAN

JANCHU DORJI\*

**Abstract :** The law enforcement officials including but not limited to the *Royal Bhutan Police*, the *Office of the Attorney General*, the *Royal Courts of Justice, Revenue and Customs*, and *Immigration* among entities. The concept of drug law, according to Buddhist jurisprudence, first originated from *Guru Padmasambhava's Ten Rationales* and the *Legal Code of Zhabdrung Ngawang Namgyel, 1652* which was later codified in *Thrimzhung Chhenmo, 1959*. In 2004, it was then incorporated in *Bhutan Penal Code, 2004*.

With new and specific legislation on drugs principally the *Narcotic Drugs, Psychotropic Substance and Substance Abuse Act and Tobacco Control Act of Bhutan* being enacted, the role was then specifically delegated to the *Bhutan Narcotic Control Authority* and the *Royal Bhutan Police*. While many reforms were initiated with the implementation of the new laws with enhanced surveillance on drugs related offences, there are numerous challenges that these institutions face. Now, with the recent Royal Command on the 115<sup>th</sup> *Royal National Day Address* on 17 December 2022, these institutions along with other law-implementing agencies have greater roles to play in ensuring a safe and drug-free society. This article highlights some new insights into the administration of a drug-free society.

## I. Introduction

During the 115<sup>th</sup> *National Day* celebration on 17 December 2022, His Majesty the King commanded that the one issue poses huge threat to our national security, economy, the well-being of our people and our children, and above all, the future of our nation: *We are a small population. Every child is precious. We cannot afford to lose any child or for that matter, anyone to substance abuse. We must not allow*

---

\* Senior Attorney at the Office of the Attorney General.

*substance abuse to jeopardize their future. Substance abuse is already taking root among our children, and we cannot let it proliferate. We must act now before it is too late, and do whatever it takes to eradicate this threat. Failure is not an option.*<sup>1</sup> Based on the inspiration drawn from His Majesty's *National Address*, the author came up with this article. It will narrate the brief history of drug laws in Bhutan, the current trend of drug use based on available data, and the future action that needs to be implemented in order to eradicate drugs and substance abuse threats in Bhutan.

## II. Brief history of drug laws in Bhutan

The seven laws<sup>2</sup> of *Guru Padmasambhava* and the *Ten Rationales*<sup>3</sup> for the enactment of laws in response to different situation mentions that the law is meant to correct those doing wrong things. The rules governing miscreants, restraining present misbehaviour, and checking future misbehaviour have some contextualized relevance to present drug laws and criminal jurisprudence primarily on social control. Further, never resorting to alcoholic drinks, meat consumption and other adulterated foods are some of the principal promulgations by *Guru Padmasambhava*<sup>4</sup> in *Pema Kathang*.<sup>5</sup> Similarly, the 1652 *Legal Code* of *Zhabdrung Ngawang Namgyel* [*Ka-Thrim*], section 6 specifically mentions the requirement

---

1 *His Majesty's Royal National Address to the Nation* on the occasion of the 115<sup>th</sup> *National Day*, 2022.

2 The seven laws are four elements of fire, wind, water and iron with the laws of wood, earth and space.

3 Ten Rationales for law by *Buddha Shakyamuni* are: 1. For the wellbeing of the community; 2. For convenience of the community; 3. In order to curb miscreants; 4. For the ease of well-behaved monks; 5. In order to restrain misbehavior in the present; 6. In order to check future misbehavior; 7. In order that those who have no faith [in this religion] may acquire faith; 8. In order that those who have faith may be further strengthened in their faith; 9. In order that the good doctrine (*Dhamma*) may last long; and 10. For the promotion of discipline.

4 Tobgye, S. (2016). *Guru Padmasambhava and Jurisprudence in Bhutan: Golden Yoke and Silken Knot. Journal of Bhutan Studies*, 34.

5 *The Chronicle of Padma, a Biography of Guru Rinpochoe*, revealed by *Ugyen Lingpa* has 108 chapters.

[within the sphere competence of a] judicial official [*drang dpon*] and [there are investigation officers] [*bsher dpon*] whose duty is to give judgement (section 12 of the *Legal Code*) which was exercised by the *rDzong-dpon*<sup>6</sup> in the dual system. Further, under section 11 of the 1652 *Legal Code*, the essence of the state law is stated to be *five fundamental laws and sixteen pure rules of human and the others [abide by laws]. The duty of the commoners was to observe the ten virtuous acts and ten unvirtuous deeds to be given up* (section 13 of the *Legal Code*). Similarly, the *Legal Code* under section 15 mentions that “*If a crime is not punished, later, the stream of crimes will not stop,*” and that one has to act in accordance with law [section 33 of the *Legal Code*].

The authority to enact laws chiefly remained with the King until the Fourth *Druk Gyalpo* Jigme Singye Wangchuck. In keeping with the spirit of His Majesty the Third *Druk Gyalpo*'s decision to give up his power of veto in the *Assembly*<sup>7</sup> to vest the same authority with the *National Assembly*, as the legislative body of the *Kingdom of Bhutan*, to enact laws and amend existing laws and acts.<sup>8</sup> However, no provisions under the *Thrimzhung Chhenmo* covered drugs and related offences. Although the harmful effects of the emerging drugs and related offences were on rise, Bhutan had little to tackle and curb this rising problem until Bhutan became a member of the *United Nations* in 1971, followed by a Notification on Narcotic Drugs and Psychotropic Substance in 1998. The issues of drugs were brought to the forefront after the ratification of the *World Health Organization's Frame Work Convention on Tobacco Control* in its 82<sup>nd</sup> Session on 12 August 2004.<sup>9</sup> In a major legal reform, the *Bhutan Penal Code, 2004* came into force on 11 August 2004 covered offences related to *protected species* and *controlled and other harmful substances*. The highest sentencing is prescribed as the

6 *The Golden Yoke: The Legal Code of Zhabdrung Ngawang Namgyal, 1652* (Engraved on the Black Slates at the Punakha Dzong).

7 29<sup>th</sup> Session of the *National Assembly*, 1968.

8 *The Thrimzhung Chhenmo*, 1959.

9 *The Tobacco Control Act of Bhutan, 2004*.

felony of the third degree for *adulteration of drugs* with the least being misdemeanour. However, the penal provision could not comprehensively cover the offence of drugs.

The *Parliament of Bhutan* then enacted the *Tobacco Control Act of Bhutan 2010*.<sup>10</sup> It is specific legislation on Tobacco and Tobacco Products. At the same time and in subsequent years, the penal provision in which section 497 which covers illegal cultivation, production, or manufacturing of controlled substances was enhanced to a second-degree felony from fourth-degree. Similarly, section 507 of the *Penal Code* was also amended with a separate level of sentencing categorically reflected as misdemeanour and petty misdemeanour.<sup>11</sup> On 19 January 2012 during the 8<sup>th</sup> Session of the *First Parliament*, the *Tobacco Control Act* was amended followed by another amendment in 2014.<sup>12</sup> The *Act* was further amended in 2021<sup>13</sup> as the *Tobacco Control (Amendment Act) of Bhutan 2021*. In order to appropriately counter the rising issue of transaction and consumption of drugs and ensure an appropriate preventive, regulatory and control mechanism in line with the international drug conventions, a specific law on the *Narcotic Drugs, Psychotropic Substances and Substance Abuse Act of Bhutan 2018* was enacted.<sup>14</sup> With this enactment, two specific laws to counter the rising problems of drugs came in place. This empowered the law enforcement officials to deal with the issue of drugs, tobacco, and its related products. In pursuant to this, section 496 to 501 of the *Penal Code of Bhutan 2004* was repealed.<sup>15</sup> This ultimately underscored the specific roles, and the quantum of conviction specific to the crime as provided under the *Narcotic Drugs, Psychotropic Substances and Substance Abuse (NDPSSA) Act of Bhutan 2018*.

---

10 During its 5<sup>th</sup> Session of the *First Parliament of Bhutan*.

11 During the 7<sup>th</sup> Session of the *First Parliament of Bhutan* on 24 May 2011.

12 17 June 2014 by the *Second Parliament*.

13 During its 5<sup>th</sup> Session of the *Third Parliament of Bhutan*.

14 Enacted on 11 May 2015.

15 During 4<sup>th</sup> Session of the *Third Parliament of Bhutan*.



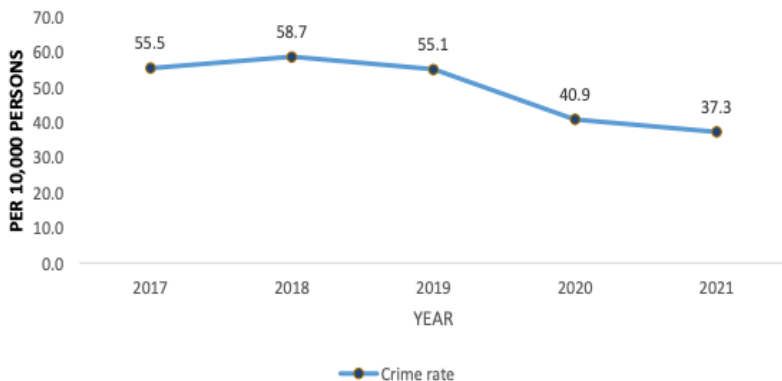
### III. What does the Narcotic Drugs, Psychotropic Substance and Substance Abuse Act (NDPSSA) of Bhutan 2018 say

The *Act* has categorically provided *Schedule-I* on narcotic drugs with no medicinal value; *Schedule-II* on psychotropic substances with no medicinal value; *Schedule - III* on narcotic drugs with medicinal value; *Schedule-IV* on psychotropic substances with medicinal values; *Schedule-V* on precursor chemicals under *Table I* and *II* of the *Convention Against Illicit Traffic in NDPS 1988*; *Schedule-VI* on other substances of abuse; and *Schedule-VII* on minimum quantity for illicit trafficking. Based on whether the drugs, psychotropic substances, and precursors bear medicinal value or not, the sentencing is also determined accordingly. The highest sentencing of a first-degree felony is prescribed for “*illegal cultivation, domestication or harvest of plants and its derivatives*” under section 127.1 of the *Act* while the lowest is a misdemeanour in most instances.

### IV. What is being done: data analysis

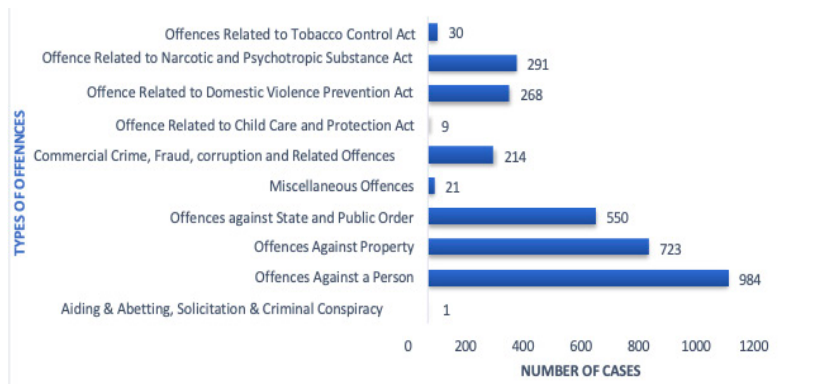
#### A. The Crime Reports in Relation to Drugs

The crime rate which is calculated at number of crime incidents for every 10,000 people has declined over the last few years with 55.1 in 2019, 40.9 in 2020 and 37.3 in 2021 as provided below:



Source: Statistical yearbook 2021 of the Royal Bhutan Police

In the year 2021, 3081 crimes were reported out of which 291, the fourth highest, were reported in relation to narcotic drugs and psychotropic substance abuse representing 9.44% of the overall crimes in Bhutan as provided below:

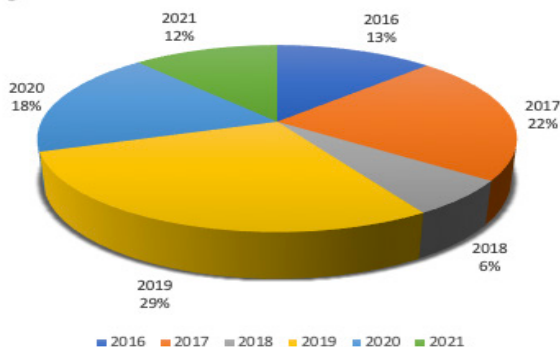


*Source: Statistical yearbook 2021 of the Royal Bhutan Police*

The total number of crimes committed in relation to narcotic drugs and related offences from 2017 to 2021 is 21,453. That is, 316/3096 in 2016, 555/4081 in 2017, 157/4310 in 2018, 715/4085 in 2019, 459/3062 in 2020 and 291/3091 in 2021 as provided below:

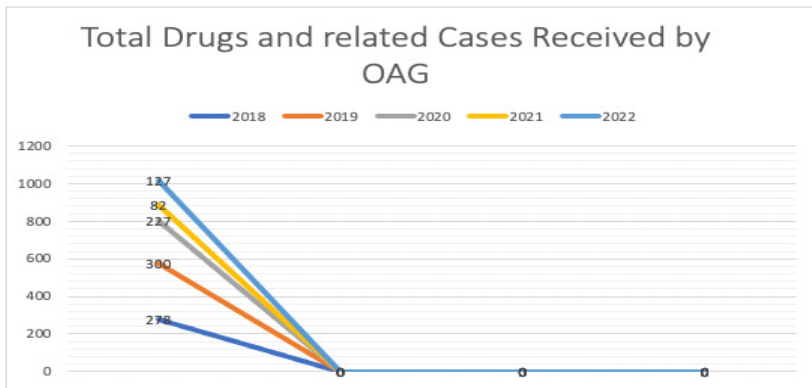
## B. The total cases received by the Office of the Attorney General

### Drug Crime Committed from 2016-2021 in Bhutan



*Source: Statistical yearbook of the Royal Bhutan Police 2017-2021 and Statistical Yearbook of Bhutan 2022*

Article 29 of the *Constitution of Bhutan* empowers *Office of the Attorney* as the central prosecution and litigation office, and the *Office of the Attorney General's Act of Bhutan 2015* is a specific governing law. Once the *Royal Bhutan Police* investigates the criminal cases based on the *Police Crime Report* filed by complainants, the misdemeanour and above cases, as provided under *Royal Bhutan Police Act*, are forwarded to the *Office of the Attorney General* for onward prosecution before the court of jurisdiction.



Source: Department of Justice, Office of the Attorney General

## V. The way forward

### A. Stakeholders' coordination and collaboration

Bhutan Narcotic Control Authority (BNCA) is primarily responsible to enhance the tobacco and drug control, prevention, treatment and rehabilitation services in the country by specifically implementing the *Narcotic Drugs, Psychotropic Substances and Substance Abuse Act of Bhutan 2015* and *Tobacco Control Act of Bhutan 2010* and its Rules and Regulations thereunder. While BNCA has actively engaged relevant stakeholders in fulfilling its mandates, it can go further with aggressive and detective strategies to detect drug peddlers and smugglers by strictly monitoring the drivers through an intermittent drug test, random passenger tests at bus terminals and airports, random tests at mass gatherings including social and religious gatherings, and random household sampling tests in urban

centers among others. If these activities are carried out in close collaboration with other law enforcement officials and agencies, then drug abusers can be reduced to a great extent.

### **B. Aggressive Crime Detection**

The *Royal Bhutan Police* is the legitimate institution to investigate on crimes committed under the *Penal Code of Bhutan*, *NDPSSA*, *Tobacco Control Act* and any other law that prescribes an element of the crime. The amount of time dedicated to investigating any category of crime is not specified thereby creating a lacuna in providing professional investigation services. In this regard, the *Royal Bhutan Police* may strategize and professionalize by building and enhancing investigation on drugs and tobacco through advanced training, and forming *Anti-Drug Task Force* at the front, particularly at the international checkpoints. The COVID-19 Task Force, *Adhoc* Drug Tests Groups at strategic points including Night Clubs and other similar places, and tests at entry and exit point of travelers among others will also help.

### **C. Maximum Sentencing Policy**

The *Royal Bhutan Police*, *Office of the Attorney General* and the *Royal Court of Justice* must develop a Joint Policy on the maximum sentencing specifically on drugs and tobacco. If this is developed at the earliest and be implemented accordingly, it will send a greater deterring effect on the community.

### **D. Enhanced Awareness**

Currently, most of the awareness programs are pre-planned and are financed by the Royal Government or aided by development partners. I personally feel that more can be done in this particular field, especially at the grass root level. Following are some of the new methods that can be initiated in reaching to the greater public:

1. Create social media account to create awareness on laws related to drugs and share on various social media platforms;

2. Create a social media group, for instance, Telegram Group, to create awareness;
3. Coordinate and collaborate with other agencies that conduct meetings, training and seminars;
4. Appear virtually in most gatherings in close coordination with other event organizers; and
5. Share information on drug laws at various checkpoints including in-country checkpoints like Bumpagang in Chukha or Rinchending check point in Phuentsholing, and international checkpoints like Phuentsholing, Samdrup Jongkhar and Gelephu checkpoints.

### **E. Statutory Amendments**

While the current drug laws are stringent, certain provisions especially on rewards to the informers must be clearly spelled out. Similarly, law enforcement officials must be adequately incentivized to further motivate them. In addition, anti-drug squads must be empowered to invoke the *Civil and Criminal Procedure Code* which otherwise is not available for now.

## **VI. Conclusion**

The use of drugs and harmful substances proliferates through their addictive nature- which completely binds with the addictive nature of the human character. Drug use is a problem that is heavily dependent on the use of tobacco and tobacco-related products. These products are intertwined thus ‘forming an indirect dependency’ in the use as well as in the supply chain. More prominently, we had been emphasizing the use of drugs – which are categorically emphasized in our laws. Conveniently, our laws have dictated ‘what a drug is.’ In this parlance, to ensure that Bhutan becomes a drug-free society, every individual has a responsibility to ensure that we take steps to protect every member of the family and the community we live by. This will reinforce adequate surveillance and effective community

intervention. Rigorous COVID-19 prevention-like strategies have to be developed to ensure that there is surveillance, detection, prevention as well as legal remedies. These supports will help to ‘re-invent the strategies of drug control’ and allow a wider space for effective intervention and control.

# AN INCLUSIVE AND SUSTAINABLE LEGAL AID IN BHUTAN: INSTITUTIONAL AND POLICY REFORMS.

PEMPA SHINGDAN\*

NIMA DOLMA TAMANG\*\*

**Abstract:** The primary objective of legal aid is to enhance equal access to justice. It is statutorily recognized and guaranteed under various legislations viz., article 9 (6) of the *Constitution of the Kingdom of Bhutan 2008*; section 34 of the *Civil and Criminal Procedure Code of Bhutan 2001*; section 180 of the *Child Care and Protection Act 2011*; section 9 (f) of the *Jabmi (Amendment) Act of Bhutan 2016*; section 86 of the *Evidence Act of Bhutan 2005*; section 27 (4) of the *Domestic Violence Prevention Act of Bhutan 2013*; and International instruments to which Bhutan is a State party, for instance Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and United Nations Conventions on the Rights of the Child (CRC); and others.

The quality of the legal system is determined by the proper implementation of existing laws, not by the number of laws. In order for these laws to be implemented, appropriate policy and institutional reforms must be implemented. The formal introduction of legal aid in Bhutan was delayed due to a lack of policy and institutional reforms. Furthermore, it must be contextualized and modernized because it is a traditional concept recognized globally, but modern challenges necessitate modern solutions. Sustainability, service quality and standards are pertinent challenges. This paper will discuss the issue of sustainability and recommend that appropriate long-term policy and institutional reforms be adopted to minimize the risk of legal aid sustainability among other issues.

---

\* Legal Officer at the Bhutan National Legal Institute (BNLI).

\*\* Legal Officer at the Druk Green Power Corporation (DGPC).

## I. Introduction

Bhutan's governance and development have adopted the oldest and most fundamental social welfare policy. The *Kidu* system instituted by our benevolent Monarchs is an exemplary form of social welfare. Historically, the welfare State has three fundamental responsibilities viz., “(i) to guarantee individuals and families a minimum income irrespective of the market value of their work or their property; (ii) to narrow the extent of insecurity by enabling individuals and families to meet certain ‘social contingencies’ like sickness, old age and unemployment; and (iii) ensure that all citizens without distinction of status or class are offered the best standards available in relation to a certain agreed range of social services.”<sup>1</sup>

The relevant provisions relating to social welfare in legislation include a State-funded program that protects rights against social and economic risks. Bhutan has enacted notable social welfare provisions in legislation such as the *Constitution 2008*, the *CCPC 2001*, the *Labour and Employment Act 2007*, the *Child Care and Protection Act 2011*, and so on. Recently legal aid has been implemented to support equal and fair access to justice, in addition to free health care and education.

Due to several unanswered questions, it took more than two decades to implement the legal aid provision enshrined in the *CCPC 2001*. The primary issue was identifying a spearheading institution for legal aid, which was resolved following the establishment of the Legal Aid Center at the Bhutan National Legal Institute. It represents the culmination of years of research and deliberation on multiple levels. The next question is who should or should not receive State-funded legal aid.

---

1 Briggs, A. The Welfare State in Historical Perspective. In: Pierson, C., & Castles, F. G. (Eds.). (2006). *The Welfare State Reader* (Second ed.). Polity Press. P 16. Retrieved 22.12.2022, from [https://books.google.bt/books?hl=en&lr=&id=OdWdQs8RT1QC&oi=fnd&pg=PA16&dq=social+welfare+legislation:+an+introduction+pdf&ots=BmAxSkRIGe&sig=KzkVwfVVN1w-PvLMYKpx0Vp4TsEk&redir\\_esc=y#v=onepage&q&cf=false](https://books.google.bt/books?hl=en&lr=&id=OdWdQs8RT1QC&oi=fnd&pg=PA16&dq=social+welfare+legislation:+an+introduction+pdf&ots=BmAxSkRIGe&sig=KzkVwfVVN1w-PvLMYKpx0Vp4TsEk&redir_esc=y#v=onepage&q&cf=false).



The Center is in the early stages and is striving to resolve some practical issues. For instance, when and how to provide effective and efficient services to the most vulnerable members of society. Due to the Center's lengthy process of reviewing eligibility criterias, an applicant who requires immediate legal guidance and assistance may not receive the services at the crucial moment. Legal aid should be readily accessible at all stages of the criminal justice system, including the pretrial stage.<sup>2</sup>

Moving forward, the Center could perhaps address the issues of sustainability and quality service, and progressively broaden the scope and extent of legal aid. Service standards are crucial in ensuring that recipients' legal needs are met substantially . This article will suggest some cost-sharing and other mechanisms for catering to the legal needs of indigent and disadvantaged groups. This is to alleviate the financial burden on the State and to ensure the sustainability of legal aid for future generations.

## **II. Existing Laws and Practices in Relation to Legal Aid in Bhutan**

### **A. Access to Justice: Right to *Jabmi* (Lawyer) and the Scope of Legal Aid**

*“A legal system may be very sophisticated with elite professionals and grand court buildings, but there can be no justice if the doors of the court are only open to those who can afford to enter.”*<sup>3</sup> Although everyone has an equal right to access to justice, certain social, economic, and other obstacles prevent people from having equal access to justice. The discussion about access to justice, the right to a lawyer, and the

2 United Nations Office on Drugs and Crime. (2013). *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*. English, Publishing and Library Section, United Nations Office at Vienna. [https://www.unodc.org/documents/justice-and-prison-reform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf).

3 BBC Sounds: Legal Rights, Legal Wrongs. Retrieved December 23, 2022, from <https://www.bbc.co.uk/sounds/play/p03cgfpv>.

right to legal aid must begin with the question of whether the right to legal aid is recognized as a fundamental right in Bhutan.

The right to *Jabmi* is a necessary component of gaining access to justice. The right to choose one's *Jabmi* is a fundamental right enshrined in Article 7 (21) of the *Constitution*, but legal aid falls outside the purview of fundamental rights. Although the terms fundamental right and constitutional right are used interchangeably, they represent two distinct concepts in law. Aside from the rights enshrined in Article 7, all other rights are constitutional rights.

Fundamental Rights apply to all individuals, regardless of race, gender, language, religion, politics, social, economic, or other status. The State, on the other hand, can enact laws to implement constitutional rights through reasonable classification based on factors such as social and economic status. Some of these objectives are emphasized through affirmative legislation, such as improving the lives of women, children, and other vulnerable, impoverished, and differently-abled persons. Therefore, legal aid is not intended for all persons, but rather for certain groups of people to ensure equal access to justice.

All Fundamental Rights *per se* are justiciable and enforceable against the State but all constitutional rights may not be enforceable. Constitutional rights might be guaranteed and enforced at the mercy of judicial interpretations. For example, the *Constitution of India* does not expressly guarantee a Fundamental Right to health. It was recognized as a Fundamental Right by the Indian judiciary through interpretation of the right to health under Article 21, which guarantees the right to life.<sup>4</sup>

The most recent Constitution within the South Asian region has explicitly stipulated legal aid as a Fundamental Right, while some interpret legal aid in reference to Fundamental Right within their

<sup>4</sup> *Declaring the right to health a fundamental right*. (2020, July 14). ORF. Retrieved February 11, 2023, from <https://www.orfonline.org/expert-speak/declaring-the-right-to-health-a-fundamental-right/>.

respective Constitutional provisions.<sup>5</sup> Asian regions have read legal aid along with other jurisprudential concepts of “equality before law,” “equal protection of law,” and “rule of law.”<sup>6</sup> For example, India has expanded the scope of legal aid through judicial construction of fundamental rights under Part III of the *Constitution of India*. Legal aid falls under Part IV of the Indian Constitution. However, when Article 39A is read in conjunction with Article 21 of the Indian Constitution, the Supreme Court of India has made legal aid an implicit part of the “right to life and personal liberty”.

Based on the preceding discussion, it is possible to conclude that achieving any intended rights necessitates the fulfillment of some other rights first. As a result, such cases necessitate the cross-referencing of constitutional provisions. Under the *Constitution*, legal aid is a *Directive Principle of State Policy* that may not be enforceable against the State. However, realizing other rights, such as “all persons are equal before the law and are entitled to equal and effective protection of the law...,”<sup>7</sup> is only possible after realizing the right to legal aid by the poor and vulnerable. In the absence of legal aid, realizing “the right to equality before the law, the right to a fair trial, and transparent and expeditious justice” is an empty promise.

## B. Coverage of Legal Aid Services in Bhutan

The person in need of legal aid must initiate the process by applying to the Center for legal aid services. Alternatively, the Police, the Court, or any other relevant law enforcement agencies may assist the applicant in the application process. Individuals, law enforcement agencies, and public institutions must submit all required documents to the Center for review. The Center and designated Committee make the final determination based on the eligibility criteria. For example, to meet the means test, a person must confirm a financial

5 Part 3, section 20 (10) of *Nepal's Constitution Of 2015*.

6 Dias, C. J. (1985). Legal Aid in Asia: A Basic Human Right? *The World Legal Studies*, 4, p. 89. Retrieved December 27, 2022, from <https://scholar.valpo.edu/cgi/viewcontent.cgi?article=1124&context=twls>.

7 Article 7 (15) of the *Constitution of the Kingdom of Bhutan, 2008*.

threshold.

Who should be eligible for legal aid has been a difficult question to answer. Apart from the legal basis enshrined in the *Constitution* and other legislations, there is a lack of policy and legislative framework. Segregated enactments in various statutes add to the confusion. According to the *Constitution*, “the State shall endeavour to provide legal aid to ensure that opportunities for securing justice are not denied to any person by reason of economic or other disabilities.” However, not all of those who are socially and economically disadvantaged are automatically eligible for legal aid. They must pass the merit test and other requirements.

### 1. Any Indigent Person

Is nationality one of the factors that determine eligibility for legal aid? Bhutan sees a large influx of Indian nationals working as foreign workers. The *CCPC 2001* requires that ‘indigent accused’ be provided with legal aid in the interest of justice. The indigent accused can be both a citizen and a non-citizen. Legal aid shall not be denied to ‘any person,’ according to the constitutional provision. The nationality test is irrelevant for legal aid, but the government may apply the principle of reciprocity.

### 2. Income and Other Factors

Although some defenders and litigants are represented by qualified attorneys, the vast majority are *pro se* litigants. The main reason for this is their financial disadvantage. According to the research conducted for the doctoral thesis, the majority of self-represented criminal defendants in Bhutan are either unemployed, farmers, self-employed, or engage in other trades and professions that do not necessarily yield a good income.<sup>8</sup> Access to justice is also hampered by a variety of other factors, including physical, mental,

8 Tshering, K. (2020). *Unrepresented Defendants in Criminal Trials in Bhutan: A Comparative Study between Australia and Bhutan*. [Doctoral Dissertation, University of Queensland]. QU, TC Beirne School of Law. p. 143.

psychological, and social disadvantages.

When a person ‘cannot afford to pay his or her own lawyer or when the ‘interest of justice so requires,’ legal aid is available. The preceding paragraphs discussed some conditions for legal aid, under which “any indigent person” is eligible for legal aid. Legal aid can be extended beyond “indigent” characteristics to “other disabilities,” according to the *Constitution*. There are two popular methods for determining eligibility for legal aid: the means test and the merits test.

**Determinants of Indigent Person :** The means test is applied to a legal aid applicant’s total income and disposable capital to determine whether or not the applicant has the financial capacity to afford legal services on their own. Indigent individuals are identified using various methods in different countries. Nepal, for example, has a fixed annual income level (Nepalese Rupee 40,000 - USD\$ 340) as an indigent person eligible for legal aid.<sup>9</sup> In India, different states have different income thresholds.

According to the *Legal Aid Rules of Bhutan, 2022*, indigent persons shall be determined for the purpose of means test using the poverty line established by the National Statistics Bureau of Bhutan (NSB). Every five years, the NSB publishes the Bhutan Living Standard Survey (BLSS) and the Poverty Analysis Report (PAR), which represent the country’s socioeconomic situation . As per the PAR 2022, persons with per capita income equal to or less than Nu. 6204 are eligible for legal aid.

**Exceptions to the Means Test :** Aside from indigent persons the Center also caters to legal needs of differently-abled persons, women, children and other vulnerable groups. *Legal*

9 Rana, D. (2021, February 4). *Pro Bono Helps Bridge Access-to-Justice Gap in Nepal*. Thomson Reuters Foundation. Retrieved December 27, 2022, from <https://www.trust.org/i/?id=451cb222-833f-4e99-9356-104321e71f05>.

*Aid Rules 2022* provides that, “... the Center may provide legal advice and assistance to children in conflict with the law and to persons with physical, mental, or social disabilities, regardless of his or her financial capacity, when the interest of justice so requires.”<sup>10</sup>

This exception was created to help people with special needs who may have resources but cannot afford to hire an attorney. As a result, persons with physical, mental, and other special needs are given due consideration in terms of the means test.

### 3. Merits Test

The merits test determines the merits of the prosecution, defence, or litigation, as well as the probable cause of the case. The merits test is concerned with the examination of documents and cases pertaining to the applicant. However, the likelihood of winning or losing the case should not be considered in the merits test. The merits test takes into account the nature and type of case, legal issues, the applicant’s claims and grievances as found in relevant court orders and case-related documents.

**Civil and Criminal Legal Aid :** The nature of the case is only a minor consideration in the merits test. In terms of the nature of the case, legal aid is available in all civil matters, but it is limited in criminal cases based on the grading of offence. According to the *Legal Aid Rules 2022*, in criminal cases, the indigent accused must be charged with a felony or higher offence under the *Penal Code of Bhutan 2004* and other laws. The accused charged with a felony must also pass the means test.

Means and the merits test refers to various kinds of assessments; the former refers to income and disposable capital, whereas the latter refers to cases and disputes. A person must meet the requirements of both tests. For example, an indigent person being tried for offenses not punishable by felony or higher

---

<sup>10</sup> Rule 31 of the *Legal Aid Rules 2022*.

will be denied legal aid. It means that, for the most part, the applicant must pass both tests, with the exception of people with physical, mental, social, or other special needs, who may be exempt from the means test.

Do women and children automatically qualify for legal aid, regardless of the grading of criminal offense charges? Under the means test, a CICL will be given due consideration. Whether the child is also eligible under the merits test, regardless of the nature of the alleged offenses committed by that child? Applying the test strictly will disqualify the child from receiving legal aid. Women, children, and persons with special needs, on the other hand, should be given legal aid regardless of their financial status and the nature of the charges against them. This means that a child is eligible for legal advice and assistance regardless of the level of offense with which he or she is charged. Similarly other vulnerable groups might be exempted from both the tests.

### **III. Issue in the Existing Laws and Practices**

#### **A. Exclusionary: Multiple Layers of Classification**

The objective of the legal aid in terms of criminal justice systems is to achieve the following:

*“A functioning legal aid system, as part of a functioning criminal justice system, may reduce the length of time suspects are held in police stations and detention centres, in addition to reducing the prison population, wrongful convictions, prison overcrowding and congestion in the courts, and reducing reoffending and revictimization. It may also protect and safeguard the rights of victims and witnesses in the criminal justice process. Legal aid can be utilized to contribute to the prevention of crime by increasing awareness of the law.”* (United Nations Office on Drugs and Crime, 2013).

Principle 3 on legal aid for persons suspected of or charged with a criminal offence states that, *“Legal aid should be provided, regardless*

*of the person's means if the interests of justice so requires, for example, given the urgency or complexity of the case or the severity of the potential penalty.*”. Principle 6 on non-discrimination states that legal aid is available to all persons regardless of education, social or other status.

Based on the above principles, legal aid should be available to anyone detained, arrested, suspected or accused of, or charged with a criminal offence, regardless of the grading of the offence. On the contrary, legal aid is made available subject to several layers of classification based on income, nature of case, and grading of offences charged, among other factors. The first level of classification, based on income, is a reasonable classification. Adding another layer of classification based on the grading of the offence is exclusionary provision.

There is also a paradox between reality and the law. According to a study conducted by Karma Tshering (Ph. D), self-represented criminal defendants were involved in petty offences such as battery, larceny, burglary, and so on. This suggests that the majority of self-represented criminal defendants are socially and economically disadvantaged and are charged with minor offenses. The *Legal Aid Rules 2022*, on the other hand, state that “only an indigent accused charged with an offense punishable by a felony under the *Penal Code of Bhutan* or other laws is eligible for legal aid.”

Similarly, the Draft *Legal Aid Rules 2022* drafted by the Office of the Attorney General (OAG) stipulated that charges of misdemeanour or above were required to be eligible for criminal legal aid. The goal of providing legal aid to poor and vulnerable groups who typically commit minor offenses and the requirement of felony offences are incompatible. Is there any rationale to such a dichotomy between reality and current laws and practices? One of the perspectives could be the sheer volume of cases. Compared to felonies and misdemeanour, more cases of petty charges are reported annually. Given the limited State resources, this exclusionary rule will indirectly reduce the number of cases eligible for legal aid. However,



the State should gradually expand and strengthen legal aid coverage.

#### **IV. Recommendations for Inclusive and Sustainable Legal Aid**

Legal aid has limited coverage due to two major difficulties that jeopardize its long-term viability. First, there is the fiscal expense of the State incurred in legal aid. Second, there is a lack of lawyers ready to provide legal help at a discounted fee. Generally, legal aid costs include, but are not limited to, lawyer fees, Center's recurrent budget, court fees, bail bond, appeal bond, and so on.

According to existing laws and practice in Bhutan, legal aid does not cover any financial benefits or incidental expenditures to the applicant other than the lawyer's fee.<sup>11</sup> In appropriate circumstances, depending on the applicant's situation, the Center should examine other charges payable or incurred in connection with any legal aid matters.

There are several ways to calculate a lawyer's fee. Most lawyers charge a flat fee or a portion of the fee. There are additional payment methods available internationally, such as hourly fee, contingency fee, conditional fee, capped fee, volume discount, and so on. The Center and the service providers should reach an agreement on the best methods.

##### **A. Integration of *Pro Bono* and Legal Aid to Improve Access-to-Justice for the Indigent and Other Persons**

One of the general responsibilities of a lawyer is to act as an officer of the Court to ensure the proper administration of justice.<sup>12</sup> To assist people with their legal knowledge and studies is a highly respected and demanding responsibility of a lawyer to the legal system as a whole and to society. Thus, in parallel to being a commercial actor, lawyers voluntarily offer free and low-cost legal services to benefit

---

<sup>11</sup> Rule 11 of the *Legal Aid Rules, 2022*.

<sup>12</sup> Section 35 (c) of the *Jabmi Act of Bhutan, 2003*.

society through *pro bono* and legal aid services, respectively.

### 1. *Definition, Origin and Scope of Pro Bono and Legal Aid*

Principally both *pro bono* and legal aid refer to work done by a lawyer for the benefit of persons with financial or other social constraints, but they differ in origin and scope. The former may be provided free of charge, whereas the latter is provided at a reduced cost at the expense of the State or certain organizations. Legal aid is primarily funded by the State, with some private contributions and grants supplementing it. *Pro bono*, on the other hand, may be provided voluntarily at no cost or, in some cases, funded by non-profit organizations.

In terms of coverage, *pro bono* services outnumber legal aid. The concept of *pro bono* is defined and understood in various ways. *Pro bono* is a shortened version of the latin term “*pro bono publico*”, which is defined as, “*for the public good and it is the provision of services that are free to safeguard public interest.*”<sup>13</sup> Legal professionals may offer legal services to anyone under *pro bono* programs, regardless of the client’s financial situation or other impairments, so long as doing so serves the greater good. *Pro bono* is a comprehensive program that offers more services than legal aid, which is primarily concerned with the legal issue at hand.

*Pro bono* began in Western countries as a free service to one’s family, relatives, or friends who have close ties to the lawyer. A survey conducted in the 1970s to determine the legal needs of the public in the United States revealed that two-thirds of lawyers’ *pro bono* work was done for their friends and relatives.<sup>14</sup>

### 2. *Implications of Pro Bono Legal Aid under the Jabmi*

---

13 *PRO BONO Definition & Meaning*, (n.d.). Black’s Law Dictionary. Retrieved December 28, 2022, from <https://thelawdictionary.org/pro-bono/>.

14 Barbara A. Currian & Francis O. Spalding. (1974)., *The Legal Needs of the Public: Preliminary Report of a National Survey by the Special Committee to Survey Legal Needs* (Chicago: ABA, 1974) as cited in The Canadian Bar Association. (2012). “*Tension at the Border*”: *Pro Bono and Legal Aid*. p. 3.

*(Amendment) Act of Bhutan 2016*

Implementing *pro bono* legal aid as per section 9 (f) of the *Jabmi (Amendment) Act of Bhutan 2016*, is different from voluntary *pro bono* work undertaken by lawyers. Under voluntary *pro bono* schemes legal professions may provide services to all, regardless of economic or social constraints faced by the client as long as it is for the benefit of society. On the other hand, section 9 (f) of the *Jabmi (Amendment) Act of 2016* provides that the Bar Council shall provide *pro bono* legal aid to an indigent person in addition to funding support from the State.

*Pro bono* work originally began as voluntary work, but it is now becoming necessary for lawyers to continue practicing. Lawyers in Bhutan are currently working *pro bono* on a voluntary basis without a proper record managed by any organizations. The Bar Council must adopt mandatory *pro bono* legal aid every year as a result of the *Jabmi (Amendment) Act of Bhutan 2016* being put into effect. *Pro bono* and legal aid which are regarded as principally different, are both included in section 9 (f) of the *Jabmi (Amendment) Act of Bhutan 2016*.

Despite the differences in public perceptions of *pro bono* and legal aid, the *Jabmi (Amendment) Act of Bhutan 2016* offers a chance to combine the two. According to Section 9 (g) of the *Jabmi Act of Bhutan 2003*, the Bar Council is responsible to oversee legal aid for an indigent person (on a *pro bono* basis only). The Center is now in charge of overseeing the administration of legal aid. These are two different concepts to be taken care of by different institutions, *pro bono* by the Bar Council and the legal aid by the Center respectively. Section 9 (f) of the *Jabmi (Amendment) Act of Bhutan 2016* enables merging of *pro bono* and legal aid.<sup>15</sup> These might have several

---

15 However, combining *pro bono* and legal aid does not imply that the Bar Council will be solely responsible for carrying out the function; rather, it will strengthen the collaboration and coordination between the Bar Council and the Center. They may delegate separate responsibilities to themselves; for example, the Center may carry out the indigent test, and the Bar Council

advantages over separating *pro bono* and legal aid.

### 3. *Advantages of Partnership Between the Pro Bono and Legal Aid*

Countries ranging from developing to developed economies are attempting to consolidate *pro bono* and legal aid. The collaboration of *pro bono* and legal aid is viewed as a viable option for improving access to justice.<sup>16</sup> In addition, some countries have expanded this partnership to include public-private partnerships in matters of access to justice.<sup>17</sup> Non-governmental organizations that provide *pro bono* services are encouraged to form collaboration agreements with legal aid institutions.

As per the general understanding *pro bono* can be made mandatory, but legal aid is not. Is it because the latter is not seen as a part of the Bar Council's mandate? The *Jabmi (Amendment) Act of Bhutan 2016*, says otherwise. It mandates the Bar Council to implement *pro bono* legal aid (both *pro bono* and legal aid together). According to section 9 (f) of the *Jabmi (Amendment) Act of Bhutan 2016*, both *pro bono* and legal aid are intended to ensure that those in need are not denied their right to justice due to financial constraints. Will the Bar Council frame separate eligibility criteria for *pro bono*? Separating *pro bono* and legal aid might lead to different eligibility criterias and regulations, which is contrary to what the *Jabmi (Amendment) Act of Bhutan 2016* has envisaged because, both *pro bono* and legal aid is targeted towards indigent persons.

---

may communicate and coordinate with lawyers to provide timely services. Furthermore, they may share resources and expertise in terms of lawyer capacity building, securing critical funds and technical assistance, and so on.

- 16 The Canadian Bar Association. (2012). *"Tension at the Border": Pro Bono and Legal Aid* [A consultation document prepared by the Canadian Bar Association's Standing Committee on Access to Justice]. Retrieved December 27, 2022, from [https://www.fundacionseres.org/lists/informes/attachments/1057/probonopaper\\_eng.pdf](https://www.fundacionseres.org/lists/informes/attachments/1057/probonopaper_eng.pdf).
- 17 *Center for Accountability & Rule of Law | What Civil Society Organizations Should Know about the Draft Legal Aid Bill.* (2016). CARL-SL. Retrieved December 28, 2022, from <https://www.carl-sl.org/pres/what-civil-society-organizations-should-know-about-the-draft-legal-aid-bill/>.

State-funded legal aid is supplemented by *pro bono* work rather than being replaced by it. Hence, cooperation between the Bar Council and the Center is a step in the right direction for Bhutan. By making the provision of *pro bono* legal aid mandatory but ensuring a minimum fee for attorneys, this will allow integrating elements of *pro bono* and legal aid (low bono, which will minimize the burden on the State). A *pro bono* program could result in the lawyer receiving nothing or, at most, reimbursement of expenses and a meager honorarium, which could deter them from taking the case.

#### 4. *Incentivizing Pro Bono Legal Aid*

Inexpensive legal services may require regulating fees but this is neither practical nor healthy.<sup>18</sup> The legal fees charged by the lawyer is a matter of private contract or agreement between the lawyer and the client. The private contract is formed between parties who have divergent interests, because the client wants the best legal services possible at the lowest cost but the lawyer is driven by profit motive.<sup>19</sup> Unlike other service or product markets, legal fees are determined by the client's perceived value of the work done rather than the cost of providing the service. Any attempt to regulate the lawyer's fee will have a direct impact on the lawyer's performance. The reasonable approach would be to encourage lawyers to provide *pro bono* legal aid at a reduced cost that is affordable for the State and clients who cannot afford to pay.

---

18 Indulia, B., & Sharma, D. (2018, August 4). *Pro Bono Work: A case for its integration into Legal Services in India* | SCC Blog. SCC Online. Retrieved December 28, 2022, from <https://www.scconline.com/blog/post/2018/08/04/pro-bono-work-a-case-for-its-integration-into-legal-services-in-india/>.

19 North, A. (2015). *The Sale of Law: Ethical Advising and Advocacy in Light of Billing in Civil Litigation* [A Thesis Submitted to The College of Graduate Studies and Research In Partial Fulfillment of the Requirements For the Degree of Master of Laws.]. University of Saskatchewan, College of Law. Retrieved December 29, 2022, from <https://harvest.usask.ca/bitstream/handle/10388/ETD-2015-10-2356/NORTH-THESIS.pdf?sequence=5&isAllowed=y>.

The relevant authorities should prioritize incentivizing *pro bono* legal aid. Except for the lawyer's fee, the legal market is regulated by the State. As a result, clients will bear the consequences of charging a fee that is not proportionate with the work done by lawyers. As a result, shifting the emphasis from monetary to non-tangible benefits may reduce the burden on the state and legal service consumers.

## **B. Supporting CSO Participation and Collaboration**

With the growing prevalence of new modes of governance such as public-private partnership, social welfare organizations and non-governmental organizations have become increasingly important actors at the national, regional and international levels. They carry out a range of governing functions, such as setting standards, mediating conflicts, aid and education (research/advocacy driven) and delivering expertise in policy issues and development assistance, etc.

There are only a few civil society organizations (CSOs) who render legal aid. Interestingly, it is not their primary mandate. As of 2023, Bhutan has 42 public benefit organizations (PBOs) and 12 mutual benefit organizations (MBOs) providing active services ranging from livelihoods, care-giving and rehabilitation, youth concerns, good governance, arts, heritage and culture, environment, animal welfare, recreation, and others. Only 2 to three out of 54 CSOs provide legal aid along with their core mandates.

In other developing and developed economies there are multiple non-governmental organizations (NGOs) and civil societies operating for the cause of poor and vulnerable persons alongside the State funded institutions. Most of these organizations provide legal aid either for specific groups like women, persons with special needs, children, refugees, immigrants, etc. or for all persons. For example, Nepal has around 12 NGOs solely dedicated to free legal aid as a core mandate. Some target specific groups while others provide services irrespective of the gender, age and other social status. Some of these organizations were formed by associations of lawyers.

For a multitude of reasons, CSOs are an asset and an essential component of national development around the world. They are advocates for the voiceless, social justice, whistleblowers, saviors and protectors, and so on. As a result, they can supplement the functions of the state while reducing the burden on the state. However, this does not mean that the State can abandon certain essential functions. One of the potential benefits is that funds can be raised from a variety of sources rather than relying on the State budget. NGOs receive funding from diverse sources, including donations from the general public, governments, international organizations, and philanthropists.<sup>20</sup> While legal aid is primarily the Center's mandate, appropriate policy interventions must encourage CSOs to participate in this cause.

Through advocacy and lobbying for policy reformation, NGOs can sometimes support the cause of the poor and vulnerable right from the start of policy development. Legal aid does not have to be resorted to at the end, but can be initiated right from the policy formulation stage. Going through a long legal battle that may result in the repeal of bad legislation and policy is an unnecessary expense for both the State and the affected groups. As a result, traditional understandings of legal aid should evolve in tandem with changes in socioeconomic, institutional, legal, and other developments in the country and around the world.

### **C. Modernization of Legal Aid**

Legal aid services are traditionally provided in the form of legal advice, legal assistance, or full legal representation. Under the traditional model, the legal aid recipient has the smallest, almost non-existent role. This may have been an appropriate thing to do in the past when there was a low literacy rate and a lack of accessible information mediums. Some persons may just seek general advice on

---

20 Butler, I. (2017). *Here's Why NGOs Are Vital to Democracy*. Civil Liberties Union for Europe. Retrieved February 9, 2023, from <https://www.liberties.eu/en/stories/ngo-why-they-are-needed-accountability-democracy-civil-organisation/11727>.

navigating the justice system. The current technological revolution has made it easier to share information and ideas via the internet.

Utilizing technology and developing appropriate sensitization programs will reduce the burden on the state's limited resources. The Center should take more preventive measures, such as reaching out to different segments of society and raising legal awareness. Simultaneously, online content may be useful to those who have smartphones and reliable internet access. As a result, the Center must develop more resources to help people stay informed and do legal work on their own, such as drafting. Although it does not completely relieve the State and the Center of their responsibilities, it does reduce a portion of them.

#### **D. From Free to Inexpensive Legal Services**

The State is required to provide legal aid to those who cannot afford to pay, but the State also has a limited capacity and resources. Although legal aid is commonly understood as the responsibility of the State to provide free legal services, the concept of legal aid is evolving over time. Section 9 (f) of the *Jabmi (Amendment) Act of Bhutan 2016* mandates that the Bar Council provide *pro bono* legal aid to an indigent person in addition to State funding. This means that the State is supposed to cover any additional costs for legal services required to support the legal aid recipient. As a result, legal aid should not rely solely on the State fund, but should be reinforced by other mechanisms.

Most jurisdictions use the cost-sharing model, in which a legal aid recipient must contribute a certain percentage of the lawyers' fees if he or she is entitled to certain proceedings based on the judgment. However, cost-sharing is not recommended if: the proceedings from the judgment are less than the lawyer's fee; the proceedings is passed in relation to damages due to the client or relates to the client's livelihood; the case is about matrimonial and child support, among other things.



As a precaution, it must be structured in a progressive manner, with only a certain percentage applicable for cost sharing based on the amount received. Furthermore, legal aid clients and the general public may contribute voluntarily to the legal aid funds of legal aid organizations and CSOs. This practice will also reduce the burden on the state.

## V. Conclusion

Legal aid in Bhutan is introduced at economically challenging times thus, the scope and coverage of legal aid is minimal. It will improve gradually and will be implemented progressively. The poor and other disadvantaged people cannot enjoy other rights such as the right to a fair and expeditious trial, equality before the law, and equal access to justice in the absence of legal aid.

Legal aid is a State obligation, and with limited resources, it can only provide limited services. As a result, collaboration and resource integration from various areas are required. Collaboration between the Bar Council and the Legal Aid Center, as well as additional participation from CSOs and organizations working for the cause of justice, is seen as a viable opportunity in this regard.

Integrating *pro bono* and legal aid as provided by the *Jabmi (Amendment) Act of Bhutan 2016* is a win-win for all the actors in the justice system. Firstly, it has some monetary advantage to lawyers. Since *pro bono* is mandatory, lawyers must provide services whether or not they are compensated. Legal aid, on the other hand, ensures that lawyers are not obligated, but that if they are willing to provide legal aid, they are guaranteed a minimum fee although that is less than what they earn from business clients. This will encourage more lawyers to participate in legal aid; otherwise, the State and vulnerable clients will bear the brunt of the already-existing lawyer shortage problem.

Scarcity of accomplished lawyers willing to take legal aid cases has become the reason for ineffective legal aid services in India and elsewhere. Similarly, the State may be in a better position because it can hire lawyers at a lower fee. The integration of *pro bono* and legal aid will improve the overall functioning of the justice system, with professional lawyers representing disadvantaged clients and making the job of law enforcement and the Judiciary easier.