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PLEDGE

His Majesty the King—He who brings joy to all beings,
The beacon of development,
The protector, the wish-fulfilling jewel,
The spiritual heir of boundless good fortune.

A rare treasure, a great benefactor,
A paragon of supreme wisdom and boundless compassion,
His wisdom shines like the purest sunlight.
We celebrate His glorious wisdom and sublime virtues.

Through the blessings of an auspicious field of merits,
We honour the white lotus of His renown.
And offer our most profound homage at His feet—
The noble holder of method and wisdom.

On this most auspicious occasion—
The 45th Royal Birth Anniversary of His Majesty the King—
The Bhutan National Legal Institute rejoices in the wisdom of transformation, grace, and glory,
A testament to His Majesty's peerless leadership.

With profound reverence, we sincerely pray for His Majesty's good health, long life, and happiness.
May all His Majesty's aspirations be fulfilled,
May virtues and good deeds flourish,
And may we continue to be guided by the great Chakravartin, the victor of victors.

May auspiciousness shine upon all!

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PREFACE

As His Majesty the King emphasized on the occasion of the 117th National Day, legal empowerment is essential, and the rigid concept of legalism must be reduced to foster greater responsiveness in governance and the rule of law. This calls for rethinking development ideologies and perspectives, paving the way for a legal and justice infrastructure centered on progress. Laws form the foundation of order, security, prosperity, and social harmony. However, achieving legal simplicity through an agile legal system that promotes progress is key to ensuring more balanced and equitable development under the framework of our laws.

By structuring, developing, and implementing sound laws, society can foster social, political, and legal mechanisms responsive to the people's aspirations. More importantly, laws should empower individuals to achieve their fundamental goals. The dimension of economic development must promote responsible governance, supported by diverse legal sciences that drive positive transformations in social and legal landscapes. True empowerment, at its core, lies in creating an enabling environment that cultivates a progressive and dynamic foundation for sustainable development.

Innovation, creative thinking, and enterprise are crucial within Bhutan's economic and legal landscape. His Majesty the King, in His Royal Address, emphasized the importance of creating laws that empower people by ensuring security and prosperity—both a necessity and a national imperative. However, many existing laws today hinder economic growth and stifle a development-oriented mindset. Laws should foster justice, and justice, in turn, should be embedded within the law, respecting the people's conscience. Furthermore, legal frameworks must support economic growth and expand the nation's aspirations. An ideal legal system requires harmonization, as research suggests that legal coherence strengthens stability and enhances the effective application of laws. In this pursuit, the preface reflects Bhutan's evolving development paradigms while echoing His Majesty's vision of establishing the best legal system. Advancing legal sciences and academia is instrumental in strengthening legal awareness and reinforcing the *rule of law.*

The Royal Courts of Justice must uphold the equal competence of laws. At the same time, other stakeholders, through careful legal analysis,

should drive systemic reforms to ensure that statutes remain comprehensive and predictable. Positive and normative legal analyses must also evaluate the means and intended outcomes, enabling informed and precise legal decision-making. When laws become overly complex, they reshape the very ideals of justice. Instead, laws should be clear, practical, and designed to serve society effectively through intelligent decision-making. We often assume that law is a cure for all, but this perspective requires careful reconsideration.

Laws must evolve to serve society better and ensure their effectiveness; open discussions are essential. Legal frameworks should be tested through both institutional and individual analyses. Furthermore, laws should possess conditional reasoning competence, guided by general intelligence, to facilitate sound decision-making and adapt to diverse circumstances for the benefit of the people. To foster deeper discussions on legal matters, the *Bhutan Law Review* (BLR) serves as an essential academic platform for capturing these perspectives. In today's evolving corporate landscape, accountable laws that establish clear boundary conditions are imperative. In legal parlance, accountability should be understood as a logical construct that upholds rationality and responsibility.

As the research and judicial education arm of the Royal Courts of Justice, the Bhutan National Legal Institute (BNLI) is committed to fostering academic excellence and providing meaningful opportunities to cultivate a legal culture that integrates education, information, and scholarship. Our objective is to serve as a mediating variable in advancing the role of legal sciences in shaping competent and effective laws. Legal research should play a pivotal role in shaping public policy and guiding its implementation based on a balanced assessment of probabilities. Through the BLR, we seek to promote interdisciplinary legal analysis and research, enhancing the methodological framework for assessing justice.

The BLR envisions itself as a platform that fosters diverse and multi-method approaches to legal scholarship, analysis, and academic, legal, and social interactions. Through the BLR, we strive to create spaces for academic discussions that contribute to advancing law and legal sciences. The current volume of the BLR presents a diverse array of articles and academic discussions aimed at fostering educational

excellence and enhancing the process of legal inquiry across various legal and socio-legal issues, including Trafficking of Persons (TIP) and corporate culture development, restorative justice, comparative democratic principles and ideals among other pertinent legal and socio-legal subjects. This platform strives to shape habits, attitudes, skills, and character to build purposeful abilities in legal and social knowledge domains. It presents legal reflections that contribute to advancing innovative legal thought.

With this foundation, the BLR can serve as an expanding academic arena, promoting the methodologies and competencies essential for academic legal writing, intellectual engagement, and scholarly enrichment. We aim to honour the noble aspirations of Her Royal Highness Princess Sonam Dechan Wangchuck in creating an enabling academic field. Since its inception in 2012, the BLR has been vital in fostering legal academic discussions and writings, nurturing progressive social, legal, and academic values, and encouraging higher-order thinking and writing. We are committed to promoting the continuous acquisition of knowledge, skills, and academic attitudes through critical rationalism and legal inquiry.

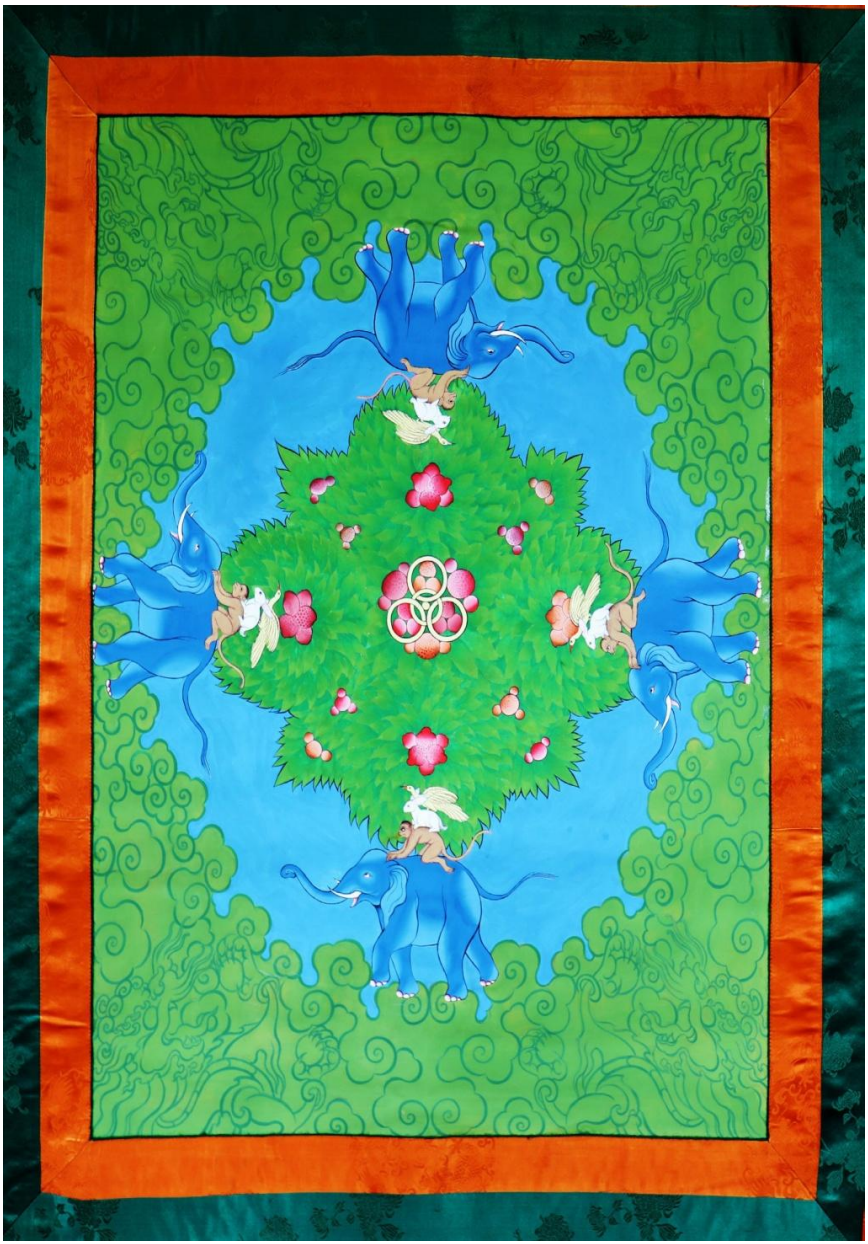
We aim to establish a robust platform where competencies can be acquired and tested, equipping judges, legal professionals, academics, and citizens to navigate, understand, and thrive in an increasingly dynamic world. Our vision is to create an academic sanctuary that fosters intellectual dialogue and promotes diverse academic perspectives. The concept of a knowledge society is rooted in developing and managing professional knowledge, highlighting the necessity for effective learning. The BLR seeks to cultivate a vibrant legal academic environment that promotes legal scholarship and establishes positions to address contemporary legal and social issues.

In celebration of these noble endeavours, the BNLI is proud to publish the 23rd Volume of the BLR, marking the auspicious 45th Royal Birth Anniversary of His Majesty the *Druk Gyalpo.* This volume honours His Majesty's legendary achievements in securing peace and fostering prosperity and stability in the country. Aligned with the contemporary changes and administrative reforms in Bhutan, the articles in this volume aim to capture the aspirations, vision, and emerging legal frameworks that

reflect the country's evolving development. We hope to engage readers and cultivate a vibrant forum that fosters increased readership and attracts a broader academic audience.

BNLI wishes our valued readers a happy reading!

THE EXPOSITION OF CONSTITUTIONAL KUTHANGS



The development of democracy in Bhutan is based on the premise of 'political development' elucidated in Bhutan's *Constitution.* It postulates that in framing the political parties, strict consideration has to be made to introduce a democratic political system best suited for Bhutan (Tobgye, 2015). This is to harvest the unique opportunity for governance, enhance peace and stability, and introduce a new political change. It is with the belief that political parties play an important role in governance and societies. Further, Article 15 guarantees a unique political system that is conducive and befitting to meet the aspirations of the Bhutanese people. This posits welfare, mindful governance, and political stability.

Let's compare the modern constitutional regimes across the globe and the political parties that have ensued. It shows that constitutional governance and wisdom are essential for constitutional integrity in governance and governance structures. The notion of constitutional or 'governance altruism' and the balance of vital governance principles are key pillars to ensure that the political system functions effectively. As remarked by Prof. Casper, he said the *Constitution of Bhutan* has done something that other constitutions have not done. It has recognized political parties as an integral organ of the state. Although most constitutions are influenced by global governance ideas, mechanisms, and traditions based on a 'sphere of constitutional pluralism,' political parties and bipartisanism still prevail and disturb the frameworks of liberty, traditions, and cosmopolitanism. While the political parties stand to have decent political ideologies and political standings, 'many tend to negate the continuum of development by striving to erase the tasks undertaken by the previous governments.'

Further, it can be postulated that, without doubt, the modern nation-state has been the most effective governance technology ever devised, securing, at its best, an unprecedented level of prosperity and security for its citizens. But in an interdependent world, no individual state, no matter how competent, can address [all] the issues (Webb, 2025). Therefore, the constitution has to be the strongest in regulating governance and governance architectures. The constitutional provisions must solidify the 'praxis for governance' and guide the national integrity and governance perspectives. However, many political mechanisms can

manipulate many countries' constitutions, thus reshaping the constitutional, legal, and governance architectures.

The ever-expanding idea of a *'world society'* begins to reshape global relationships and intercourses, and this principally requires the constitutions to uphold the legitimate constitutional principles of protection, justice, and power (Webb, 2025). Global constitutionalism and nation-based constitutional rights require 'liberal thinking' and 'effective governance' as new premises for clustering good and effective policy established through political participation and governance standards. One of the most interesting observations about global constitutions and constitutionalism is the 'unbridled power' of the political parties to conduct the government at the whims of 'political ideations.' Therefore, the fathomless wisdom of His Majesty the Kings has always been farsighted, and it can be said that the Bhutanese constitutional wisdom is guided by benevolence and deep respect for the popular conscience. It focuses on unity and progressive development.

One historian observed that [a] political thought is the child of chaos and the father of order. It is evident that today's world has its own governance and leadership turbulences, and it reckons with 'singular thinking' about the best laws and policies that protect our national interests. This is where political parties come in. They form the basic bedrock of governance, and as critical as ever, the imperatives of national development and the need to maneuvers global challenges remain. Political parties are expected to do [many] tasks to usher development and progress. In addition, our existence is punctuated by the need to survive in the shared global space. This provides the need for a political system that can contest for global image and exhibit a unique system of governance so that the global governance system can copy from a small country like Bhutan.

As such, the constitutional values within the Bhutanese legal architecture support the ever-expanding global order and fill the gap[s] in constitutional virtues that other constitutions lack. It marks the new trajectory for constitutional thinking. Keeping the gist of the Article today, we reckon on the key principles of the *Constitution* so that we appreciate the intentionality and constitutional theories that support

constitutional psychology by reinforcing a strong constitutional belief, desire, and expectations.

In line with this, let us explore the intentionality of the constitutions since, in many countries, the constitution can be seen as a 'muted domain of law.' The 'intentionality of the existence of object' explores the reasons for the existence of the *Constitution* and gives the precincts of legal and structural dimensions. In brief, these can be 'hard subjects' that are very scholastic; it is imperative to understand the basic genesis of constitutional intentionality (Voltolini, 2024). With the emergence of populist leaders across the globe, examples of constitutional change within the constitutional regime[s] are visible as part of the deconstruction of the institutional order (Landau, 2018). Looking at these changing constitutional legal orders as well as the normalization of new constitutional design thinking, within the conception of populist ideology, it can be surmised that Bhutanese constitutional leadership is an exemplary epithet of excellence.

Many constitutions across the globe are expanding to consolidate the powers and eliminate 'those' powers and legal institutions that act contrary to the intentions of the political parties. Liberal democracies, as they say today, have become a liberal ground for populist ideologies. This is when the safeguards of the constitution are required to delimit power and rein in [those] in power. As we can see, legality is slowly giving way to popular conscience, which does not form the substratum of justice. In line with this, the *Constitution of Bhutan* and Bhutanese governance principles focus on the carefully crafted instrument of *Gross National Happiness*, thus establishing a distinct character from 'other world constitutions.'

In most constitutions*,* the wordings are similar and ricochet, and the legal phrases of rights and duties are identical, among others. The Bhutanese *Constitution* is a powerful legal instrument that adapts to both times and responds to modern legal and political necessities. As said in the *Sutras,* the *Constitution* adapts to Bhutan's past, present, and future. It creates a fertile ground for attaining a virtuous life that eliminates 'the normative nomenclature of life.' Bhutan is unique, and we must display a non-similar attitude even in legal drafting and law-making: crafting and implementing a unique *Constitution.* Ideologically, the 'legal

stems,' let us call it, have similar or the same natural originations. The genesis of the *Constitution* is almost identical, but the legal differentiation arises from the *'difference in jurisprudential thinking, and how populism affects the implementers of the Constitution.'* This posits that 'constitutionalism', even within the Bhutanese legal sense, has to be based on practicality, justice, a strong *rule of law,* and constitutional conscience.

The cardinal principles of law and the 'mother law' have to be pitted 'by keeping the legal vision of the nation' by designing the constitutional responses to the country's requirements. It can be noted that the Bhutanese *Constitution* is extolled as an extraordinary legal instrument that captures the conscience of the Bhutanese nation. Thus, we extrapolate that the *Constitution* is an extraordinary legal document. However, for the *Constitution* to grow, there should be concerted efforts to empower it by enriching it with interpretations and conclusions. The *Constitution*'s growth can be enhanced through calculative interpretations and setting new jurisprudential models in many areas. Therefore, in many countries, the growth of the *Constitution* is spurted by expanding the dimension of interpretation and setting legal precedents and case examples. While the *Constitution* is the heir of the past and testator of the future, the future building of the *Constitution* and *Constitution* development is indispensable for positive legal development in the country. The role of constitutional jurisprudence has to expand normatively through well-settled legal principles and legal differentia (Pandey, 2008). This is how we can guide good governance.

The eventual conceptualization of the virtues of the *Constitution* has to be tested through the specifics of jurisprudence, which further tests the metaphysics of the theory of truth. The realism and the broader context of modern jurisprudential debates 'over the justification of the law' and 'legal propositions' have to be incubated as jurisprudential realism and the rationality of the law (Patterson, 1996). In the present context, the cosmology of law, as propounded in the Tibetan legal contexts, provides about the 'dimension of space and time' that exerts an influence through some conceptual assumptions.

Similarly, legal bearings through the norms of the *Constitution* emphasize 'testing the reality' of the law's nature and the circumstances

that arise before them. This is how the concept of reality and phenomenon, even within the legal fields, needs to be examined to scrutinize the legal and as well non-legal elements through the lens of perfect determination. This is how the versatility of the laws can be postulated, illustrating the connection between the cause and conditionality. After all of these, it can firmly regulate the political postulates through the doctrines of constitutionality, its high purpose, and the smooth functioning of the *rule of law* and democracy. It provides the duty to respect constitutional obligations, and it should be supposed that government organs owe their existence to the *Constitution.* To ensure that the *Constitution* is supreme, the Judiciary has the power and obligation to declare a law unconstitutional and ensure that the *Constitution* is flexible enough to meet the newly emerging problems and challenges (Bakshi, 2013).

We currently explore the various principles under Article 15 of the *Constitution: Political Parties.* Drawing inspiration from His Majesty the King's *Royal Address* on the *National Day* in 2024, it provides the right time to initiate discourses on the political parties. This dimension is the exposition of the two governance systems, positing a pluralist system of governance in line with our national conscience. Article 15 expostulates the unique political system adopted in Bhutan. This political system initiative is incorporated with adequate research and study analysis from other countries. In other countries, it is commonly assumed that some measure of Party System Institutionalization (PSI) is necessary to consolidate a democracy. This assumption on democratic consolidation argues that the institutionalization of party systems is foundational for democratic consolidation.

Studies reveal that a comparative analysis of 12 Latin American party systems spanning central and southern America showed that the level of institutionalization is a key determinant in whether a stable democracy will emerge and that countries with weakly institutionalized party systems are more prone to instability (Schoeman, 2025). Bidet (2025) suggests that with the emergence of neoliberalism policies, political ecology is an essential element of order in the contemporary world. This can formulate good governance and a pathway towards a

new dimension of political practice that translates to the people's aspirations. In many countries, designing the popular political coordination and re-aligning organizational logic that introduces national collectivism is becoming a national challenge.

Political strategy and practice and the dual existence of 'these political epithets' constitute a triangular prism of national techno-structure or 'competent power.' In other jurisdictions and political scenes, research shows that rational coordination on a social scale is imperative, and competence forms the superstructure of any political party. The popular national will concept has to merge with the movement form in which a political form directly unites the populace with a leader. This is seen as an important element for political building, and populist politics can, to some extent, win the dynamics of political engineering. Further, the ideals of functional order punctuate the need for social strategy, and we have to see the contingent confluence of two traditions: liberalism and democracy. Pluralism and popular transposition conciliate through an *equivalency chain* that resolves the democratic demands of the time.

The constitutional provisions within the Bhutanese *Constitution* provide the 'equivalence chain.' It promotes social order by re-imposing national interests over 'other party interests' that sustain the opportunity of choices based on the values and aspirations of the people for good governance. This doctrine and strategy define political practice and enumerate a social ontology that promotes both a paradigm and a philosophy. These constitutional aspirations are premised on national unity and progressive development based on principles of well-being and *Gross National Happiness (GNH).* In most countries, political ideologies are informed by an anti-essentialist approach, according to which the 'people' is not an empirical referent but a discursive political construction. Further, the 'social agent' dynamics mention that the structure of the political paradigm has to be on the subject positions of the people, and these have to intersect with the social and political theory in the purest form. Therefore, the concepts of regionalism, ethnicity, and religion*,* as reflected in the *Constitution of Bhutan,* emphasize the need to displace electoral gain and avoid 'social and social situation consciousness.'

The ‘political field’ discusses the idea of ‘singularity,’ which should not at all cost be guided by what political theorists called *‘deeper objectives’* based on religion, class, and gender. These imperatives provide a theoretical framework. If not, the political parties may be ‘always contingent, precarious, temporarily fixed at the intersection of the above discourses and dependent on specific forms of identification’ that are prey to an ‘essential non-fixity.’ These non-fixity items include, as discussed above, the normative of regionalism and other factors, which may emerge contingent on political climate and time. Therefore, Article 15 of the Bhutanese *Constitution* has been able to draft very egalitarian constitutional and political objectives designed to provide an attractive vision for a future democratic society in Bhutan. This enhances the ‘crystallization of effects’ that provides the motor for political action. Further, authors and political experts argue that democracy requires mobilizing *effective energy* through discursive practices that beget identification with a democratic and egalitarian vision. In political theory, ‘effects’ are something other than interests or inclinations.

Within this dimension, the *Constitution* states that the political party shall be registered with the Election Commission of Bhutan (ECB). This connotes the balance of power relations and establishing an order that enhances communicative political ties. Therefore, this genesis is the method of political translation of peaceful coexistence and mutuality within the plural landscapes. Article 15 (c) stipulates the idea of cross-national membership, and these strategies are aimed at promoting cohesion and stability. The world-class system positions that, in reality, something like a ‘world-state’ has begun to emerge, intertwined with the world system that has given rise to state institutions that are not only international but also supranational and, therefore, global. These ecosystems have begun to promote a unified approach towards creating a faith of allegiance and upholding the national integrity of Bhutan.

The Article suggests that these tenets of democracies are essential to upholding the democratic spirit and enhancing Bhutan's social, economic, and political growth, constituting only two political systems established through elections. This also connotes the idea of

non-defection, which propositions the existence of a sound political–ecological environment. In this light, the *Constitution of Bhutan* is one of the most significant documents that enhances what Westerners call the 'legal civilization.' In many countries, as it has been given, the constitution provides the laws that set norms for political rule, and the state is defined as a 'political unit.'

This postulates that beyond the significance of the legal terminology on the political system, it upholds the expression that constitutionalizes the 'appropriate solutions' through law that originate in social consensus. Theorists and scholars suggest that the *Constitution* is an evolutionary achievement. In Bhutan, Article 15 restored legal bonds to political rule based on the norms of the modern state through a functional differentiation approach to society. This provides the complete legalization of political rule, and the politics, as they say, is reduced through the *Constitution* and its norms. Thus, it fulfils the state's fundamental legal order, describes the political system's identity, and contributes to the integration of society (Grimm, 2016).

The communicative constitution provides the basis for the structuring and organization of an institution. Similarly, this structure enhances production and legal negotiation, which provides a practice structure by dictating an organizational existence. Now, the *Constitution* not only provides legitimate legal expectations, it also provides that a political party may be dissolved only by the declaration of the Supreme Court if it violates constitutional and legal requirements. This is called *judicial constitutional control*. The 'development enterprise' concept is preferably rearranging the political system through the constitutional lens, providing a new legal phenomenon. This spectrum converges national constitutional systems and re-strengthened the constitutional legal order, vertically and horizontally (Camsara, 2024).

This legal development engineering through a constitutional paradigm within Article 15 provides the constitutional legal order on political parties, establishing the context of the democratic transition for Bhutan. This approach has been chosen with a *'legitimacy and effective approach'* in mind that states the mechanism of a political party, as well as liberal legalism. Liberal legalism dictates that legal reforms become a means of achieving political and economic development, which can be

accelerated through science and rationality (Camsara, 2024). The rational technique and law guide the predictable legal process through which Bhutan can achieve competent political parties.

Further, it is postulated that modern written laws, alongside bureaucratic management, reinforce the elements of predictability in the socio-political environment. Reading Article 15 on political parties provides constitutional-legal rationality with a shared understanding of Bhutanese polity and the public policy approach. As part of it, the *Constitution* represents the corpus of fundamental legal principles by which the state's power is established, limited, and defined. Further, the *Constitution of Bhutan* incorporates the ideals of *GNH*, and this is fundamentally supported when Aristotle emphasized that the most desirable constitution is the one that allows every citizen to attain a life of excellence and complete happiness. Therefore, political parties are the instruments that form the corpus for promoting the ideals of *GNH.* Article 15 focuses on a political system and parties that are best suited based on the ideals of a progressive nation.

As a tribute to His Majesty the Fourth Druk *Gyalpo* on His 60th glorious Royal Birth Anniversary, the Supreme Court and the Bhutan National Legal Institute, under the noble guidance of Her Royal Highness Princess Sonam Dechan Wangchuck initiated the paintings of the 34 *Kuthangs* corresponding to the 34 Articles of the *Constitution.* Each *Kuthang* represents the wisdom and method of governance in line with the spirit of the *Constitution*. The *Bhutan Law Review* aspires to embrace and emulate the profound knowledge, wisdom, and sacredness of each Article of the *Constitution* as part of our ceaseless tribute to Their Majesties The Druk *Gyalpos* and the *Tsa-Wa-Sum*. In this volume, we reflect on Article 15 of the *Constitution,* which mirrors the sacred *wisdom* and *method* enshrined for the political parties.

ARTICLE 15

POLITICAL PARTIES

1. Political parties shall ensure that national interests prevail over all other interests and, for this purpose, shall provide choices based on the values and aspirations of the people for responsible and good governance.

2. Political parties shall promote national unity and progressive economic development and strive to ensure the well-being of the nation.

3. Candidates and political parties shall not resort to regionalism, ethnicity and religion to incite voters for electoral gain.

4. A political party shall be registered by the Election Commission on its satisfying the qualifications and requirements set out hereinafter, that:

a) Its members shall be Bhutanese citizens and not otherwise disqualified under this Constitution;

b) Its membership is not based on region, sex, language, religion or social origin;

c) It is broad-based with cross-national membership and support and is committed to national cohesion and stability;

d) It does not accept money or any assistance other than those contributions made by its registered members, and the amount or value shall be fixed by the Election Commission;

e) It does not receive money or any assistance from foreign sources, be it governmental, non-governmental, private organizations or from private parties or individuals;

f) Its members shall bear true faith and allegiance to this Constitution and uphold the sovereignty, territorial integrity, security and unity of the Kingdom;

g) It is established for the advancement of democracy and for the social, economic and political growth of Bhutan; and

h) It has not been dissolved earlier under the provisions of section 11 of this Article.

5. Election to the National Assembly shall be by two political parties established through a primary round of election in which all registered political parties may participate.

6. A primary round of election shall be held to select the two political parties for the general election on the expiry of the term

of the National Assembly or in the event of dissolution under section 12 of this Article.

7. The two political parties obtaining the first and the second highest number of votes in the primary election shall be declared as the two political parties for the purpose of section 5 of this Article to contest in the general election.

8. The party which wins the majority of seats in the National Assembly in the general election shall be declared as the ruling party and the other as the opposition party. However, in the case of casual vacancy, if the opposition party gains majority of seats in the National Assembly after the bye-election, such party shall be declared as the ruling party.

9. No election shall be held where the remainder of the term of the National Assembly is less than one hundred and eighty days.

10. The members of the National Assembly belonging to one party shall not defect to the other party either individually or en bloc.

11. A political party shall be dissolved only by declaration of the Supreme Court:

a) If the objectives or activities of the party are in contravention of the provisions of this Constitution;

b) If it has received money or assistance from foreign sources;

c) On such other grounds as may be prescribed by Parliament or under a law in force; or

d) On violation of the Electoral Laws.

12. Where the ruling party in the National Assembly stands dissolved under section 11 of this Article or the Government is dismissed under section 24 of Article 10 or under section 7 of Article 17, the National Assembly shall also stand dissolved and, accordingly, sections 1 to 8 of this Article shall apply.

13. During the election of the opposition party under section 14 of this Article, the National Assembly shall be suspended animation

and the ruling party and their candidates shall not contest in the elections.

14. Where the original opposition party stands dissolved under this Constitution, an opposition party shall be elected:

a) Within sixty days from the date of the dissolution of the original opposition party;

b) From the parties registered with the Election Commission in accordance with section 4 of this Article; and

c) Through an election held under the Electoral Laws to fill the seats of those constituencies which stood vacant on the dissolution of the original opposition party.

15. Upon such election of the opposition party and the seats having been filled up, the National Assembly shall resume thereafter in accordance with the provisions of this Constitution.

16. Parliament shall, by law, regulate the formation, functions, ethical standards, and intra-party organization of political parties and shall ensure the transparency of party funds through regular auditing of their accounts.

In line with this, Article 15 (2) states that political parties shall promote national unity and progressive economic development and strive to ensure the nation′ s well-being. Bridging it with these Buddhist philosophies, it is reflected in the ***Biography of Unsurpassable Youth***:

Therefore, it is the life style of noble beings
Too steep in the practice of the system of law and effect
Honestly, without any delusion
Which is the biography of noble beings.

Likewise, the *Buddha* commanded that *"honouring and respecting monks according to their seniority is the good conduct of Dharma; juniors should practice that accordingly."*

In the *Kuthang,* the four directions′ image of the *Four Harmonious Friends* signifies the good relationship and integrity among the political parties, symbolically represented by the *Four Friends*. Further, this is supported by five grounds of moral conduct, ten virtuous actions,

and sixteen pure human laws. Therefore, the normative guidance from the Buddhist philosophies and practical adoption of best practices can enable the systematization of political virtues and good governance in Bhutan.

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RE-ENGINEERING WORK CULTURE AT WORKPLACES: THE PRISM OF CORPORATE CULTURE

*KINZANG CHEDUP

ABSTRACT

Engaging corporate governance and culture requires careful organizational and human resource analysis. With the development of organizations and the diffusion of organizational business mindsets as a new paradigm for development, corporate culture is becoming crucial. This new paradigm has to re-shift the work culture and be guided by central principles of *Gross National Happiness (GNH).* Perceptibly, the article analyzes the dimension of corporate culture and assesses its various components, including strategic and sustainable human resource management. It briefly examines the role of corporate culture, organizational work models, viewing of the organizations, and strategic human capital management to enhance and strengthen the versatility of corporate culture. Further, the article investigates and proposes the linear incorporation of *GNH* values into corporate culture to provide a holistic ecosystem of governance that promotes integrating Bhutanese corporate cultural values with external variables. This is also to make the integration and development of the corporate culture contextually right and sustain the people-centric values that Bhutan already has. This can help establish and leverage high-impact corporate cultures with high organizational ownership and sustainable organizational competitiveness.

Keywords: corporate culture; organizational culture; human resource management; and Gross National Happiness (GNH)

INTRODUCTION

Examining the workplace scenarios globally shows that we live in a turbulent time punctuated by radical and unforeseen changes, with unpredictable professional outcomes and consequences. The values of

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work globally are changing at a fast pace, and both technology and leadership are acting as introducers of new values and key drivers of change. Organizationally, the sharp competitiveness it had yesterday could be challenged today, and its mandates can be reshaped and repositioned. With technological advancements and enhanced working cultures, organizations have become more agile, innovative, digitally assisted, customer-friendly, and people-centric in recent years. There is an inclination in the paradigm to shift it from the providers to the consumers. With expanding consumerism ideals, public satisfaction with the services, professional etiquette, and corporate landscapes, services must re-orient with business strategies to aim for competitive organizational advantage. Organizations can be guided by cost leadership, organizational differentiation, and long-term corporate strategy and virtue. The competitive strategy evaluation, as in business, rests on robust 'organizational and product and service branding' through services and product designs aimed at enhancing organizational value creation (Palepu et al., 2021).

The global approach towards services has been reshaped within the expanding dimension of businesses to entail positive experiences and engagement. These interactions are posited on fundamental questions about the existing corporate strategies that aim to assess the imperfections in the quantity of resources available for products and services, including human, financial, and technical know-how. It also evaluates the organizational processes and the portfolio of the services, thus gauging the organizations' decisions. The theory of change, fueled by technology and modernity, requires understanding and managing the change as a necessary tool for planned organizational transformation. On the occasion of the 117th National Day, His Majesty the King stressed key and very pertinent issues of governance, organizational growth, and change.

The idea of ***enlightened entrepreneurship*** stands as an important dimension for change. Further, deepening the corporate approaches we practice in the workplace is a means of introducing responsible and responsive change. The need for contemporary ideas and the implementation of those ideas within the framework of organizational change and organizational culture is imperative, necessary, and relevant. Research in domains of organizational change shows that organizational change involves confronting the persistent pattern of behaviour blocking

the organization from higher performance, diagnosing its consequences, and identifying the underlying assumptions and values that have created it (Alvesson & Sveningsson, 2025).

In many big companies, organizational culture is viewed as the ultimate way of addressing organizational problems, combining efficiency and focus with flexibility and engagement through values and conviction – culture is still broadly seen as a key aspect of organizational competitiveness. There are two key dimensions here: the value of 'organizational competitiveness' and, in line with the changes in global work cultures, 'organizational competitiveness' should always be viewed through the prism of a business entity and culture. As said, organizational competitiveness should be understood and seriously meant to adopt a corporate approach to a work culture that has been molded through new thinking, new work methods, and ethos.

An approach without changing the 'traditionalist approaches' as noted by Carl-Henrik Svanberg, at the time CEO of Ericsson, can defeat the best of strategies. He shared that 'culture always defeats a strategy.' Further, they noted that 'culture is not just one aspect of the game, it is the game' (Palmer et al., 2022). Therefore, one of the significant approaches to enhancing an 'effective work culture' established on the principles of technocracy and corporate outlook and mentality is the 'engagement of business-centric work cultures evolving on the similar values of economics and economic returns.'

If we examine the organizations within Bhutan, most organizations cannot be guided by business-centric orientations or be strictly ruled by principles of business and economic returns. However, it has to be conceptualized that the 'ultimate object' of any organizational work, although it may be differential on varying degrees, is governed by the centrality of the 'work product.' Only a few organizations can generate income, and others cannot; for that, the output differs, but the economic concept of 'product' remains the same for all organizations. Putting the economic concept of returns and the professionalization of those comes the idea of corporate engagement. Corporate engagement and culture could mean *'efficiency of service, with a willingness to be efficient and productive.'*

Abbas & Kumari (2022) noted that organizational strategies and actions significantly affect societies and economies. The theory of *operant conditioning*, also known as *instrumental conditioning,* engages in learning human behaviour, psychology, and the learning process. Here, the engagement of 'corporate mentality' within the ecosphere of 'work mentality' has to re-align the three essential points: economic, social, and organizational-corporate precepts of employee, employer, service consumer, and society (Abbas & Dogan, 2022). In this light, the organizational change theory, the behavioural theory of the employees, the idea of successive approximation, enhancement of the organizational values through strict corporate desirability, and the continuum of organizational force to implement positive corporate reputation at every level are studied as significant. Further, an organizational culture guided by principles of shared values, beliefs, and behaviours that amalgamate the 'standards of the organization' is essential.

This has to be integrated through strategic human resource management, capacity building, and altering the 'current' behaviours and patterns of management to create a balanced system for optimal organizational prosperity. This is a vast subject, and organizational expertise may be required to build the corporate culture and reputation. In addition, the organizational culture (San, 2023) reminds us about the falsities of the drivers of organizational culture and the need for alignment of organizational mission and values, incentives, accountability, talent management, transparency, risk management, and leadership. This article examines corporate culture and its organizational practices, focusing on strategic initiatives.

CORPORATE ORGANIZATIONAL CULTURE

To keep pace with the trends of widespread globalization, the changes in open innovation and production technologies are gradually changing organizational development strategies. The automation concept and professionalization of services and products influence it. Organizations, especially in the line of production, concentrate on creating value and customer service as well as innovation capability. [T]his provides the leadership continuum with positive relationships, organizational culture and knowledge management, and innovation capability (Lam et al., 2021). It is multifaceted and multi-pronged to

engage the various dimensions of changing product demands. Today, the product includes services and the operations of best business ideals aimed at customer satisfaction and consumer retention. In the corporate world, the *Corporate Ethical Virtues Model (CEVM)* is grounded on business ethics and extended customer satisfaction. Th is theory holds that individual business people, as well as business organizations, should possess certain characteristics, that is, virtues, to excel morally. Within this ambit, the 'corporate culture' incorporates the element of virtue beyond the 'externalities of the product and product differentiations.'

The organizational virtue of clarity supports this. Here, the organizational virtue of clarity can mean the normative expectations regarding the conduct of employees. Corporate culture creates standards and expectations that are concrete, comprehensive, and understandable. The business setting confronts employees with ethical issues that differ from those encountered in other social settings. Further, it is established that the more employees are left to their [own] discretion and moral intuition without a guiding organizational frame of reference, the more unethical conduct and unclear organizational expectations. The organizational virtue of congruency suggests that organizations may stipulate clear normative expectations to guide employee conduct, and it has been established that management behaviour is an important source of normativity within organizations. The managers are expected to be normatively correct. Therefore, corporate culture can mean the 'existence of supportability,' and the employees can identify with the organization's values and have a shared commitment.

Research studies suggest that the *Resource-Based View (RBV)* and *Resource-Based Theory (RBT)* provide two views on corporate culture. They *indicated* that internal resources and capabilities are important factors that influence sustainable competitiveness and high-performance organizations. The concept of 'internality' is important, which means that the organization's internal strengths should nourish the corporate culture. There is much research undertaken on 'how to optimize performance.' Generally, it is argued that 'strategic group membership' governed by 'collective behaviours' provides the basis for organizational effectiveness. Therefore, scholars have identified *corporate culture* as one of the factors responsible for organizational effectiveness. Substantially, a strong corporate culture is premised on the belief that

everyone understands and believes in the organization's goals and priorities. This fosters and encourages the participation of all the members of the organization. Theoretically, research as confirmed that organizational culture could enhance organizational performance. These are premises of how organizational culture, productivity, and corporate culture are linked. However, it is imperative to delineate what corporate culture is within specific organizations so that 'corporate culture can suit the inherent values and cultures of the organizations.'

According to Sudarsanam (2010), corporate culture is the cumulative norms and values that direct employees' attitudes toward each other and other stakeholders. Here, the theory of differentiation includes sub-cultures, including personal beliefs, through a fragmentation approach. The culture and effectiveness model suggests that adaptability, involvement, mission, and consistency with stability and direction are essential to a corporate culture. In brief, corporate culture refers to the values, beliefs, and behaviours within the dimension of an organization. Primarily, it reflects how the employees and management interact, perform, and handle the transactions of the businesses of the organization. Therefore, through this research analysis, there is nothing significant in the corporate culture, and one of the most critical elements is 'management' through the lens of positive engagement. This has to be directed through organizational direction and the determinants of improving the relationship between corporate culture and work performance.

Cultures within the 'circle of productive employment' are considered prized treasures. Corporate culture represents a significant potential for success and competitiveness. It is associated with employee satisfaction, commitment, and a strong driver of sustainable performance. Hence, this topic has to be discussed with social and economic considerations, and importantly, within the changing landscape of Bhutan, corporate culture is critically important. It has to be fostered through mutual experiences and learning, and this 'culture' has to provide a distinct shape to every organization (Simon, 2024). Now, every organization needs to be innovative, flexible, and competitive. To some extent, these paradigms must be channeled through effective employee retention, and significantly, understanding and developing a corporate

culture is the first step. This has to be seen as a sustainable competitive advantage developed and promoted within the organization.

Recalling the Royal Address of His Majesty the King, it is imperative that we first understand and differentiate the 'basic essences of a corporate culture.' Every organization should have the unique opportunity to develop and shape these cultures within the normative frameworks of organizational values, beliefs, and principles. This has to align with the business or organizational ideals and strategy (Picken, 2017). Research analysis indicates that the lack of attention and understanding of the corporate culture may create a dysfunctional culture. Therefore, the corporate culture dimension is multilayered, and it is still a debatable topic. Within this dimension, understanding the basic norms of corporate culture is significant to understanding corporate culture as a force for organizational and social control (Michulek et al., 2023).

Further, understanding 'corporate culture' and 'corporate climate' as two distinct organizational concepts is essential. Authors suggest that these cannot substitute each other, and corporate climate is generally associated with 'employees in a particular work unit on their perception of the impact of their work environment, and their shared perceptions.' However, the corporate culture emphasizes situational perceptions of organizational members regarding observable policies, practices, and procedures, including behaviours. In this, it argued that corporate climate might be manipulated, and corporate culture is rooted in shared values within a subconscious value system anchored in the behaviour of the employees. If we distil down the corporate culture construct, it is a multi-layered system that provides a *'system of shared values that define what is important, and the norms that define appropriate attitudes and behaviours from that organization.'* In short, it professionalizes the service through norms, values, and attitudes that shape the behaviour of the employees in solving a 'problem.' It is 'how things are done' (Simon. 2024).

Besides varying definitions of corporate culture, it has a common denominator that establishes the construct of values and norms required as well as the basic cognitive assumptions composed of beliefs or 'ways of thinking.' These are external conceptions of how corporate culture has been defined, and in the Bhutanese work parlance, corporate culture can,

deducing from the various definitions put by multiple researchers and authors on the matter, be defined as the amalgamation of professionalization of work culture [with emphasis on professional work output] coupled with ownership, dedication, and work-oriented thinking, and appropriate work-suited behaviours. Some define it as the organization's personality (Michulek et al., 2023). Within this dimension, it is imperative to analyze the research perspectives through the variables of corporate culture within the measurements of work performance, leadership, and work engagement. In this, the mediation model investigates the relationship between corporate culture (Abu-Bader & Jones, 2021). Using this mediation model, they explore how corporate culture influences work engagement and performance. This can be kept for later discussions.

CORPORATE CULTURE AND ORGANIZATIONAL WORK MODELS

In most aspects, the corporate culture identity is associated with entrepreneurship. Balco et al., (2021) discuss the competitive advantage of corporate culture, and they argue that corporate culture has to be enhanced through training and skills development. Data from various academic resources suggests that 'organizational adaptation' has to be geared towards sustained regeneration and redefinition. They call this 'intrapreneurship,' which is the renewal and reshaping of the corporate culture through re-orientation and strategic development. It has to be accepted that not all organizations can act as economic units that generate economic benefits. However, it has to be a new premise where [every] organization should be geared towards innovation and creativity beyond the economic lens for organizational self-renewal. Further, the concepts of 'opportunity, exploitation,' 'proactivity,' and 'risk-taking' should be introduced to enhance the 'competitive advantage' of the organizations. The 'exploitation' should mean the 'using of optimal advantage' to improve the organization.

This stimulates ideas, generates organizational differentiations, and creates new ideas. However, this requires rapidly promoting skills and competencies with a specific focus on different intra-entrepreneurial strategies (Balco et al., 2021). Thus, creative work strategies can be developed in search for opportunities. These theoretical constructs are

underpinned by critical thinking, transparent communication, awareness of the corporate culture, and strong coordination. These values are supported by a strong attitude to change within the construct of the organization. Analysis and research by Balco et al., (2021) suggest that work model analysis based on organizational innovation, processes, and products [necessarily may not be economic product] has to be specific and suitable. Developing creative strategies is an essential precursor for developing new work models, and research shows that planning is crucial here. It also shows a critical link between skills and corporate culture, which helps to synergize skills, knowledge, and strategic visions. Research suggests that managers must support [these] strategies, and learning and cooperation should be promoted to stimulate motivation and commitment (Balco et al., 2021). This has to be supported by adequate human resources (HR) practices that promote responsibility and enhanced organizational performance.

Within the new models of work culture, writers like Song & Avotra (2024) provide that the incorporation of 'corporate ideology' and 'corporate learning culture,' besides other key influences, is a crucial part of corporate culture. These work models are supported by various research and studies that correlate the strength of corporate culture in which they synthesize that effective corporate culture promotes positive work performances. These are primarily designed for long-term organizational orientation and more corporate risk-taking. A new dimension is added, which makes corporate culture associated with people-centric and technology-oriented culture. In line with the imperative of introducing corporate culture in workplaces, corporate culture has emerged as a big differentiator. It can be argued that in the digital age, it is vital to have committed talent to successfully compete in an environment characterized by uncertainty, hyper-competitiveness, and constant change. In addition, it is accepted that talent is increasingly liquid: it is not tied to geography (Cardona & Rey, 2022).

VIEWING OF THE ORGANIZATION

If we have to incorporate the corporate culture and work mentality, it is how we have to view the organizations. Although the world is developing very competitively, the fundamental question of what a business is [still] remains. Within the organizational work model, we must

build differentiation in corporate strategy, which must be delivered within some organization-specific criteria. This requires identifying the organization and grouping it within different categories with the framework of *'rational logic.'* It shares three perspectives: mechanical, organic, and cultural, strengthening the *"Integrated Organizational Model"* (Cardona & Rey, 2022). Following the approaches developed by Juan Antonio Pérez López (1991), organizations are divided into chronological order and perspectives.

a) *Mechanical Perspective* – The organization is seen as a 'machine' that must be managed "scientifically" through rationalism of planning and control.

b) *Organic Perspective* – The organization is seen as a 'living organism' with initiative and creativity, which must be managed based on people's performance and talent.

c) *Cultural Perspective* – Seeing the organization as a 'social organization' with ends and values and whose management must create a culture ensuring commitment and unity among its members.

Within this organization perspective, the mechanical perspectives share strategy, structure, and systems, while organic perspectives talk about contributions, people management, and management styles. From a cultural perspective, it discusses the organization's external values and internal missions. From the viewpoint of rationality, it is imperative to discuss the various perspectives, mechanical, organic, and cultural, to align the organization's perspectives within the 'corporate mentality and structure.' Further elaborating, the mechanical perspectives indicate that strategy, systems, and structure reinforce and enrich each other. According to this perspective, managing an organization involves developing a good strategy and implementing it appropriately through effective processes. Further, they use these processes efficiently to add to the organizational competitiveness. Researchers say this perspective corresponds to management through 'command and control.' They argue this can smother initiative and creativity (Cardona & Rey, 2022).

On the other hand, the organic perspective is based on the people-centric management practice, adding three fundamental elements to

management: talent, management systems, and people's specific contributions, goals, and results. In this, they manage through objectives (MBO). It is a process whereby an organization's superior and subordinate managers jointly identify its common goals, define each individual's major areas of responsibility in terms of the expected results, and assess the contributions. The concept of empowerment guides motivation and creativity. Here, empowerment is divided into four domains: power, information, rewards, and knowledge, abbreviated as PIRK. From the cultural perspective, it is represented by the concept of 'organizations with purpose.' The purpose drives the key elements of success.

These perspectives introduce a new way of viewing an organization. As stated before, the cultural perspective comprises three elements: external missions, values, and internal missions. In external missions, the organization meets stakeholders' needs, such as those of consumers and communities. The internal missions, meanwhile, are about the stakeholders who contribute to meeting those needs, which constitute employees and stakeholders. And the values here are the synthesis of missions for effective organizational decision-making. These elements are all interrelated and help to form a consistent culture.

From the cultural perspective, an organization is more than just a machine or a group of people with initiative and creativity; it is a social institution with its own identity, defined by missions and values shared by its members (Cardona & Rey, 2022). The cultural perspective aims to generate ownership and a sense of belonging. To do that, it is stipulated that organizations must develop a culture that inspires people to identify with a shared undertaking and values. Therefore, the basic premise is that building a corporate culture with purpose based on models and symbols that reinforce the desired values is integral. Further, corporate values like transparency, social awareness, reduction of status differences, and value-based awards are important strategies for developing and thriving organizational corporate culture.

Nonetheless, aligning organizational objectives with the management systems, in which there is a natural dimension of developing corporate cultural dimension, is a must. Viewing the organization [within the three above domains] provides the praxis for self-organizational and

leadership analysis. However, organizational inclinations have to be developed over time, and it should be done progressively through a 'corporate interaction,' taking a common ownership. If the actions are unilateral, as we see in the Department of Government Efficiency (DOGE) in the United States under Elon Musk, it does not facilitate the process of justice, and if the start of the corporate initiative does not imbibe the fundamental values of a corporate mindset, it can, at a later point of time, be fallible. The concept of 'corporate learning culture' should facilitate optimal firm-level research and ensure that corporate ideology is based on three ideologies: progressive decision-making, social responsibility, and organicity (Song et al., 2024).

In the conception of the organizational corporate mentality, the fixation of corporate ideology should be seen as a crucial framework to inspire action and connect it with behaviour and attitude. Further, research analysis suggests that ideology serves as the foundation of the laws that govern employee relations and consumer interactions. Therefore, aligning the corporate ideology is one of the foremost components to establish corporate legitimacy (Chow et al., 2022). Here, when viewing the organization, 'it requires a learned, intelligent, expandable, elastic and development-oriented mentality' aimed at expanding knowledge, generating new ideas, and strengthening fundamental beliefs. The 'punitive construct,' if we engage in the preliminary development of the corporate organizational construct, this strategy may jeopardize innovation, adaptation, and the robust culture of learning and lose the collective sense of direction. If the project, let us say, is single-handedly undertaken, we may deviate from the organizational learning theories, and the singular recognition of a problem and ideation of a solution may tamper the 'common civilized concept of organizational rationality.' Researchers such as Song et al. (2024) suggest that this approach may increase the perception of organizational politics (POP). They define POP as self-serving conduct at the workplace. Therefore, we must take adequate care of what 'organizational learning' and 'positive corporate culture' are that assume a favourable work environment within our context.

Haga et al., (2024) have linked corporate culture and workplace safety as two emerging notions of corporate culture. In line with this, it is imperative that 'making sense of the view of the organization' should not

be at the harm of others, and perceptibly, ‘common ownership’ should be guided to facilitate organizational wellness. It is learned that incorporating a corporate culture within an organization is achievable, but economic and corporate gain may induce negative work attitudes. Empirically, corporate culture and the *Gross National Happiness (GNH)* paradigm can help strengthen the corporate culture and introduce a climate of adaptation. Examining *GNH's* tenets and comparing them to corporate ideology can help eliminate monolithic sets of values and norms that impair the employees’ personal autonomy and good judgment. It has to be understood that a strong corporate culture focuses on employees as the primary stakeholders, with concentrated efforts on maximizing the benefits of the employees. This ensures that they are committed and have the continuum of energy to act in ‘common ownership.’

This is imperative; we should terminate this partnership strategy at no cost. This is an instrumental variable. Fiordelisi & Ricci (2014) studied that stronger collaboration and creativity promote better ‘work culture and corporate culture at offices.’ It has to be noted that introducing a corporate culture within the dimension, for example, in an **institution A**, should not make the employees of **institution A** targets, demanding immediate proficiencies, and the natural duty, as we may call it, on **institution B** that demands and instils corporate culture on **institution A**, is to approach it by ‘first knowing the basic norms of the institution.’ If there is a lack of realistic connection between institutional desire and outcomes, it can result in orthodoxy in approach. This can directly tamper with organizational innovation, creativity, integrity, quality, and teamwork. First, we have to know the psychology of the employees of the organization, then the psychology of the organization. If the strategy is not effective, it can be a cat-mouse game.

Another significant line of thinking is the integration of national cultures within this approach. As we said, corporate culture is a ‘shared norm.’ Here, it should not be understood as an ‘alien norm’ but a working norm that integrates with ‘what best works for Bhutan’, and it should be maximized through harmonizing country-level cultures, expanding on the culture of integrity and non-individualistic work attitudes, amongst others. Exploring the best ideals and harmonizing them to reinforce corporate culture is crucial. Within the economic firm lens, most firms base the corporate culture dimension on integrity, innovation, quality,

respect, and teamwork (Haga et al., 2024). However, 'getting it contextually right' and enhancing the people-centric approach with an employee-centric approach is a prerequisite. As said before, psychological analysis with talent creation and motivation can be the 'simple ways to strengthen corporate culture.' Knowing the organization is crucial.

ESTABLISHING CORPORATE CULTURE AND HUMAN CAPITAL MANAGEMENT

In the preceding discussion, we narrated the narratives of corporate culture and how corporate culture is premised 'based on primary and second analysis of various institutional dimensions.' Further, as a country governed by renowned *GNH* precepts, the corporate culture should be established by testing, analyzing, and discussing the tenable variables of Bhutanese organizational culture, as well as our work cultures. While corporate culture is a requirement of modern governance, it should be structured for a harmonious transition. Taking an airplane as an example, we can say it can only be rolled into the airport after years of precise manufacturing and testing. Small components play a crucial role in maintaining the integrity of the aircraft. Similarly, organizational culture also plays a similar role. More than manufacturing an aircraft, restructuring human behaviour and psychology is the greatest challenge in the modern age.

This has to be weighed with modern values of populism. There are many socio-legal premises, and we must balance them to make them sustainable. The long-term objectives are far more critical than short-term goals since any national development endeavour should be strategic, based on long-term priorities, and culturally focused on sustainability principles. It is no achievement if the great 'culture survives only a few years.' It has to be sustained, and for sustenance, it should be structured on the principles of a 'breathing ecosystem' that promotes growth rather than 'mere survival.'

The development should be strategic, systematic, and not dramatic, and it should not allow crevices to exist 'where human falsities can enter.' Neither can we copy and implant it. There are many best practices of corporate culture across the globe, and we have to be reminded that 'values differ significantly.' There is also a huge

differential, which can affect the direction of the corporate culture ecosystem. For it, we have to systemically evaluate and assess our national work cultures, Bhutanese work habits, perception of work, professionalism, economic returns, and collectivism in the Bhutanese work environment. Essentially, 'these variables affect the ecosystem of work culture.

Nowadays, corporate culture has become a strategic priority for many companies. As in organizations, as we said before, the only difference is that it 'generates or does not generate economic returns. Other things remain similar and constant. Unless we engage that 'business mentality,' in which we will have to 'please the consumers,' the existentialism of the profession and the organization can be easily challenged by modernity and time. It is said that culture is the sum of all human ideas, acts, and outcomes unconnected from our natural inclinations and can only be sparked by those who have undergone the learning process. Organizational culture is at the heart of what makes them function.

Achieving company goals, such as creating the right work mentality with high dedication and loyalty, is a significant imperative. However, leadership, direction, motivation, and proper work coordination are essential for organizational work culture (Krizanova & Michulek, 2022). However, work-life balance has become crucial in today's work environment, which is characterized by fluid mobility. This must be established by exploring the complex relationship between work settings and risks. The Royal Courts of Justice, as it was in the past, is a challenging work environment. Therefore, in such work environments, it is studied that corporate culture, which is regulated through peer influence and the social construction of reality in contrast to formal control mechanisms codified in the form of rules and procedures, can help to foster positive feelings of solidarity and a greater sense of autonomy among individuals within the organization (Li et al., 2021). Corporate culture influences employee work satisfaction and mental health, preventing disputes, ensuring continuity, facilitating and making coordination and control easier, and reducing employee uncertainty. Additionally, it may serve as a major motivator and promotor of competitive edge (Lorincove et al., 2020). According to Guiso et al. (2015), corporate culture revolves around teamwork, integrity, humility,

and working with the end consumer based on the secret strategy of client acquisition.

Within this dimension, human capital management is imperative to enhance organizational sustainability and allow sustainable change. This is called the continuum of change. This involves establishing appropriate balance between the economic, ecological, and social aspects of an organization's operations and striving to accomplish economically viable, socially and environmentally responsible goals. By aligning the priorities and incorporating environmental, social, and economic factors into their operational strategies, organizations can generate value for themselves while positively impacting the current and future welfare of society and the environment. Noticeably, the advancement of organizational sustainability relies heavily on human capital management in the workplace. Many change initiatives can fail due to non-changing organizational management and human resource imperatives. Planer (2025) notes that leadership and direction are essential.

Ozturk's (2021) definition of leadership states that leadership is the process of using influence to clarify organizational objectives for individuals within a group or those under one's guidance. Here, the approach should be two-pronged in which the corporate architecture has to be supported by a good working environment and effective and strategic management of human resources. It can be identified that human resources play the key catalyst for development. Further, the fluid nature of employment and workforce means that the 'carrot and stick' approach can seldom work, and the static nature of employment easily gives way to more fluid working behaviour, which, on a small mishandling, can trigger mobility. Things can be fragile, further influenced by opportunity and mobility. Balancing and making strategic and helpful decisions can help enhance organizational change. This is how corporate entrepreneurship can balance effective human resource management.

There is adequate research on corporate entrepreneurship and corporate behaviour. Therefore, the human resource management aspect is striking between these two paradigms. This has to be focused on sustainable human resource management (SHRM), which is envisioned in the *Triple Bottom Line (TBL)* idea. This is focused on organizational sustainability (OS), which encompasses the actions taken by an

organization as well as their outcomes to ensure the continuity of its business operations, including financial stability, without causing harm to social or organizational ecological systems (Sudolska, 2025). Further, this emphasizes the equilibrium between economic, ecological, and social aspects of business operations to achieve economic goals that are environmentally acceptable and socially desirable. In conclusion, while different authors take different approaches to defining OS, all definitions effectively consider the interests of the organization's stakeholders, such as employees, society and others, which is currently referred to as a "silent stakeholder."

Acquiring and enhancing OS necessitates engaging and developing human capital in the organization. Authors call this *Green Human Resource Management (GHRM)* the subset of *Sustainable Human Resource Management (SHRM)* that integrates sustainability principles with a people-centric approach to managing human resources. As part of the corporate culture, having and implementing human resource management strategies and practices that facilitate the accomplishment of corporate culture and focus on 'development-centric management' is necessary. More so, the objectives should have a lasting impact and be fostered by managing the complex relationships between the HRM system and the external and internal organizational environments and implementing actions that ensure the long-term sustainability of resources. In addition, the idea of 'social factors' in human resource management that cultivates a motivated and talented workforce is essential. Organizational change should engender positive change in the mindsets of its employees.

Studies suggest that what makes the organization unique is the 'organizational culture' based on shared understanding and adherence to organizational ideals. As part of it, corporate culture is a 'distinctive way' of thinking that people bring to the table. On the one hand, it requires accountability; on the other, it requires strategic and sustainable human resource management by enhancing employee performance within the expected norms. Sustainable human resource management should balance between the extremes of 'organizational efficiency' and 'optimum employee performance' by setting explicit norms and standards. Further, the corporate organizational culture should be robust and facilitate transparent communication and active involvement in decision-making.

In line with strategic and sustainable human resource management, Guo (2022) observed that organizational culture is important and good human resource management can be comprehended by thinking about important aspects like staff engagement, creativity and opportunity for error, reward structure, transparency in information sharing, and focus on effective public service. Khan et al., (2024) undertook quantitative research assessing various aspects of corporate governance, including effective leadership and human resource management. Analysis shows that corporate behaviour and job satisfaction of the employees, which is composed of personal beliefs, principles, personality traits, and expectations of the individual, in addition to the characteristics of the profession and the opportunities form an integral part of corporate culture and behaviour.

It has been found that individuals tend to advance in their careers when they are happy in their jobs. According to the study conducted by Sutia et al., (2022), a significant association was observed between organizational environment and job satisfaction among employees in specific roles. Additionally, a connection was identified between satisfaction and turnover. In light of this, human resource management must be excellent for corporate governance and structure to be successful and for the *GNH* system of work-employment systems to exist as part of strategic human resource management, leadership behaviour and conduct to influence corporate culture and employee retention.

Zuraik & Kelly (2019) and Purwanto et al. (2021) stress how leadership conduct influences organizational culture and how that culture affects worker fulfilment. Nugroho et al. (2021) add to this discussion by highlighting the moderating role of organizational culture in the relationship between leadership behaviour and organizational commitment. These studies highlight the importance of a healthy organizational culture and strong leadership to support employee productivity and general well-being. Significantly, it emphasizes the importance of a balanced approach with a mindset to enhance learning, improvement, and knowledge management.

The mediating role of management support and influence of corporate culture provides enhanced work productivity. Management support is studied as directly proportional to enhancing work productivity

and positively influences positive work attitudes (Selviani et al., 2024). The concept of mission and sense of purpose also states that unity and survival, unity and profit, and realigning the mission and vision of the organizations through the concept of *Management by Mission (MBM)* can kickstart the fundamental question of 'what and how.' It synthesizes the end of the organization and gives a clear 'why' emphasis. When we answer the 'why' question, it also posits the 'how' questions. David Packard, co-founder of Hewlett-Packard (HP), said in 1960 about corporate culture that an organization should not exist only for money, and it should find deeper reasons for its existence. The drive should come from the desire to do something else, to make a product and give a valuable service (Cardona & Rey, 2022). This precept rightly echoes the *GNH* concept of corporate governance.

CONCLUSION

The idea of corporate culture and governance can be extensive and attuned to different facets of management and administration. As part of it, the article tries to reflect the various aspects of corporate culture from multiple dimensions, and the idea has been constricted to make the article concise. With a business direction for each organization, there are analysis tools that identify the strategy and bargaining power and apply corporate strategy evaluations. This has to be viewed through strategic and sustainable human resource management. Further, it can be stated that within the Bhutanese work ecosystems, the corporate culture engagement at workplaces can be synergized with the values of *GNH* so that economic and non-economic motivations govern the corporate culture by leveraging values, good governance, strategic human resource management, and knowledge management. This is to facilitate effective innovation, creativity, and continuous learning, enhance the communities of corporate practice, and redefine corporate practice knowledge capture (Uriarte, 2008).

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AN ANALYSIS OF THE LEGAL ECOSYSTEM OF THE GELEPHU MINDFULNESS CITY (GMC)

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ABSTRACT

The paper explores the strategic legal foundations of the Gelephu Mindfulness City (GMC), a unique Special Administrative Region (SAR) in Bhutan designed to attract international investment and promote innovation. The analysis focuses on the *GMC*'s adoption of select Singaporean laws and the *Abu Dhabi Global Market* (ADGM) financial regulations, examining how these frameworks create a robust environment for economic activity. This research seeks to identify specific areas where strategic enhancements can further align Bhutanese law with international best practices by undertaking a comparative analysis of these adopted laws with their respective comparable Bhutanese legislations. It recognizes the globally competitive financial ecosystem as a source of economic prosperity for Bhutan.

Keywords: GMC; legal framework; Special Administrative Region

INTRODUCTION

Bhutan, renowned for its unique culture, tradition, and values, strategically positions itself as a significant player in the global economy by establishing the *Gelephu Mindfulness City (GMC),* a *Special Administrative Region (SAR).* The *GMC* is envisioned as a center for trade, finance, and technological innovation, designed to attract global investment and support sustainable economic growth in Bhutan. A foundational aspect of the *GMC* is its unique legal framework, which incorporates specific Singaporean laws and *Abu Dhabi Global Market (ADGM)* financial laws. This is a bold and ambitious step for a jurisdiction with a unique history and socio-cultural background.

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This paper aims to provide a comprehensive comparative analysis of the legal frameworks adopted in the *GMC*, examining how they differ from existing Bhutanese frameworks and what this means for investors. The paper will explore how these frameworks are designed to create a modern, efficient, transparent, and predictable system that can contribute to a thriving financial ecosystem. The analysis will specifically focus on how specific laws are expected to function in the context of the *GMC.* This research will take an investor-focused perspective, analyzing how these international frameworks are designed to build investor confidence and promote sustainable economic growth in the *GMC.*

This paper will make specific research-based references to improve and enhance the adopted regulations and legal schemes, ensuring that the new framework is ideally tailored to address investor needs. The paper will analyse how the *Application of Laws Act 2024* brings Singaporean laws and the *ADGM* laws into the legal framework of the *GMC.*

I. Establishing a Framework: The Application of Laws Act 2024

The legal basis for adopting Singaporean and *ADGM* laws in the *GMC* is established by the *"Application of Laws Act 2024,"* a key piece of legislation that defines the extent to which these international legal systems will apply.

1. Scope and Definitions

This Act establishes the legal framework for the *GMC*, incorporating specific laws from both Singapore and the *Abu Dhabi Global Market (ADGM)* (Application of Laws Act, 2024). It defines key terms such as "GMC," "GMC Laws," "common law of Singapore," and "Abu Dhabi Global Market financial services law" (Application of Laws Act, 2024). These definitions are essential for understanding the scope and applicability of the adopted laws. For example, the "common law of Singapore" is defined as the common law as it exists in Singapore, as well as the specific Singaporean *Acts* defined in *Schedule A* of the *Act* (Application of Laws Act, 2024). Similarly, "Abu Dhabi Global Market financial services laws" are defined as the *Financial Services and Markets Regulations 2015* promulgated in the *ADGM*. This *Act* not only

establishes which rules are adopted but also establishes the *GMC Authority* to enact laws and determine the applicable laws.

2. Application of Singaporean and ADGM Laws

Section 3 of the *Act* establishes that "the common law of Singapore, as it stands from time to time, applies and forms part of the law of the GMC." Further, sections 4 and 5 outline the specific Singaporean enactments and *ADGM* laws to be adopted and specify that such laws apply "in the *GMC." Schedule A* and *Schedule B* explicitly list the specific laws from Singapore and ADGM that will be used in the *GMC*. This includes the *Companies Act of Singapore, 1967*; the *Electronic Transactions Act of 2010;* Singapore's *Income Tax Act* of *1947*; and the *Insolvency, Restructuring, and Dissolution Act of 2018* from Singapore. Similarly, *Schedule B* includes regulations such as the *Anti-Money Laundering and Sanctions Rules and Guidance* (AML) (ADGM, 2025) *and Market Rules (MKT)* from the *ADGM* (*GMC* (ADGM, 2025).

The *Act* also states that these adopted laws will be subject to modifications as specified by the *GMC Authority*, allowing for the tailoring of these laws to the unique context of the region. It also provides that Singaporean laws will take precedence over the ADGM laws, further solidifying that they are of primary importance within the *GMC*. This strategic adoption of international frameworks ensures that the *GMC* meets the highest best practice standards.

3. Power to Modify and Interpret

The *Act* recognizes the importance of a flexible legal system and grants broad powers to the *GMC Authority*. Sections 3 and 4 of the *Act* indicate that the *GMC Authority* can modify the Singaporean and ADGM laws as they apply in the *GMC* to ensure they can be suitably applied to its needs (Application of Laws Act, 2024). It also allows the *GMC Authority* to issue guidance to implement these complex legal instruments, as shown in section 8. These legal foundations demonstrate that adopting Singaporean and ADGM laws is not simply replicating existing laws but a strategic and well-considered approach that recognizes the need for local adaptability. The Act promotes certainty and flexibility in the *GMC*'s legal environment by outlining a clear mechanism for modification and interpretation.

II. Building Blocks of a Globally Competitive Financial Ecosystem: A Thematic Analysis

1. Establishing a Reliable Business Environment: Corporate Governance and Clear Operational Frameworks

A foundational requirement for attracting sustainable investment is creating a reliable business environment characterized by precise rules, well-defined responsibilities, and a predictable application of the law. To this end, the *GMC* framework prioritizes creating stability and encouraging strong systems of management as key aspects of its appeal. To this effect, we can compare the *Company Act of 1967* and *the Electronic Transactions Act of 2010.*

The Singaporean *Companies Act of 1967* directly builds confidence by creating a structured system with clear liability for stakeholders to make well-considered decisions (Companies Act, 1967). With detailed *Rules,* the *Act strongly focuse*s on enabling greater financial success while providing clear direction for governance. It is clear that under sections 145-173I, there is great certainty in the duties for all (Companies Act, 1967). While the *Companies Act of Bhutan 2016* focuses on having the structures, it may have too broad or unclear processes, which may impede international investments and trade in Bhutan.

The Singaporean framework provides better legal clarity on the duties of officials and key Directors, which in turn provides support for its operations. The *Electronic Transactions Act of Singapore, 2010* seeks to provide security in the use of electronic transactions and electronic communications, promote public confidence in the integrity and reliability of electronic records and electronic commerce, and foster the development of electronic commerce. This will help create a leading framework designed to promote trade and investment (Electronic Transactions Act 2010). The Financial Stability Board (2024) mentions that the Singapore framework is best for creating a business and an effective legal system worldwide.

2. Facilitating Trade and Transactions: Enforceability, Redress, and Third-Party Protections

To ensure effective investments from the third party, the best legal and business systems are a must (GlobaLex, 2024). It has been studied that a strong legal system helps to facilitate trade and investments. Singapore's strong and stable legal system can help facilitate the ease of investment and business, which can be hugely profitable for Bhutan. Further, the legal business infrastructure in Bhutan is also adequately strict, and these environments provide a ripe culture for investment, business, and trade, which brings long-term benefits.

3. Creating a Modern and Digitized Economy: Electronic Transactions and Data Protection

Bhutan's legal framework ensures that best practices are harvested and that there is a continuum of improvement. *The Electronic Transactions Act 2010* of Singapore establishes a very strong transaction network and reliability standards with high data integrity and industry standards. It can create, enrich, and enhance a digitized economy with the highest transaction data standards and security.

4. Providing a Stable Financial Sector: Transparency, Ethical Conduct, and Investor Protection

An important factor to draw investors is to have long-term plans based on principles of stability, ethics, and a strong legal infrastructure. This provides the avenue in which the investors 'find all the relevant protections, as well as the infrastructure and environment they seek' (Ebenezer, 2011). Business factors like transparency, ethical conduct, and investor protection help to build and enhance the framework of ethical and legal standards that promote investment and business climate.

III. Why Investors Prefer the Adopted Frameworks

This section will highlight the overall advantages of the adopted Singaporean and *ADGM* frameworks in the *GMC* from the investor's perspective, emphasizing how they will create a more attractive business ecosystem.

1. Regulatory Clarity and Predictability

The detailed nature of the Singaporean and *ADGM* frameworks creates greater regulatory clarity and predictability for businesses. This clarity

reduces the risk and uncertainty that may impact financial and investment decisions. These frameworks, which are internationally recognized and well-established, provide investors with a level of confidence that is not as easily achieved in jurisdictions with less defined legal systems. The predictability also allows companies to manage their processes and compliance better, reducing the administrative burden and allowing for more effective planning and cost management.

2. Promoting Global Integration

The *ADGM* and Singaporean frameworks are designed to facilitate global trade, investment, and cross-border transactions. The adoption of such frameworks will aid in creating an investment hub that is well-integrated with the global financial sector. Both systems are aligned with global best practices and international norms, ensuring businesses operating within the *GMC* can engage effectively with international counterparts.

3. Risk Management and Transparency

The *ADGM* and Singaporean legal systems emphasize risk management and transparency, providing a safety net for businesses requiring stability and predictability. Singaporean frameworks have detailed rules on reporting requirements, ensuring that companies are held to high standards of disclosure, which will reduce the risk of fraud and ensure that investors have a clear picture of financial operations. *ADGM* laws are designed to support businesses that require a more sophisticated system of internal controls and risk mitigation policies.

4. Efficiency and Innovation

The Singaporean and *ADGM* systems, with their adoption of digital technologies and focus on streamlined procedures, offer a more efficient and innovation-friendly business ecosystem. Singapore's *Electronic Transactions Act of 2010* facilitates and strengthens the security of the digital financial system, providing a platform for the secure implementation of modern technologies. Such a technological focus offers a competitive edge to the framework, allowing it to facilitate technological innovations and attract tech-focused investors.

IV. References for Enhancing the Bhutanese Frameworks

This section proposes specific references on how Bhutan can further develop its legal frameworks, drawing on the strengths of both the Singaporean and *ADGM* systems while retaining its own unique identity.

1. Enhanced Transparency and Accountability

Implement detailed reporting requirements similar to those found in *ADGM* laws to ensure transparency in financial operations and governance. Technology, such as online portals for the submission of reports, will promote easier access to information and data and help streamline administrative processes.

2. Adoption of a Risk-Based Approach

Shift from a rules-based approach to a risk-based approach in areas like *Anti-Money Laundering Regulations*, where such approaches are more efficient and are better at aligning with international standards. This would also entail establishing a suitable body to conduct such risk assessments.

3. Strengthened Dispute Resolution

Enhance mechanisms for dispute resolution by creating a robust judicial system and specific dispute resolution channels for specific types of disputes. Such a process should be guided by transparency, accountability, and the ability to give investors recourse if a legal dispute occurs.

4. Clearer Pathways for Foreign Investment

Improve processes for immigration and work permits for foreign talent by creating more accessible and specific pathways for skilled professionals, entrepreneurs, and investors. This will be a positive step in attracting talent to the region and supporting the growth of the *GMC* as a global economic center.

5. Modernizing Regulations

Regulations should be continuously reviewed and updated to ensure they align with international standards and that the regulatory structures are future-proof. Technology should be adopted across all sectors to enable online filing and reporting and streamline operational processes.

V. Integration and Convergence: The Path Forward

This section will highlight how adopting these international regulations and practices is a key step towards ensuring that the *GMC* and Bhutan are not viewed as separate systems but as different parts of an integrated whole. Integrating the *GMC* legal frameworks into the broader legal system of Bhutan is a crucial step in ensuring the project's long-term success. While the *GMC* provides a more attractive framework to international investors, it also recognizes the long-term interests of the whole nation as Bhutan endeavours to create a business niche in the global business ecosystem.

The Royal Address of His Majesty the King on the 117th *National Day* emphasized the need for a "convergence" of the systems, recognizing that what is achieved within the *GMC* must be mirrored across the rest of Bhutan for long-term success. This means that the legal systems adopted by the *GMC* should form a platform for innovation and the improvement of the rest of the country. This helps to build bridges by amalgamating the unique approaches of Singapore and the *ADGM* legal and business practices, especially by incorporating similar concepts of innovation, transparency, and a focus on ease of business operations. From a long-term perspective, implementing these reforms is a step towards creating an integrated economic and legal framework. This means the creation of institutions of governance that ensure a skilled workforce and streamlined regulatory and administrative structures across the country to help Bhutan achieve a globally competitive economic environment.

CONCLUSION

Bhutan's strategic choice to adopt Singaporean laws and *ADGM* regulations within the *GMC* reflects its commitment to building a globally competitive financial ecosystem. The comparative analysis presented in this paper reveals that such frameworks have much to offer investors through their promotion of enhanced transparency, predictability, efficiency, and investor protection. By understanding the strengths of both the Singaporean and *ADGM* approaches, and carefully tailoring them to the Bhutanese context, the *GMC* has the potential to transform Bhutan's economy and serve as a model for other jurisdictions in a globalized world. By building upon this foundation, Bhutan will be able to create a

more robust legal system that is geared towards supporting long-term economic development and ensuring a brighter future for its citizens.

The *GMC* is a unique and ambitious project which serves as a strategic pathway for economic growth in Bhutan. Through a commitment to best practices, modern frameworks, and a focus on sustainable development, the *GMC* has the opportunity to become a leading financial hub and secure its place in the global economy. The development of the *GMC* legal system must be seen as an opportunity to demonstrate the nation's best aspects of a globalized world and an opportunity to attract ethical investment and generate prosperity for all citizens of Bhutan.

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EMBRACING RESTORATIVE JUSTICE PRINCIPLES IN SOUTH ASIAN JUSTICE SYSTEMS TO FOSTER HARMONIOUS COMMUNITIES

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ABSTRACT

Restorative justice is a very effective means of resolving community disputes, reducing damage, and facilitating reconciliation. It aims to mend the damage created by criminal activity through communication, responsibility, and community engagement. Reconciliation within the community, accountability for the offender, and victim healing are the main objectives. This contrasts the retributive justice approach, which prioritizes punishment and deterrence while frequently ignoring the needs of those directly impacted by the crime or its underlying causes. The article outlines the principles of restorative justice and how they will help create a harmonious community. It provides examples of restorative justice practices in cultural contexts, highlighting the challenges and opportunities. In doing so, it discusses the need to institute restorative justice practices in the South Asian region.

Keywords: restorative justice; reconciliation; South Asia

INTRODUCTION

The restorative justice system is a strong substitute for the conventional punitive justice system. It strongly emphasizes community involvement in conflict resolution and damage reduction, as well as healing and reconciliation (Zehr, 2015). Adopting restorative justice concepts can lead to more peaceful communities in South Asia, a region with a diverse population and history. These ideas can help South Asian judicial systems overcome the drawbacks of punitive regimes, lower recidivism rates, and strengthen social bonds. This article will examine the possibilities of restorative justice in the area and its importance in

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fostering more harmonious and peaceful communities. Under the restorative justice ideology, crime is not simply an illegal activity but also an offence against relationships (Braithwaite, 1999). It aims to mend the damage created by criminal activity through communication, responsibility, and community engagement. Reconciliation within the community, accountability for the offender, and victim healing are the main objectives. This contrasts the retributive justice approach, which prioritizes punishment and deterrence while frequently ignoring the needs of those directly impacted by the crime or its underlying causes. Facilitated sessions involving victims, offenders, and occasionally community representatives are a common part of the restorative process (Zehr & Mika, 1998). During these sessions, offenders are urged to accept accountability for their deeds and make an effort to atone. While the community works to reintegrate all sides, victims can discuss how the crime affected them.

Key Principles of Restorative Justice

Victim-Centric Approach

The foundation of restorative justice is the understanding that crime creates pain and that harm must be repaired by prioritizing victims' needs and perspectives. As a result of the traditional criminal justice system's emphasis on punishing the perpetrator, victims frequently feel ignored and marginalized. On the other hand, restorative justice aims to give victims a voice and let them actively choose how justice will be carried out (Canada Department of Justice, 2024).

For instance, principles of restorative justice have been applied in New Zealand, especially in its juvenile justice system. In a controlled environment, juvenile offenders can meet their victims through the *Family Group Conference (FGC).* The perpetrator can express regret and offer apologies after the victim discusses how the incident affected them (Mousourakis, 2023).

Accountability for Offenders

Beyond just admitting guilt, restorative justice demands that offenders accept responsibility for the harm they do and comprehend the true consequences of their acts. This responsibility helps offenders to

show regret, comprehend the impact of their actions on others, and take corrective action (Zehr & Mika, 1998). For example, a man who broke into a house in Nova Scotia, Canada, was allowed to see his victim. He offered to make up for the stolen goods and showed sincere regret during the restorative justice process (National Association of Women and the Law, 2003).

Participation in the Community

The message of restorative justice is that crime affects the community as a whole in addition to its specific victims. Communities assist victims and offenders in their recovery and reintegration, a crucial part of restorative justice procedures (Zehr & Mika, 1998). Involving the community promotes social trust-building and guarantees that criminals are held accountable in a way that is advantageous to all parties (Trevethan & Maxwell, 2023).

Healing and Reconciliation

The goal of restorative justice is to repair the emotional and interpersonal harm that crime has inflicted, emphasizing not only concrete compensation but also rebuilding relationships and trust (Zehr & Mika, 1998). This is particularly critical in situations where the parties may need to routinely encounter or continue living near one another, such as in small towns, jobs, or schools. One of the most well-known instances of restorative justice in a political setting is the Truth and Reconciliation Commission (TRC), founded in South Africa following the end of apartheid in the 1990s. By addressing the underlying reasons for criminal conduct, such as poverty, trauma, and a lack of education [not limited to these], restorative justice plays a critical role in lowering recidivism and decreasing the chance of reoffending.

Giving victims who are frequently ignored in conventional legal procedures the opportunity to engage and obtain closure actively fosters healing by lowering anger and anxiety. Restorative justice creates a safer and more cohesive environment by bringing victims, offenders, and community members together. It also improves community relationships and fosters a culture of support, understanding, and shared responsibility. Furthermore, presenting offenders with the true consequences of their behaviour fosters empathy and personal accountability, discouraging such

future transgressions. Restorative justice provides offenders with opportunities for therapy, education, and access to social services, emphasizing prevention and rehabilitation over punishment. This approach promotes everyone's long-term safety and well-being.

Why the Need for Restorative Justice in the South Asian Nations

South Asian nations, including Bangladesh, Bhutan, India, Pakistan, Nepal, and Sri Lanka, have rich histories influenced by a variety of legal systems, ranging from colonial legacies to customary laws. Despite this variation, most of the judicial systems in the area are retributive, frequently marked by drawn-out legal proceedings, jam-packed jails, and a lack of focus on rehabilitation (Wong, 2014).

One of its main drawbacks is retributive justice's incapacity to address the underlying causes of crime, such as poverty, inequality, and illiteracy. Tensions in South Asia are further heightened by socio-economic concerns such as gender-based violence, caste inequality, and community disputes. By excluding criminals from their communities, punitive approaches can exacerbate social fragmentation and frequently fall short of addressing these pervasive issues. Restorative justice would provide a transformational answer in this situation. Rather than sustaining cycles of alienation and conflict, restorative justice offers the opportunity for healing and reintegration by addressing the relational and social aspects of crime.

Historical and Traditional Practices as a Foundation for Restorative Justice

Community dispute resolution is deeply ingrained in South Asian culture and is consistent with the ideas of restorative justice. For millennia, rural communities, particularly in nations like India and Nepal, have employed restorative techniques (Thapa, 2009). Similarly, in Bhutan, the practice known as *Nangkha Nangdrig* (mediation) is still prevalent (Reuter, 2015).

While these methods are not the same as contemporary restorative justice, they share ideals like rehabilitation, peace within the community, and reconciliation. These regional examples show that South Asian communities have long understood the need to mend fences and promote

harmony. Incorporating contemporary restorative justice frameworks with the revival of ancient indigenous practices might offer a thriving and culturally relevant approach to justice in the area.

Challenges and Opportunities

In South Asia, restorative justice implementation faces obstacles despite its potential. Lack of funding, opposition to reform, and cumbersome procedures are common problems facing legal systems (Pinto-Jayawardena, 2017). On the brighter side, opportunities are just as significant. For instance*, India's Juvenile Justice (Care and Protection of Children) Act* of 2015 integrates restorative ideas (The Juvenile Justice Act, 2016).

On the brighter side, opportunities are just as significant. The need for justice reforms is becoming more and more apparent to governments and civil society groups throughout the region, especially in light of juvenile justice, gender-based violence, and inter-communal conflicts. For instance, India's *Juvenile Justice (Care and Protection of Children) Act* of 2015 integrates restorative ideas, which prioritizes rehabilitation over punishment for juvenile offenders. Nepal's law revisions further show the potential of restorative justice in addressing post-conflict reconciliation and rebuilding initiatives.

Furthermore, the youth population of South Asia, which is among the world's largest, offers a special chance for restorative justice to flourish. Young people can be vital allies for systems that put the community's needs and healing first because they are frequently more receptive to new ideas. Restorative justice provides a route to healing in circumstances of community violence that standard legal procedures frequently cannot. For example, during periods of ethnic or religious strife, restorative justice programs may help communities communicate with one another, settle old grudges, and encourage both individual and group healing.

Regarding Bhutan, with its emphasis on harmony and the well-being of the whole, the *Gross National Happiness (GNH)* ideology is a good fit for the ideas of restorative justice. The nation's initiatives to include *GNH* in its legal system might be a template for the area,

encouraging judicial systems to prioritize community well-being and reconciliation more than punishment.

CONCLUSION

Restorative justice has great potential to change the justice systems in South Asia by moving the emphasis from punishment to healing and reconciliation. Its values are in harmony with the cultural focus on community well-being and balance. Incorporating restorative practices into current legal structures and utilizing traditional indigenous dispute resolution methods like *panchayats* and *jirgas.* South Asian communities can establish a justice system that tackles the underlying reasons for crime, promotes reformation, and enhances social cohesion. Nations such as Bhutan, which follow the *GNH* philosophy, demonstrate how these ideals can be effectively incorporated into governing systems.

Despite the potential, obstacles persist, like established social rankings, institutional resistance, and limited knowledge. Addressing these obstacles will necessitate educational improvements, changes in legislation, and policy adjustments focusing on inclusiveness and engagement with the community. South Asia can develop more humane and effective justice systems by embracing restorative justice, which focuses on building relationships, lowering repeat offences, and promoting long-term social unity and peace.

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METHODICAL APPLICATION OF FACILITATIVE MEDIATION IN NEPALESE JUDICIAL SYSTEM

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ABSTRACT

This article examines the methodical application of facilitative mediation within Nepal's judicial system, emphasizing Alternative Dispute Resolution (ADR) as a means to promote Justice and efficiency in dispute settlement. It explores the historical evolution of ADR in Nepal, highlighting key legal frameworks, including the Mediation Act of 2011 and subsequent regulations that institutionalized mediation practices. The study underscores the role of facilitative mediation in ensuring voluntary, non-coercive dispute resolution, distinguishing it from evaluative mediation and other ADR methods. Nepal's court-connected mediation programs have been systematically developed and supported by legislative measures and judicial guidelines that enhance accessibility, mediator certification, and procedural standardization. Despite significant advancements, the study identifies challenges such as inadequate mediator compensation, limited implementation, and the need for international recognition. The author advocates for structural reform, professionalization of mediation, and Nepal's accession to the *Singapore Convention* to strengthen and apply international dispute resolution mechanisms.

Keywords: Facilitative Mediation; Alternative Dispute Resolution (ADR); Nepalese Judicial System; Mediation Act 2011; Court-Connected Mediation; Legal; Framework Mediator Certification; Singapore; Convention on Mediation; Dispute; Resolution Mechanisms; and Access to Justice

INTRODUCTION

Since the dawn of recorded history, the annals of civilization have borne witness to the prevalence of conflict and discord among

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familial units, communities, organizations, the citizenry, and their governing bodies, as well as between sovereign nations (Moore, 2003). In its broadest sense, conflict can be understood as the fundamental driving force that challenges individuals or groups. It arises from disagreement or tension between two or more people due to different needs, values, or interests.

It is even considered a natural part of relationships. Conflicts are resolved through various means, including but not limited to Negotiation (Compromise and Bargaining), finding a middle ground, Arbitration (Binding Decision by Third-Party), letting someone else decide for us, Litigation (Courtroom Battle), allowing the law to determine, Reconciliation (Forgiveness and Healing), moving on forward and healing, and Avoidance (Ignoring the Conflict), letting drop it, amongst others.

In the following, our concern is focused on the resolution through mediation (third-party intervention), which involves a neutral party to help them settle this. The right-based method entails an adjudicatory process through litigation, which is often protracted, time-consuming, public, and excludes the parties from decision-making. This approach to decision-making encompasses actions based on utilizing power, focusing on interests, and avoiding or escaping the dispute, yielding different solutions, results, and even consequences (Moore, 2003).

The exertion of unilateral power, which refers to the ability of a person, group, or authority to make decisions or take actions independently, without needing approval or consultation from others, does not promote lasting peace, as parties may maintain antagonistic relationships even after a third party resolves a dispute. Therefore, the emphasis is on an interest-based solution approach that focuses on applying fundamental principles of facilitation, mediation, and negotiation towards resolving conflict that allows joint problem-solving approaches. To ensure durable and lasting settlement, mediation becomes a catalyst even in long, complex, litigated cases in various tiers of the court.

Historical Perspective of Mediation in Nepal

Alternative Dispute Resolution (ADR) has historical roots in Nepalese society, dating back to the involvement of elderly individuals and men of social standing in resolving disputes. ADR has always existed in Nepalese history, including during the *Kirat*, *Lichhabi, Malla,* and *Shah* regimes. However, notable structural changes occurred with introducing the Village Panchayat Act in 1961, which granted local representatives the authority to settle disputes through mediation. Following the *Local Self-Governance Act of 1999*, the concept of "Med-Arb" was introduced, mandating local bodies to maintain records of neutrals and resolve disputes through mediation.

If mediation failed, the mediators were granted authority to make decisions independently. Despite limited implementation, the Act laid the groundwork for potential mediation by local governmental bodies, establishing jurisdiction and procedures for resolving disputes at the local level. The new *Country Code of 1963* introduced provisions for settling cases through compromise at any stage of court proceedings. This allowed cases to be concluded through compromised settlements facilitated by the parties and their lawyers, subject to court approval, known as *Milapitra* or settlement by compromise. While this process does not result in formal judgment, it offers an alternative route to resolving disputes outside the formal court system without judgment. However, it does not adhere to the fundamental principles of modern mediation practices.

Formal court mediation programs in Nepal were initiated through amendments to the *District Court Regulation 1995* in 2003. Pilot programs were subsequently launched by establishing mediation centers at the District Court and the Appellate Court. Additionally, amendments to the *Appellate Court Regulations* and the *Supreme Court Regulations 1992* were made in 2006, introducing court-referred mediation. Furthermore, enacting the new *Mediation Act* in 2011 extensively recognizes mediation at the community and local government level and provides for establishing the Mediation Council.

The application of formal mediation has been observed at both community, local government, and Judiciary levels to access Justice and ensure the speedy disposal of suitable cases. However, until the new enactment, the absence of a regulatory institution had resulted in

oversights regarding issues such as recognition, training, and mediator certification. These aspects, crucial for defining procedural, monitoring, and supervision guidelines, were neglected until the enactment of the *Mediation Act, 2011*, and *Mediation Regulation, 2014*. These new laws addressed the shortcomings and provided an official and legal framework for mediation, making the process cost-effective and enhancing access to Justice for the public.

Facilitative Mediation and Alternative Approaches

As per Ruskin & Westbrook (2005), they categorize ADR into consensual and mixed processes. The classification of ADR methods is based on their extent of authority, which is either binding or non-binding in their results. In other words, their grouping relies on whether their outcomes are enforceable as mandatory or remain optional. Med-Arb represents another method encompassing a synergy between mediation and arbitration processes. Mediation is conventionally characterized as a procedure wherein an impartial third party, known as a mediator, facilitates the resolution of a dispute by assisting the parties involved in achieving a mutually satisfactory agreement.

This approach encourages the participants to engage in a dialogue that may yield innovative and cooperative solutions while it refrains from imposing a decision upon any party involved (Moffiit & Brodone, 2005). Diverse methods such as fact-finding, neutral evaluation, settlement conference, mini-trial, summary jury trial, and negotiation constitute various approaches applicable under differing circumstances (Fincher, 2002). Nonetheless, the contemporary mediation process in Nepal is predominantly centered on facilitative mediation. The facilitation, negotiation, and mediation that are determined by the parties involved represent non-coercive Alternative Dispute Resolution (ADR) techniques. These methods are employed in a range of contexts to foster peace, ensure Justice, and safeguard human rights (Stone, 2000).

While the traditional ADR form in Nepal may appear coercive rather than private and consensual (Cohen, 2006), the modern process emphasizes collaboration and voluntary participation, allowing the parties involved to actively engage in finding mutually agreeable solutions (Silveria, 2007). Facilitative mediation emphasizes party self-determination, allowing them to reach an agreement regardless of its

perceived fairness. Still, the notion of a fair settlement agreement makes the mediator responsible for ensuring fairness in the settlement process, sometimes recommending that an unrepresented weaker party seek advice on technical matters (Silveria, 2007).

The *Model Standards of Conduct* (2005) further notes that evaluative mediators operate assuming that parties desire and require the mediator's guidance on appropriate grounds for settlement, drawing from law, industry practices, or technology (Ruskin, 1994). Such expressions of opinion can be conveyed subtly or overtly at any stage during the mediation process (Silveria, 2007). The adherents of facilitative mediation are concerned that the mediator must embrace a facilitative orientation in producing a self-determined outcome because the neutral, with an evaluative role, renders judgment and expresses an opinion on a disputed matter (Kovac & Lela, 1998). The *Model Standards of Conduct for Mediators* emphasize facilitation and party self-determination as fundamental principles of mediation (Model of Standards of Conduct, 2005).

The structural setup developed and implemented under the court system in Nepal is purely facilitative because the mediator's role is only to facilitate and help resolve disputes on their own (Mediation Act, 2011). However, principally, if facilitative mediation is not suitable, evaluative mediation is recognized as an alternative in cases where facilitation is not feasible and a settlement is needed (Brown, n.d.). Seagriff (2010) mentions that mediators are tasked with promoting the flow of information between the parties and assisting and encouraging them to identify the factors that led to the dispute. The evaluative process is modeled on the settlement conferences judges hold (Zumeta, n.d.). It emerged in court-related mediation within a legal context.

In his mediator orientation, Professor Riskin initially categorized the role of mediator as facilitative and evaluative. Still, later, he replaced the evaluative with directive mediation, which falls under the category of directive mediation umbrella. (Riskin, 2003). According to transformative mediation, a mediator's intervention can fundamentally transform interactions from negative and destructive to positive and constructive (Samuel et al., 2007). Scholars define a wide range of practices, including facilitative and evaluative, as "broad" and "narrow"

approaches to mediation. Riskin (1996) mentions that based on the terms, academics and scholars have different approaches to mediation; the term 'facilitative mediation' alone may not be enough to understand the nuts and bolts of mediation.

In Nepal, settlement of disputes through indigenous practices does not fall under the broad facilitative form of mediation because settlement is directed to keep community harmony. However, community mediation is recognized by the umbrella legislation. However, court-referred mediation is considered a broad facilitative approach, ensuring that parties can resolve independently without coercion or evaluation. Under the *Mediation Act of Nepal*, mediators are required to play the role of facilitator (Mediation Act of Nepal, 2011). Obligated to assist parties independently and impartially in resolving disputes. While helping settle disputes under this *Act*, a mediator shall not be a judge, arbitrator, or legal advisor. The other forms, such as settlement conferences and neutral evaluation, are not recognized by the law. The mediator shall play only the role of facilitator (Mediation Act, 2011). Hence, Nepalese court-connected mediation is purely a facilitative mediation.

Institutional and Legal Framework

A. The Mediation Act, 2011

A strong organizational foundation characterizes Nepal's modern mediation practice. The certification of mediators and the implementation of monitoring and supervision activities are identified and formalized. Unlike historical methods of settling disputes outside the judicial process, recent developments have established specific approaches and guiding principles for mediators. A distinctive feature of Nepalese mediation practice is incorporating community mediation and establishing the Mediation Council as an umbrella organization to implement and formalize the mediation system. This centralized body oversees and regulates mediation activities, ensuring consistency, quality, and adherence to established standards nationwide. It outlines the framework for settling disputes through mediation in Nepal.

The *Act* provides for the settlement of dispute sub-judice at any court level (Mediation Act, 2011). It addresses the possibility of co-mediation, providing several mediators 1-3, Imposing the duty to abide

by the code of conduct for mediators, and providing procedures related to mediation, including seeking information from the parties. The law also makes certification to work as a mediator. It specifies details regarding the appointment of mediators, the responsibilities of mediators, procedures related to mediation and settlement, and the conditions for a mediator's removal.

The legislation includes provisions for establishing agencies dedicated to offering mediation services. Additionally, it grants parties the liberty to appoint an untrained individual as a mediator, should all involved parties agree to such an appointment. The formation of the Mediation Council is mandated. The leadership of the Council is to be assumed by a currently serving judge of the Supreme Court, who is appointed by the Chief Justice based on a recommendation from the Judicial Council. The composition of the Council includes the Secretary of the Ministry of Law and Justice, the Secretary of the Ministry of Local Development, the Secretary of the Nepal Bar Association, the Deputy Attorney General, a member with expertise in the relevant field, and a representative from civil society. The Registrar of the Supreme Court holds the position of member secretary. The statute firmly establishes the obligatory and enforceable nature of the agreements reached through mediation and underscores the mediator's role in facilitating such settlements. The Council holds a crucial position in the promotion of educational initiatives that are designed to encourage the resolution of conflicts via mediation. It is charged with the task of prescribing the course content for mediator training and recognizing the educational establishments qualified to deliver such programs.

Additionally, the Council carries out oversight functions regarding the conduct of mediators and has formulated curricula that cater to both introductory and advanced levels of mediation training (Mediation Council). Furthermore, the Council has undertaken the publication of laws relating to mediation, including the Mediation Act, the accompanying Regulation, and the *Code of Conduct for Mediators*, which codifies the ethical and professional standards expected of mediators. This publication serves as a reference to ensure that mediators adhere to the highest standards of integrity and impartiality while facilitating dispute resolutions (Mediation Council). *The Mediation Regulations of 2014* have been officially enacted and put into effect, stipulating comprehensive

procedures for the upkeep of the mediator roster, the assignment of mediators, the administration of oaths to mediators, as well as the annual renewal and revision of the neutral roster. These regulations also delineate the mediation procedure and set forth provisions for supervising mediation activities at the local level.

B. Court Regulations and Manuals

Nepal has a three-tier unitary judicial system that includes a district court in the administrative district, a High Court in each province, and the Supreme Court of Nepal. Each court operates under its independent regulations to manage filed cases. Consequently, mediation within each tier of the court system is governed by separate regulations, with each court's rules explicitly recognizing the mediation of litigated cases. These regulations typically include provisions for maintaining a roster of neutrals, updating the roster, establishing referral procedures, selecting mediators, and outlining post-mediation procedures. However, depending on the tier of the court, there may be nuanced and distinct authorities in place.

1. The Supreme Court Regulation, 2017

Each court procedure is outlined in the respective court regulations in Nepal. Therefore, the procedure for mediation at the Supreme Court is outlined in the Supreme Court regulation. The regulation provides that parties can request the Registrar, and the Registrar can refer the case to the mediation center if both parties consent. Justices of the Supreme Court can refer the case on the hearing day, providing three months (Supreme Court Regulations, 2017).

2. High Court Regulations, 2016

The regulation requires a roster to be prepared by trained mediators (Regulation 90). The procedure incorporates online mediation if the parties consent (Rule 98 (6)). This regulation's other important feature is assigning a court employee to persuade parties to adopt mediation in a suitable case.

3. The District Court Regulation, 2018

This regulation allows the District Judge to approve and exclude mediation from the roster. The roster needs to be updated annually. The

district court registrar could refer the case to the mediator or institution providing mediation service if the parties agree to give one month. The judge can refer two times to try for mediation. The regulation also provides that parties can request the registrar of the court.

For court-connected mediation, the Supreme Court has developed *Court-Connected Mediation Guidelines* for all tiers of courts, including the Supreme Court of Nepal, High Courts, and District Courts. These guidelines include provisions regarding the establishment of mediation centers in each court, the responsibilities of these centers, updating the roster of mediators, the appointment of mediators, the mediation process, the stages of mediation, and the responsibilities of both mediators and parties involved in the mediation process (Court Referred Mediation Guidelines, 2067).

C. National Criminal Procedure Code 2017 and Mediation of Criminal Cases

Certain criminal cases, including criminal betrayal, deception, and criminal benefit, may be mediated as *sub-judice* at any tier of the court or the stage of enforcement of the judgment level (National Criminal Procedure Code, 2017). The victim and the defendant can request the public prosecutor, and the Attorney General may order the settlement of the cases by compromise. If cases are settled by compromise, the penalty, fees, and fines under the judgment will be exempted (National Criminal Procedure Code, 2017).

Since the code provides the right to Attorney General's broader rights over government cases and the government attorneys had criminal cases on behalf of the government as a plaintiff, the attorney general has issued directives to public prosecutors enforcing the law on the settlement of certain criminal cases initiated by the public prosecutors. The recent amendment in the criminal procedure code has created additional ways to address the issue of fines and penalties after the settlement of cases initiated by the government. Exemption of fees and fines will encourage the settlement of the cases through compromise and mediation and make victims easily compensated.

Application

Nepal's judicial system includes 77 District Courts and 18 High Court Benches, comprising 7 High Courts and 11 Provisional Benches within these High Courts. Across all three tiers of the courts, there are 1,972 enlisted mediators engaged in court-connected mediation programs. In the recent period, out of 151,990 cases identified as suitable for mediation, 32,234 cases were referred for mediation. Of these, 28,573 cases were processed by the courts' mediation centers. A total of 4,529 cases were settled through mediation, while 24,044 cases did not result in settlement and were returned to the court for further proceedings (Annual Report, 2023/24).

The latest annual report from the Judiciary acknowledges the need for a critical review of the prevailing mediation practices. It highlights the importance of refining these practices to better meet the justice system's demands and the disputing parties' needs, thereby improving the efficiency and effectiveness of dispute resolution through mediation (Annual Report, 2023/24). The report underscores the critical need to increase funding to compensate mediators adequately. Expedient resolution of appropriate cases through mediation is essential to address the backlog and ensure timely adjudication per the law.

While participation in mediation is typically voluntary, courts can mandate mediation in certain cases by referral, thereby motivating parties to settle disputes through this process. The Supreme Court's Annual Reports meticulously document data for each court, detailing cases amenable to mediation, the tally of registered mediators at each center, the number of cases directed to mediation, the aggregate of cases resolved, and the rate of successful mediation outcomes. A quantitative and qualitative analysis of the data concerning court-referred mediation demonstrates a robust structural framework in place to support the enforcement of mediation by the courts. However, its output does not outweigh the structural advancement. Therefore, the relevant stakeholders must concentrate on effectively implementing these mediation processes. Despite a strong mechanism for mediation, Nepal has to ensure international communities the assurances about the commitment that parties have the right to invoke mediation settlement and their enforcement ensured by the *UN Convention on International*

Settlement Agreement Resulting from Mediation, known as the *"Singapore Convention on Mediation."* Ratifying it could further strengthen Nepal's commitment to mediation and effective implementation.

CONCLUSION

The practice of ADR has a long-standing history, with disputes traditionally settled through ADR methods even before the establishment of formal judicial systems. Historically, various community-based approaches, including ethnic and the pursuit of harmony through local governance structures, were employed. However, such practices did not reflect the current formal, facilitative mediation processes that are now integrated into the judicial and decentralized government systems as an essential element of ensuring access to Justice and the expeditious administration of Justice while upholding due process and party autonomy.

The unequivocal commitment of all involved stakeholders, including court personnel, judges, litigants, and lawyers, cannot be overstated. There exists an urgent necessity to professionalize mediation to reduce time and costs while preserving the autonomy of the disputants. Establishing private mediation centers and their endorsement by the courts could contribute to structural reforms and help establish mediation as a recognized profession. The recognition of pro bono service for certification and granting parties the option to select full-time professional mediators could bring additional value. In the context of litigated international commercial disputes, it is crucial to guarantee the right to invoke and enforce settlement agreements. Additionally, for Nepal to effectively participate in the mediation of international disputes and to resolve pending cases in court through mediation, it is recommended that Nepal become a signatory to the *Singapore Convention*, which would ensure the enforcement of mediated settlements across borders.

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U.S. INVENTORSHIP IN THE AGE OF AI: THE CRUCIAL HUMAN CONCEPTION

*JIGME SINGYE

ABSTRACT

This paper explores the intersection of automation's expansion into traditionally human-centric fields of creativity and the implications on patents. As computational technology advances, it is not only executing numerical tasks but also creating outputs once strictly considered the domain of human creativity. This technological evolution known as Artificial Intelligence (AI) prompts significant inquiries regarding the protection rights for materials produced with limited human oversight under intellectual property frameworks. A critical area of concern is using substantial computing capabilities to produce novel inventions. This paper explores how current legal jurisprudence, specifically the doctrine of conception, is a critical requirement for inventorship and how to create a broad perspective on conception when it involves inventions with contributions from artificial intelligence systems so long as a natural person is listed as an inventor and co-inventor.

Keywords: artificial intelligence; invention; and patent

INTRODUCTION

Patents have long been recognized for their substantial influence, granting their owners exclusive rights that create limited monopolies. This power is so significant that it is bound by limitations on both its scope and duration. Patents transcend mere tangible personifications of "products of mind," referred to as Intellectual Property ("IP"); they empower inventors to exclude others from tapping into their unique creations (Miller, 2006). Despite their formidable nature, the realm of patents has been inherently

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restricted by human creativity and mental capacity and has been explicitly checked by statutory limitations—until now (Ning, 2023). The advent of artificial intelligence (AI) has ushered in a new era where invention is not solely the domain of human intellect and AI's burgeoning role across various sectors, from automotive to agriculture, raises questions about its place within the patent system (Brown, 2022). The intersection of AI and patents poses a conundrum: should human inventors be granted patents for their AI-assisted inventions? (Federal Circular, 2022).

This debate is fueled by differing perceptions of AI's nature and its role in human achievement. Should a future legal framework broadly permit the patenting of all AI-assisted inventions, concerns might arise regarding the definition of an "inventor" and critics could argue that it diminishes the inventor's role to merely initiating an AI process, essentially reducing their contribution to merely pressing the "start" button on an AI system to generate new ideas. Conversely, if regulations were to impose strict constraints on the patentability of AI-assisted inventions, there is a compelling argument that such restrictions could severely hamper the progression of science and the arts, given the pervasiveness of AI today.

As the above implications persist, the United States Patent and Trademark Office (USPTO) has published its *"Inventorship Guidance for AI-Assisted Inventions",* making AI-assisted inventions not categorically unpatentable (Federal Register, 2024). Federal Register (2024) provides the guidance that patent protection may be sought for an AI-assisted invention provided a natural person contributed significantly to the invention. However, it is essential to note that the Guidance purports merely to restate the U.S. existing law that governs inventorship determinations in all patents and does not constitute substantive rulemaking. Given the likelihood that AI is already being widely used in the development of patented inventions, the validity of inventorship for AI-assisted inventions was and still is a question that the guidance cannot fully resolve.

This paper will explore the idea that the "conception" element of patent inventorship is necessarily a human neurological process. It is vital to the functioning of the U.S. patent system because of the underlying policy of incentivizing inventiveness. Therefore, regardless of relative

efficiency compared to humans, AI processing cannot amount to "conception," as defined by U.S. patent law, so AI cannot and should not be recognized as an inventor under U.S. patent law. Furthermore, this paper will provide a rationale to support the USPTO's Guidance allowing inventorship recognition for AI-assisted inventions, so long that a human is listed as an inventor. This paper does not intend to explore AI's patentable subject matter, nor will it touch upon whether or not AI could be granted legal personhood, for such questions will require deeper analysis, which will likely fall under the jurisdiction of Congress to address it. Instead, this paper will emphasize that the patent law requirement that an inventor must have conceived of the claimed subject matter in a patent application is connected to the incentivization scheme of the U.S. patent system and, thus, inherently a human quality.

This paper is divided into six parts. The introduction is Part I. Part II provides an overview of an existing legal framework on inventorship revolving around the doctrine of "conception" and the rationale for excluding AI from being recognized as an inventor or co-inventor under the conception requirement. Part III explores the role of artificial intelligence (AI) as an advanced tool within the realm of invention. Part IV briefly provides an overview of the recent USPTO guidance on the patentability of AI-assisted inventions. Part V illustrates some challenges and implications if AI were allowed to be recognized as inventors or co-inventors. Part VI provides a broader perception of the doctrine of conception to better accommodate the era of AI in inventorship. In conclusion, this paper summarizes the broader and modern perception of proper inventorship.

I. LEGAL FRAMEWORK ON INVENTORSHIP

In this section, the paper will delve into the established legal standards for qualifying as an inventor and analyze the concept of "conception" as the cornerstone of inventorship.

A. Intellectual Property Clause of the Constitution

Article 1, section 8, clause 8 of the Constitution (also known as the "Intellectual Property Clause") grants to Congress the enumerated power "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their

respective writings and discoveries" (U.S Constitution). Congress exclusively holds the authority to establish a patent system and has thus entrusted the United States Patent and Trademark Office (USPTO) with the responsibility of granting patents. The Constitution's Intellectual Property Clause employs specific terminologies, including "inventor," which necessitates interpretation in line with the Constitution. Consequently, it's crucial to delve into the original intent behind these terms when delineating patent rights by understanding subsequent judicial decisions (Greive, 1966).

B. Who is an inventor, and who can patent it?

Although the Constitutional Intellectual Property Clause, mentions the word inventor, it does not necessarily provide an explicit definition of an inventor back then. Instead, it is important to look into the dictionary meaning of the word inventor during the period when the Constitution was formed, and the best is to look into Samuel Johnson's Dictionary (Johnson, 1785). In that dictionary, "inventor" is defined as "one who produces something new; a deviser of something not known before" (Johnson, 1785). This definition captures what it means to be an inventor, emphasizing the human capacity to create, innovate, or materialize something previously unknown or non-existent. Furthermore, since the inventor is the person whom Congress has the sole discretion to recognize with the patent exclusive rights, U.S. patent law vests patent rights initially in the inventor (U.S Constitution). In particular, §101 of the *Patent Act* states that *"whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor…"* (U.S. Constitution, 2012). This makes it clear that only an inventor may obtain a patent, making inventorship inherently a condition for patentability.

Chisum (2020) suggests that the proper inventor for a patent can either be a single human (sole inventorship) or multiple humans (joint inventorship). 35 U.S.C. § 100 (f) defines an inventor as "the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention" (U.S Constitution). Defining "an inventor" as broadly as "an individual" seems to leave much room for interpretation, which might include an AI system. However, for

U.S. patent law, the act of invention has developed to require two related elements, 'conception' and 'reduction to practice.' Although AI might be able to satisfy the reduction to practice, it cannot fulfil the conception requirement, which is a crucial element.

In addition, since the term "whoever" is defined as including "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals" (U.S. Constitution), neither section 100 (f) nor section 101 contemplates a machine as a co-inventor. To supplement further, the machine cannot be recognized as a co-inventor because it conflicts with the necessity for an inventor to take an oath (U.S. Constitution) and fulfil the duty of candor. These provisions provide a statutory argument as to why machines can never be identified as co-inventors of patents even if they can invent under the Patent law.

C. What is Conception?

As early as 1871, in one of the earliest patent cases, the Commissioner relied on the doctrine of conception to resolve an interference regarding the invention of an adapted telegraph printing lever (Commercial Patent, 1871) in the case of *Edison v. Foote,* [1871]. The Commissioner reasoned that "invention is not the work of the hands, but of the brain and the man that first conceived the complete idea… is the first inventor…" (Commercial Patent, 1871).

In *Smith v. Nichols,* the United States Supreme Court solidified the importance of conception over any physical act of creation, as reflected in the case of *Smith v. Nichols*, 99 U.S. 112 (1874). Justice Swayne declared that "A patentable invention is a mental result. It must be new and shown to be of practical utility. Everything within the domain of conception belongs to him who conceived it. The machine, process, or product is but its material reflex and embodiment," as reflected in *Smith v. Nichols* [1874].

In 1897, the Court of Appeals of the District of Columbia decided the leading case, *Mergenthaler v. Scudder* [1897] (D.C. Circular, 1897). In the case, Mergenthaler used constructive reduction to practice, citing the filing date of his patent applications as the date of invention during an interference proceeding. Meanwhile, Scudder tried to prove an earlier invention of the same linotype machine by presenting evidence of prior

conception. The *Mergenthaler* Court reversed in favour of Mergenthaler and refined the definition of conception concerning the requirement of a "definite and permanent idea of the complete operative invention:"

> *The conception of the invention consists in the completeness of the performance of the mental part of the inventive act. All that remains to be accomplished, to perfect the act or instrument, belongs to the department of construction, not invention. It is, therefore, the formation, in the mind of the inventor, of a definite and permanent idea of the complete and operative invention, as it is thereafter to be applied in practice, that constitutes an available conception within the meaning of the patent law* (D.C. Circular, 1897).

Furthermore, the date of conception can take precedence over the date of reduction to practice if the inventor diligently continues working after conceiving the idea. Therefore, the mental act of conception is the crucial element of invention, rather than the physical act of reduction to practice. Actual reduction to practice is not necessary for filing a valid patent application, making the mental act of conception the sole requirement to characterize the act of inventing. While most cases concerning conception occurred before the *America Invents Act* of 2012, mainly focusing on identifying an exact date of invention, these cases are still significant today because they delineate the act of invention, a requirement rooted in constitutional law. By emphasizing the act of conception and considering reduction to practice as a secondary aspect, patent law has consistently underscored the mental processes involved in inventing.

When these early cases were decided and conception was defined as a mental act, that mental act almost certainly only referred to human cognitive processes and nothing less or more. The reason for not furthering the definition of "mental act" to any other than human's mental act was probably because the idea of machines with human-like intelligence was barely conceivable back then. It was only in the first half of the 20th century that science fiction familiarized the world with the concept of artificially intelligent robots by introducing the "heartless"

Tinman from *The Wizard of Oz* and continued with the humanoid robot that impersonated Maria in *Metropolis* (Anyoha, 2017). Only by the 1950s did we have a generation of scientists, mathematicians, and philosophers with the concept of AI culturally assimilated in their minds, especially the likes of Alan Turing, who explored the mathematical possibility of artificial intelligence (Anyoha, 2017).

D. Conception in Inventorship

In the case of *Sewall v. Walters* (1994), conception is described as "the touchstone of inventorship." In the leading case of *Burroughs Wellcome Co. v. Barr Laboratories, Inc.,* the Federal Circuit decided on an issue of proper joint inventorship based on conception (Federal Circular, 1994). In this case, Barr Laboratories sought the Food and Drug Association's approval to manufacture and market a generic version of the drug 3'-azidothymidine ("AZT") by filing an Abbreviated New Drug Application ("ANDA"). Burroughs Wellcome commenced a patent infringement suit against Bar after it was notified of the ANDA. Barr conceded that its AZT product would infringe Burroughs' patents; however, Barr filed a counterclaim under 35 U.S.C. § 256 (1988) seeking to correct the inventorship of Burroughs' patents to add two NIH employees as co-inventors. Barr had obtained a license to manufacture and sell AZT from the government, which would be the owner of the NIH co-inventors' interests in Burroughs' patents. Barr argued that the invention was not conceived in a sufficiently complete form until Burroughs received the results from tests conducted by the NIH (Federal Circular, 1994).

The Federal Circuit panel determined that the inventors named by Burroughs had established conception for five of Burroughs' patents before the alleged NIH co-inventors due to a draft patent application that was dated before any experiments conducted by the NIH (Federal Circular, 1994). The panel emphasized that the document itself did not constitute conception, which occurs in the minds of the inventors, not on paper; instead, the draft served to corroborate their claim of having a clear and lasting concept of the inventions by the time it was prepared (Federal Circular, 1994). Moreover, the panel noted that the NIH personnel merely engaged in standard clinical trials for the drug and were not joint inventors of the patents claimed by Burroughs (Federal Circular, 1994).

Therefore, the court used evidence of conception to assess the proper inclusion of individuals as co-inventors and establish the priority of invention.

In 2003, the Federal Circuit addressed conception in terms of patent inventorship again in the case of *Board of Education v. American Bioscience, Inc.* (Federal Circular, 2004), mainly focusing on defining conception within the context of chemical inventions. The Federal Circular (2004) states that the court sought to ascertain whether an individual had sufficiently contributed to the conception of the patented chemical compound to be acknowledged as an inventor. The panel ruled that merely envisioning specific parts of a claimed compound did not qualify someone as a joint inventor. Instead, the individual needed to conceptualize the complete compound, including all its components, to be recognized as such.

A legitimate inventor is a human who has conceived the invention. Given the crucial link between conception and inventorship, the case law surrounding conception remains pertinent even under the *America Invents Act (AIA)* "first-inventor-to-file" priority system (Chisum, 2020). While the Federal Circuit has not explicitly addressed inventorship issues for patents filed under the *AIA*, it is almost certain that determining correct inventorship, including joint inventorship, will continue to hinge on conception since every patent application must still list the actual inventor(s) (U.S Constitution, 2012). This raises the essential question of whether AI can meet the conception requirement to be named as inventors on patent applications. The forthcoming discussion will illustrate why AI cannot fulfil the conception requirement.

E. Public Policy: Incentive for Inventor's Ingenuity

Thomas Jefferson is viewed as one of the foundational architects of the U.S. patent system, and he thought that "patents were meant as 'encouragement to men to pursue ideas' which may produce utility." Moreover, numerous legal scholars have recognized this view of the policy underlying the U.S. patent system as more persuasive than other property rights justifications. The policy considerations fundamental to the operation of the U.S. patent system further underscore the importance of conception as the essential component of the act of invention and, consequently, proper patent inventorship. The framers of the *Constitution*

predominantly viewed the patent system as an economic exchange between inventors and the public (Kasner, 2015). Thomas Jefferson, regarded as one of the principal architects of the U.S. patent system, believed that patents were intended as "encouragement to men to pursue ideas that may prove to be of utility." Additionally, numerous legal experts have endorsed this perspective on the policy underlying the U.S. patent system, considering it more compelling than other justifications related to property rights (Ravid & Liu, 2018).

It is unlikely that AI could ever be incentivized in the way that human inventors are incentivized (e.g., monetarily or with industry recognition and stature), and issuing patents that are not incentive-driven could lead to vast over-privatization of inventions. More is certainly not always better, particularly when the means to achieving more is to flout decades of inventorship precedent and sound policy. In the words of Thomas Jefferson himself, it is man's "ideas" that are to be encouraged. As will be addressed in greater detail below, modern AI does not conceive of "ideas," so to speak, and cannot be incentivized to conceive of ideas. Thus, participation by AI in the U.S. patent system would not comport with the primary policy goals of the system itself.

It is improbable that AI could be motivated in the same manner as human inventors, such as through financial rewards or professional recognition, and granting patents without such incentives could lead to excessive privatization of inventions, which is not always beneficial (Ravid & Liu, 2018). Indeed, increasing the number of patents by disregarding long-established principles of inventorship and sound policy could be counterproductive. Echoing Thomas Jefferson's perspective, it is human "ideas" that should be encouraged (Kasner, 2015). It will be further elaborated below: contemporary AI systems do not generate "ideas" in the traditional sense and cannot be motivated to do so. Consequently, integrating AI into the U.S. patent system would conflict with the system's fundamental policy objectives.

II. AI AND INVENTIONS

A. Emergence of AI systems

U.S. law has not agreed on a single definition of "artificial intelligence", as the definitions vary across jurisdictions and federal agencies. Still, the definition of AI likely to become consistently used across most of the federal government would be the one codified in the *National Artificial Intelligence Initiative Act of 2000* (NAIIA) adopted by the U.S. State Department (U.S. Department of State, 2024).

> "Artificial Intelligence" means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human-based inputs to (a) perceive real and virtual environments, (b) abstract such perceptions into models through analysis in an automated manner, and (c) use model inference to formulate options for information or action" *(National Artificial Intelligence Initiative Act of 2020).*

Turing (1950) noted that, without a doubt, advancements in artificial intelligence have come a long way since Alan Turing's important question in 1950: "Can machines think?" A striking example of such progress is evident from an event in 2017, where Google's AlphaGo, a program created by engineers at Google's artificial intelligence company DeepMind, was able to beat the top-ranked Chinese Go player in the game of Go, a two-player board game that originated in China more than 2000 years earlier (Tam, 2017). Similarly, Google's AlphaZero, another computer program, began with only the basic rules of chess as its knowledge base. Within just a few hours, it had played an immense number of games, rapidly learning and refining its strategy to the point where it could defeat a human world chess champion (Strogatz, 2018). This highlights how, within specific narrow domains, AI systems surpass human capabilities by a wide margin. No human could grasp the rules of Go or chess for the first time within a matter of hours period and then attain competitive-level mastery immediately after that. Apart from the many AI advances [in terms of the superior outcomes of tasks], AI is also capable of inventing.

Today, one of the most well-known examples of AI inventions are those associated with DABUS, an acronym for "Device for the Autonomous Bootstrapping of Unified Sentience" (Lohr, 2023). DABUS is an AI system developed by Dr. Stephen Thaler, "designed to ingest data about a range of subjects including factual geometry and flashing light patterns and conceive ideas for products it had not seen before" (Council, 2019). Since Dr. Stephen Thaler maintained that he did not contribute to the conception of the Neural Flame and Fractal Container inventions by DABUS, the United States Court of Appeals for the Federal Circuit rejected Dr. Thaler's appeal and affirmed the USPTO's decision [and the U.S. district court] on the ground that the plain meaning of "inventor" in the *Patent Act* is limited to natural persons. The Federal Circuit observed, "Congress has determined that only a natural person can be an inventor, so AI cannot be." In sum, U.S. law limits patent inventorship to humans only, as supported under Part II of this paper.

However, restricting inventorship exclusively to humans might not sufficiently promote the advancement of technology, especially in areas where AI can perform more efficiently than humans. The 1943 National Patent Planning Commission's report recommended that "patentability should be determined objectively based on the contribution to the advancement of the field, rather than subjectively by the method through which the invention was developed" (Jaratt, 1944). In support of this recommendation, some areas of patent law have been subject to dynamic interpretation, such as in the case of *Diamond v. Chakrabarty* [1980].

The Supreme Court, in this case, deciding whether genetically modified organisms could be patented, held that a categorical rule denying patent protection for "inventions in areas not contemplated by Congress…would frustrate the purposes of the patent law." The court noted that Congress chose expansive language to protect a broad range of patentable subject matter. Thus, from the policy standpoint, AI inventions may even be especially deserving of protection since AI creativity may be the only means of achieving certain discoveries that require tremendous amounts of data or deviate from conventional design wisdom (Lohn, 2003). This leads us to the question of whether AI should be treated as a tool rather than an inventor to align with current laws and fully leverage AI's inventive capacities.

B. The Role of Artificial Intelligence in Inventions

The interesting central question is whether AI is a tool or an innovator. John Villasenor's paper "Reconceptualizing Conception" (Villasenor, 2022) answers this question by stating that it depends on the lens used to view concepts, such as the generation of ideas. It also depends on the type of AI system, as computer systems that learn span an enormous range of capabilities and behaviours.

At one end of this spectrum, consider an AI-based irrigation system that learns the moisture levels of various garden parts at different times of the day and across seasons. Utilizing data on weather forecasts, soil types, and plant species, it dynamically adjusts watering schedules to optimize plant health and water usage. This system may incorporate the inventive efforts of its human creators, yet it does not invent on its own. It operates as a tool influenced by its human operators—the developers who programmed its logic and the gardeners who specify the moisture preferences for their plants.

Now, envision a hypothetical AI tool designed to optimize the aerodynamic shape of a racing car. A developer crafts a new AI model and sets it to scour vast databases for information on aerodynamics principles, racing car designs, materials, drag coefficients, and airflow patterns (Montagne, 2009). The developer's goal for the AI is to conceptualize a more aerodynamically efficient car design. Imagine that after processing this extensive data and running countless simulations, the AI suggests a novel car shape that significantly reduces drag, an outcome the developer had not anticipated.

Though initially unaware of this specific design solution, the developer recognizes its potential to redefine racing car aerodynamics upon review. This scenario illustrates an AI-driven invention. In this context, determining the inventor becomes complex. While the AI, with its autonomous analysis and design proposal, qualifies as the inventor, the developers' foundational role in creating and directing the AI cannot be overlooked. The developer not only conceived the AI's design objectives but also provided the necessary tools and information for the AI to execute its tasks. From this angle, AI is an advanced tool that extends the developer's capabilities beyond human limits.

Likewise, in Biotechnology, some experts have suggested that AI is essential to analyzing the exponential growth of genetic sequence data. According to the National Security Commission on Artificial Intelligence, "AI will be essential to fully understand how genetic code interacts with biological process" (National Security Commission Final Report*,* 2021). AI can analyze vast amounts of biological data, including genetic sequences from diverse sources, which is crucial for understanding complex biological systems (Bhardwaj, et al., 2022).

For example, researchers can use AI to analyze genomic data sets to determine the genetic basis of a particular trait and potentially uncover genetic markers linked with that trait. In the recent written testimony of Claire Laporte to the Judiciary Committee on "IP Protection for AI-Assisted Inventions and Creative Works," Claire Laporte stated that in biology, AI functions as a sophisticated tool that enhances human creativity but does not replace it and that it is instrumental in solving engineering problems when used skillfully and purposefully (Laporte, 2024).

> "For instance, when AI assists scientists in designing DNA sequences, these suggestions require conversion into biological materials and must be tested in the laboratory to verify their effectiveness. Integrating AI into biotechnology research is iterative, involving continuous interaction between computational predictions and experimental validations. This integration necessitates significant human input and expertise, notably in the emerging field of "prompt engineering," where specialists learn to effectively guide AI toward useful outcomes. This discipline, while still in its infancy and primarily applied in non-biological contexts like software development, points to the necessity of human creativity in refining AI outputs. Therefore, despite AI's potential to transform biotechnology research by making it faster and more cost-effective, it is not capable of autonomous invention.

> This perspective is crucial for entities like the Subcommittee and the Patent and Trademark Office (PTO), emphasizing that AI tools are dependent on human direction and are not independently generating inventions."

Given the essential human oversight and creativity required in guiding and refining AI outputs, this paper suggests that AI technologies serve as tools, albeit sophisticated ones, capable of generating unexpected outcomes. Therefore, the focus for patent law should be on how AI-assisted inventions are integrated within the patent framework, sidestepping the quagmire of defining the inventorship between humans and machines.

III. USPTO GUIDANCE ON AI-ASSISTED INVENTIONS PATENTABILITY

The USPTO Guidance explains that while AI-assisted inventions are not categorically unpatentable, the inventorship analysis should focus mainly on human contributions, as patents function to incentivize and reward human ingenuity. Patent protection may be sought for inventions for which a natural person provided a significant contribution to the invention, and the guidance provides procedures for determining the same. The guidance stipulates how the current statutory framework, court decisions, and policy considerations support this position by explicating in the following manner:

> ***Statutory Framework***
>
> *"The requirements that a patent application name an "inventor" and that each individual who is named an "inventor" of a claimed invention execute an oath or declaration are available in 35 U.S.C. 115(a). These inventorship requirements are extended to joint inventorship in 35 U.S.C. 116(a). Under 35 U.S.C 115(b), the oath or declaration must state, among other things, that "such individual believes himself or herself to be the original inventor or an original joint inventor of a claimed invention in the application." Failure by the applicant to name the proper "inventors" is a ground for*

rejection under 35 U.S.C. 101 and 35 U.S.C. 115. The term "inventor" is defined in 35 U.S.C. 100(f) as "the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention".

Additionally, the term "joint inventor" is found in 35 U.S.C. 100(g) and is defined as "any 1 of the individuals who invented or discovered the subject matter of a joint invention". Therefore, the statutory requirement in 35 U.S.C 115 and 116 to name the inventor or joint inventors and require each to sign an oath or declaration is limited only to the natural persons who invented or discovered the claimed invention. These statutes do not provide for recognizing contributions by tools such as AI systems for inventorship purposes, even if those AI systems were instrumental in the creation of the invention.

Additionally, there are no other sections of the Patent Act that support the position that inventions that are created by a natural person(s) using specific tools, including AI systems, result in improper inventorship or are otherwise unpatentable. The statutes only require the naming of the natural persons who invented or discovered the claimed invention, irrespective of the contributions provided by an AI system or any other advanced system. Accordingly, the inability to list an AI system used to create an invention as a joint inventor does not render the invention unpatentable due to improper inventorship" (Federal Registration, 2024).

Judicial interpretation and Policy considerations

"The Supreme Court has indicated that the meaning of "invention" in the Patent Act refers to the inventor's conception. Similarly, the Federal Circuit has made clear that conception is the touchstone of inventorship. Conception is often referred to as a mental act or the mental part of invention. Specifically, "it is 'the formation in the mind of the inventor, of a definite and

permanent idea of the complete and operative invention, as it is hereafter to be applied in practice." Because conception is an act performed in the mind, it has to date been understood as only performed by natural persons. The courts have been unwilling to extend conception to non-natural persons. Hence, when a natural person invents using an AI system, the conception analysis should focus on the natural person.

The patent system is designed to encourage human ingenuity. From its very inception, patents were intended to incentivize human individuals to invent and thereby promote the progress of science and the useful arts. Focusing the patentability of AI-assisted inventions on human contributions supports this policy objective by incentivizing human-centered activities and contributions, and by providing patent protections to inventions with significant human contributions while prohibiting patents on those that are not invented by natural persons. This approach supports the USPTO's goal of helping to ensure our patent system strikes the right balance between protecting and incentivizing AI-assisted inventions and not hindering future human innovation by locking up innovation created without human ingenuity."

The statutory framework, judicial case law interpretation, and policy considerations highlight the non-recognition of artificial intelligence systems as potential inventors, underscoring a pivotal gap in the legislative framework concerning AI contributions to the inventive process, however, not precluding a natural person(s) from qualifying as an inventor (or joint inventors) if the natural person(s) significantly contributed to the claimed invention.

Since the patent statutes require naming all inventors who contributed to at least one patent claim, the threshold question in determining the named inventor(s) is who contributed to the invention's conception. The guideline stipulates that in situations where a single person did not conceive the entire invention, courts have found that a

person who shares in the invention's conception is an inventor. In these instances, every inventor listed on a patent application or on the patent itself, including those for inventions aided by artificial intelligence, must have made a "significant contribution" to the invention as claimed. It further defines what the courts should look into while determining the "significant contribution" aspect to the invention and they are three-factor test, which is known to be *Pannu* factors (Federal Circular, 1998) that each inventor must:

1. Contribute in some significant manner to the conception or reduction to practice of the invention,
2. Contribute to the claimed invention that is not insignificant in quality when that contribution is measured against the dimension of the full invention, and
3. Do more than merely explain to the real inventors' well-known concepts and/or the current state of the art.

The guidance further provides "five guiding principles" in determining whether a natural person's contribution to AI-assisted inventions is significant or not, basically to assist applicants and USPTO personnel in determining proper inventorship:

1. *"A natural person's use of an AI system in creating an AI-assisted invention does not negate the person's contributions as an inventor. The natural person can be listed as the inventor or joint inventor if the natural person contributes significantly to the AI-assisted invention.*
2. *Merely recognizing a problem or having a general goal or research plan to pursue does not rise to the level of conception. A natural person who only presents a problem to an AI system may not be a proper inventor or joint inventor of an invention identified from the output of the AI system. However, a significant contribution could be shown by how the person constructs the prompt in view of a specific problem to elicit a particular solution from the AI system.*
3. *Reducing an invention to practice alone is not a significant contribution that rises to the level of inventorship.*

Therefore, a natural person who merely recognizes and appreciates the output of an AI system as an invention, particularly when the properties and utility of the output are apparent to those of ordinary skill, is not necessarily an inventor. However, a person who takes an AI system's output and contributes significantly to the output to create an invention may be a proper inventor. Alternatively, in certain situations, a person who conducts a successful experiment using the AI systems' output could demonstrate that the person contributed significantly to the invention, even if that person cannot establish conception until the invention has been reduced to practice.

4. *A natural person who develops an essential building block from which the claimed invention is derived may be considered to have provided a significant contribution to the conception of the claimed invention even though the person was not present for or a participant in each activity that led to the conception of the claimed invention. In some situations, the natural person who designs, builds or trains an AI system in view of a specific problem to elicit a particular solution could be an inventor, where the designing, building, or training of the AI system is a significant contribution to the invention created with the AI system.*

5. *Maintaining "intellectual domination" over an AI system does not, on its own, make a person an inventor of any inventions created through the use of the AI system. Therefore, a person simply owning or overseeing an AI system that is used in the creation of an invention, without providing a significant contribution to the conception of the invention, does not make that person an inventor."*

The guidance requires patent applications and patents for AI-assisted inventions to name the natural person(s) who *significantly contributed* to the invention as the inventor or joint inventors (i.e., satisfying the *Pannu* factors). What it means is that the use of an AI system or other advanced tools by a natural person(s) does not preclude that natural person(s) from

qualifying as the inventor (or joint inventors) if the natural person(s) significantly contributed to the claimed invention. In this case, applications and patents must not list any entity that is not a natural person as the inventor or joint inventor, even if an AI system may have been instrumental in creating the claimed invention.

IV. CHALLENGES AND IMPLICATIONS OF NAMING AI SYSTEMS AS INVENTORS

A. Transferring of ownership

Currently, U.S. patent law grants ownership rights to the inventor absent an assignment (Manual of Patent Examining Procedure, 2018). Intellectual property is an alienable personal property right that can be transferred, assigned, licensed, or sold. For patents, initial ownership is vested in (1) the inventor(s) of the patent, (2) an employer via pre-inventive assignments, or (3) an employer for an employee who was "employed to invent."

While ownership may be assigned to the natural person inventor, it may also be assigned to non-natural persons, such as a corporation, via work-for-hire or assignment contracts (Pearlman, 2018). Without an assignment, the original applicant is presumed to be the owner. Where a patent has multiple owners, each owner may exploit the patent without the consent of the others (Manual of Patent Examining Procedure, 2018). The owners of a patent gain the "right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States." Where there is only one inventor who has not assigned the patent property, the inventor owns the entire right, title, and interest of the patent property (Manual of Patent Examining Procedure, 2018). Therefore, if an AI system is recognized as an inventor, it would not be able to own the patent rights to the invention absent an assignment.

B. Person Having Ordinary Skill in the Art Standard

If AI system inventions become more prevalent due to AI inventorship, novelty, non-obviousness, and enablement may become an issue. These elements are judged according to a person of ordinary skill in the art, who is a hypothetical individual presumed to have known the relevant art at the time of the invention (Federal Circular, 1986). With

AI's ability to sort, store, and access vast quantities of knowledge beyond human capabilities, the hypothetical skilled person may become equipped with an AI system (Tull & Miller, 2018).

Elevating the "person having ordinary skill in the art" ("PHOSITA") standard could greatly affect established areas of patent law that rely on this standard, including novelty, obviousness, and enablement. Consequently, patenting could become more difficult because of the elevated standard, thus constricting the ability of human inventors to secure patents. Given the dramatic investment in AI technology, this issue is relevant whether AI inventorship is adopted or not (Abood, 2017). While AI inventorship may accelerate the pace of this change, allowing AI system inventorship could encourage more AI disclosure on patent applications. This enables the USPTO and other patent-review agencies to factor in the use of AI when using the PHOSITA standard.

V. RETHINKING CONCEPTION IN INVENTORSHIP IN THE ERA OF AI

A. Broader Lens

The *Mergenthaler* court defined conception as the requirement of a "definite and permanent idea of the complete operative invention." In the AI invention hypothetical, mentioned at the beginning of the paper, of an AI system used to design a racing car with the best aerodynamics, the AI system has come up with a design and conveyed it to the programmer. Once that occurs, the programmer has in their mind "a definite and permanent idea of the complete and operative invention." For patent law, it is well understood that the idea should be said to have formed in the programmer's mind. No matter how sophisticated an AI system might be, it does not have a mind in the human sense to form ideas. In that case, the programmer is the first person to hold the invention in mind, which occurs as a direct consequence of information obtained from the output of a tool (the AI system) used as an extension of the programmer's mind.

Attributing conception to the person who forms "a definite and permanent idea of the complete and operative invention" in their mind poses no conflict with situations in which the assisting entity is a person instead of an AI system. And since conception is to have occurred in the

human mind, and the AI system fails to establish that requirement, the next immediate person, who is the programmer in this instance, can be said to be the rightful person who conceived of the idea with the help of the AI system.

In a parallel scenario, an engineer, Alex, is exploring the development of new materials with unique properties for renewable energy applications. Alex combines various metals and polymers in specific ratios and then subjects these mixtures to electromagnetic fields of varying intensities and frequencies in a controlled environment. Although Alex deeply understands the materials used, the outcomes of these experiments are unpredictable, and the functionalities of the resulting materials are initially unknown. After each experiment, Alex tests the newly formed materials to determine their electrical and thermal conductivity, strength, and durability.

Through this rigorous testing process, Alex discovers that a specific material, which we will call **Material X**, exhibits extraordinary efficiency in converting solar energy into electrical energy, far surpassing existing materials used in solar panels. Alex then undertakes a detailed analysis to ascertain Material X's molecular structure and understand why it exhibits such superior solar energy conversion efficiency. After establishing the unique structure and identifying the mechanisms contributing to its high efficiency, Alex filed a patent application for **Material X**. The application includes a comprehensive disclosure of **Material X'**s structure, its novel and beneficial function in solar energy conversion, and the methodology employed to synthesize it.

In this hypothetical case, Alex may rightfully be named as the sole inventor on the patent application for **Material X**. This right is grounded in the discovery of an unexpected outcome from the experimental process, the subsequent determination of the material's structure and functionality, and the innovative method developed to create it. This example illustrates that patent law recognizes and rewards both the unpredictable nature of experimental research and the critical role of human insight and analysis in identifying and understanding novel phenomena. This recognition is akin to acknowledging the inventive contribution of humans when AI is utilized in the creative process, drawing a parallel to how natural phenomena are leveraged in scientific discoveries.

B. Non-Obviousness, 35 U.S.C. §103

The Patent Act, 35 U.S.C. § 103, states that "patentability shall not be negated by how the invention was made." When read literally, this text could be read to support a view that AI inventions should not be unpatentable because AI was used to make them. Referring to a "Reviser's Note" in the "Legislative History" section of the 1952 U.S. Code, it states that concerning patentability, "it is immaterial whether an invention resulted from long toil and experimentation or a flash of genius." "Flash of genius" refers to a question that was much litigated in the mid-20th century: whether a patentable invention had to reflect a "flash of genius" on the part of the inventor (Prager, 1952). The author of the 1952 legislative notes referred to this issue and its resolution in the negative through the language of 35 U.S.C. § 103, *i.e.,* patentability does not require a flash of genius. Hattenbach & Glucoft (2015), after writing a deeper analysis of section 103, suggested that it was not intended to permit computer-generated inventions to be patented (Hattenbach & Glucoft, 2015).

This assertion is most accurate as it can be sure to say that the legislators certainly did not have AI inventions affirmatively in mind when drafting the language of the *Patent Act* of 1952. Furthermore, under a strict textualist interpretation, the words in the statute matter, not the motivations or intent of the legislators who wrote them. Under a textualist approach, 35 U.S.C. §103 supports the patentability of AI-assisted inventions. The words of the statute state that the "manner in which the invention was made" does not negatively impact patentability. Under that logic, the extent to which an invention was "assisted" by AI should not have any consequence on patentability.

C. The Measure of Human Contribution to AI Inventions

This is the most crucial factor regarding how much of the invention is a product of human innovation. As noted in the USPTO's Guidance, this factor is directly tied to the "human contribution" element. Naturally, the more contribution by a human in the inventive process, as opposed to the contribution by an AI-assistive tool, the stronger the argument for patentability is, as we have seen in the Guidance. Similarly, it logically follows that the less human contribution in the inventive process, the stronger the argument against patentability. To answer the

question of how significant human contribution is, the answer should be any amount sufficient to qualify as an inventor.

The court in *Pannu v. Lolab Corp.,* decided that for a person to constitute as an inventor, they must "contribute in some significant manner to the conception or . . . contribute to the claimed invention that is not insignificant in quality" (Federal Circular, 1998). In other words, they must have helped conceive the invention, and by requiring the necessary human contribution to equate to that of a qualifying inventor, effectively prove and not just be a bystander who hit the proverbial "start button" on the AI system. All in all, considering inventorship is viewed from a broader understanding of conception and 35 U.S.C. §103 harmonized with the USPTO's Guidance on AI-Assisted Inventions, lawmakers have a guiding starting point behind any future new pieces of legislation aimed at curtailing the dangers and risks of patenting AI-assisted inventions.

Beyond the legislative branch, courts and judges will also be able to find this helpful understanding when confronted with patentability issues on AI-assisted inventions. The purpose of this paper was to highlight how the current jurisprudence on inventorship and joint inventorship, including the requirement of conception, supports the patentability of AI-assisted inventions as long as a natural person who invents is listed as the inventor and not the AI system; it is important to bare that there are critical legal implications on AI-assisted inventions which requires a step forward in the legal landscape as well.

CONCLUSION

The U.S. patent system is fundamentally designed to balance personal incentives with the public good, fueling progress in various sectors such as healthcare, safety, and technology. This balance promotes societal advancement through innovation, aligning with the transformative potential of artificial intelligence (AI). However, as we stand on the brink of a new era where AI significantly contributes to the invention process, it is crucial to reassess the criteria for inventorship.

A central thesis of this paper is that the principle of conception remains a cornerstone of inventorship within the U.S. patent system, representing the earliest discernable link between the act of invention and

the economic benefits conferred by the patent system. The Federal courts should, therefore, endorse the inventorship criteria defined in *Mergenthaler* as a standard for cases under the *America Invents Act (AIA).* This standard should expressly exclude artificial intelligence from being recognized as inventors on patent applications, as AI processes do not involve the human mental act of conception necessary for inventorship. Moreover, AI lacks the essential connection between human creativity and the economic incentives provided by patents.

To preserve the integrity of this framework, inventorship should be exclusively attributed to humans only. Nevertheless, to accommodate the evolving role of AI in the creative process, it is imperative to establish a legal structure that integrates AI-assisted inventions under a broadly interpreted standard of conception. This approach will ensure that the patent system continues to foster innovation while maintaining its core principles and adapting to technological advancements.

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HUMAN TRAFFICKING PREVENTION EFFORTS AND STRATEGIES IN BHUTAN: INTEGRATING LESSONS FROM AUSTRALIA'S EFFORTS

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ABSTRACT

Human trafficking is a multi-faceted crime involving a multi-stakeholder approach, a global phenomenon, and one of the most pressing challenges in the modern world. It involves the exploitation of people through forced labour, sexual slavery, or commercial sexual exploitation, either by being a source, transit, or destination country. Though often perceived as peaceful and insulated, countries like Bhutan are not immune to this issue. Bhutan's involvement with human trafficking issues has primarily been due to its geographic location, limited economic opportunities, and vulnerability of certain population groups, which began to feel its nudges as an organized crime in 2007 (UNODC, 2013). The recent *Kuensel* (Lhamo, 2025) highlights the rising human trafficking issues in Bhutan, which saw 31 cases in 2024, out of which 89.47% were female victims. Understanding this issue requires a comprehensive look at Bhutan's efforts to combat trafficking, as well as drawing insights from other countries with more developed frameworks for prevention, such as Australia's criminal justice system (AIC, 2024). Australia has developed comprehensive anti-trafficking strategies that include robust legal frameworks, multi-agency collaboration, and support services for victims. Analyzing these approaches can offer valuable lessons for Bhutan as it strengthens its fight against human trafficking. This article will explore Bhutan's human trafficking strategies, discuss the key elements of Australia's criminal justice response, and outline strategies Bhutan may adopt for an effective anti-trafficking effort.

Keywords: human trafficking; Australia; and efforts

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INTRODUCTION

Bhutan is a small but strategic country situated between India and China. Despite its relative isolation, the government has faced significant challenges related to human trafficking since its first reported cases in 2007 (NCWC, 2020). Victims of human trafficking are often recruited under false pretexts, including promises of employment or education, and are subsequently forced into exploitative labour or sexual exploitation (UNODC, 2021). They are reported to have faced restricted movements, passport confiscation, forced labour, or financial threats if they leave their employment (Lhamo, 2025).

1.1. Economic Vulnerability and Trafficking

One of the primary factors contributing to human trafficking in Bhutan is the country's economic vulnerability, evident from the Multidimensional Poverty Index [MDP] (2022) of Bhutan. This creates a situation where people, particularly women and children from rural areas, are vulnerable to traffickers who offer false promises of work or better living conditions (ILO, 2016). Traffickers often lure Bhutanese individuals into neighbouring countries like India and Nepal with promises of well-paying jobs, only to subject them to forced labour or sexual exploitation (BBS, 2022). Bhutanese women and girls are trafficked for domestic servitude, marriage, or commercial sexual exploitation (NCWC, 2020), while porous borders and the lack of stringent law enforcement further worsen the problem (Tashi, 2020), which is also reported in *Kuensel* (Lhamo, 2025).

1.2. Trafficking of Children and Forced Labour

Bhutan has also witnessed an alarming increase in the trafficking of children, particularly in forced labour with excessively long working hours and low promised wages (Lhamo, 2025). In most of the reported cases, Bhutanese children have been trafficked into neighbouring countries for forced labour and other forms of

exploitation (U.S. Department of State, 2021), including countries such as Iraq, Oman, Qatar, the Philippines, Thailand, and India.

Human trafficking victims are coerced into working in hazardous conditions, often with little or no compensation and restrictions being imposed on their movements. Labour trafficking victims frequently suffer from physical and psychological abuse, as reported by repatriated victims (BBS, 2024), and they are rarely able to escape their captors due to threats of violence or other forms of intimidation (Tashi, 2020).

2. Bhutan's Legal and Policy Framework for Combating Human Trafficking

Bhutan has taken steps to address human trafficking, but these efforts have been limited by lack of resources, institutional capacity, and awareness of the issue among the general public. The country has ratified several international treaties, such as the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (UNODC, 2021), including the *United Nations Convention against Transnational Organized Crime* and *Protocol on Trafficking in Persons*. Bhutan is also a party to the *SAARC Convention on Human Trafficking* and ratified the *BIMSTEC Convention against Trafficking in Persons*. However, implementing these international obligations at the national level has been slow and incomplete despite efforts undertaken by law enforcement agencies since the *modus operandi* in committing these crimes become more challenging to understand as their structures grow more complex (Clarke & Knake, 2019).

2.1. National Laws on Human Trafficking

Bhutan's primary legal instrument to combat human trafficking is the *Penal Code of Bhutan, 2004,* which includes its amendments. The *Code* criminalizes human trafficking and prescribes penalties. While the *Penal Code of Bhutan* provides the

legal framework for prosecuting traffickers, enforcement remains weak, and there have been few successful prosecutions of traffickers. However, several convictions ranging from 3 to 13 years (BBS, 2024) for trafficking 200 Bhutanese women to Iraq and Oma in 2020 were reported.

Bhutan has also established the National Commission for Women and Children (NCWC), an organization tasked with addressing issues related to trafficking, particularly the protection of women and children from exploitation. After acceding to the *Trafficking in Persons (TIP)* protocol, *Bhutan's Penal Code 2004* was amended (Amendment 2011) in agreement with the definition of trafficking thereunder, and with its recent accession to *United Nations Transnational Organized Crime (UNTOC)* in 2023, efforts on its fight through anti-trafficking legislation and training has been progressive. A multi-stakeholder cooperation among the investigators, including Royal Bhutan Police, prosecutors, judges, and border security officials, including customs and immigration, has been established (UNODC, 2025).

2.2. Law Enforcement Challenges in Bhutan

One of the key challenges in Bhutan's fight against human trafficking is the limited capacity of law enforcement agencies to investigate and prosecute traffickers. Many police officers and border officials, principally those stationed at the Integrated Check Posts (ICPs), including immigration and customs, lack specialized training in identifying trafficking victims, leading to a failure to detect cases of trafficking (Tashi, 2020). While Bhutan's legal system is progressive in its effort to combat this issue, the growing complexities pose a more significant challenge, especially in identifying potential trafficking victims and recognizing the red flags. Recognizing these challenges, recent trainings were conducted in victim identification and red flag recognition. These helped law enforcement officials identify and reintegrate 26 victims

through multi-stakeholder coordination (Lhamo, 2025), a progressive movement. However, challenges continue to pose.

Although corruption among local authorities has also been identified as a problem in some countries, as traffickers often bribe officials to avoid arrest or prosecution, there is no official record that indicates the involvement of officials in authority in connection with human trafficking in Bhutan. Since this undermines the combat efforts on human trafficking, breeding such elements will further endanger the vulnerable populations (U.S. Department of State, 2021). However, the stigma surrounding domestic work in the country and unlicensed overseas recruitment agencies has been centrally linked to many of the repatriated human trafficking victims in Bhutan, which sends an idea of an undocumented migration agent who gets through the system despite being an illegal entity.

3. Australia's Criminal Justice Response to Human Trafficking

Australia is predominantly a destination country for human trafficking and has developed a comprehensive response accordingly, which encompasses prevention, protection, and prosecution. Australia's criminal justice system is widely regarded as a model for other countries due to its multi-faceted approach and focus on victim protection and rehabilitation.

3.1. Legal Framework

Australia's legal framework for combating human trafficking is based on several key pieces of legislation, including the *Criminal Code Act 1995* (division 270 and 271), *Commonwealth Crimes 1914 (Crimes Act),* and the *Migration Act 1958*. These laws define human trafficking as a serious offence and provide severe penalties for traffickers, including 4 years for debt bondage to 25 imprisonments for slavery and trafficking in children (Attorney General's Department, 2025).

Besides the *National Action Plan*, the Australian Federation Police has its *Human Trafficking and Slavery Strategic Plan 2023-2026, National Policing Protocol to Combat Human Trafficking and Slavery* and *International Engagement Strategy on Human Trafficking and Modern Slavery: Delivering in Partnership* in place (AFP, 2025). In addition to domestic legislation, Australia is a party to several international treaties and conventions related to trafficking, such as the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons* [UNTOC] (UNODC, 2021) and actively engages in combat against human trafficking within and beyond the region. *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime,* and the *Australia-Asia Program* are two main areas where Australia and Indonesia co-chair in their efforts to fight human trafficking in the region.

Australia has also enacted specific laws to address labour trafficking or forced servitude (18%), forced marriage (31%), and exploitation in the sex industry (25%) and has developed policies that assist the authorities in victim identification (AIC, 2025). Parliament of Australia passed two more legislations, namely, *The Crimes Legislation Amendments (Slavery, Slavery-Like Conditions and People Trafficking Act 2013) (Slavery Act 2013)* and *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013 (Vulnerable Witness Act)* thereby amending the *Criminal Code and Crimes Act* (Attorney General's Department, Australia).

3.2. Multi-Agency Collaboration

One of the key strengths of Australia's anti-trafficking strategy is the emphasis on multi-agency collaboration. The Australian Border Force's 11-member Inter-Departmental Committee on Human Trafficking and Slavery (IDC) has also taken a committed victim-centered approach in building strong partnerships within government and chairs to address trafficking,

focusing on both the prosecution of offenders and the protection of victims. The members are from the Australian Federal Police (AFP), Department of Home Affairs, Department of Foreign Affairs and Trade, Commonwealth Director of Public Prosecutions, Department of Social Services, Department of Prime Minister and Cabinet, Fair Work Ombudsman, Australian Institute of Criminology and Australian Criminal Intelligence Commission (ACIC). They collaborate with each other to identify and investigate trafficking cases (AIC, 2025).

The AFP's Human Trafficking Team also plays a central role in leading investigations into trafficking. At the same time, the Department of Home Affairs focuses on victim protection, including providing visas and support services to trafficking survivors. In addition to government agencies, Australia works closely with Non-Governmental Organizations (NGOs) and international partners to combat trafficking, who are often involved in providing services to victims, such as shelter, legal aid, and medical care, while also raising awareness of trafficking in vulnerable communities. To better coordinate this effort, there is a specific guideline for NGOs working with trafficked people (Department of Social Service).

3.3. Victim Protection and Support

Australia's response to human trafficking and modern slavery is committed to victim protection, ensuring that survivors of human trafficking receive suitable attention and assistance. The Australian Government's Support for Trafficked People Program principally provides victims with access to financial aid, medical care, legal aid, and housing facilities (Department of Social Service). The Program also offers victims temporary or permanent visas, depending on their cooperation with law enforcement during investigations.

In addition to immediate support, Australia focuses on the rehabilitation and reintegration of trafficking survivors. This includes providing psychological counselling and vocational

training to help victims rebuild their lives after escaping exploitation (Schloenhardt, 2009). This ensures that the victims have access to an inclusive service, helps reduce the risk of re-trafficking, and enhances the overall effectiveness of its anti-trafficking efforts.

3.4. Public Awareness and Education

Public awareness campaigns have played a crucial role in Australia's efforts to combat human trafficking. The government works with NGOs and civil society organizations to raise awareness of human trafficking risks, including forced marriage and associated forms of trafficking, particularly among vulnerable populations (AFP, 2025). These campaigns educate the public about the dangers of trafficking and provide information on identifying, recognizing, and reporting suspected trafficking cases to lawful authorities (Department of Social Service, 2025). The Australian government has also implemented training programs for law enforcement officials, border control agents, and immigration officers to help them identify and assist trafficking victims. This training ensures that frontline officers are equipped to detect and recognize trafficking cases and provide appropriate support to victims (Attorney General's Department, 2020).

4. Lessons from Australia's Criminal Justice System for Bhutan

Australia's success in combating human trafficking offers several valuable lessons that Bhutan can adapt to strengthen its anti-trafficking efforts. These lessons include improving the legal framework, enhancing multi-agency collaboration, prioritizing victim protection, and raising public awareness.

4.1. Strengthening Legal Frameworks

One of the key lessons from Australia's experience is the importance of a strong legal framework that defines trafficking offences clearly and imposes severe penalties on traffickers. Bhutan may consider revising its existing legislative framework and include

the *Slavery, Slavery-Like Conditions Act* and *Law Enforcement Integrity and Vulnerable Witness Protection Act"* which shall be instrumental in the prevention, detection, and disruption of trafficking. Similarly, the government may initiate *'Bhutan and Beyond Strategies'* focusing on the *Process of People Smuggling, Trafficking in Persons, and Related Transnational Crime* among neighbouring countries.

While trainings are ongoing in Bhutan, specialized and enhanced training for police officers, prosecutors, and judges may be required. This shall ensure they are equipped to prevent and identify victims, detect and disrupt, and investigate and prosecute trafficking offences effectively. Furthermore, a specific guideline for NGOs working with trafficked people may also be framed.

4.2. Enhancing Multi-Agency Collaboration

An eleven-member Inter-Departmental Committee in Australia collaborates with the different government and civil society sectors to combat trafficking. Bhutan could explore establishing stronger interagency cooperation between law enforcement authorities, customs and immigration, relevant NGOs like RENEW (Respect, Educate, Nurture, and Empower Women) and The PEMA Secretariat, *De-Suung* -The Guardian of Peace, and other social services to improve and specialize in anti-trafficking efforts.

4.3. Victim-Centered Approach

Another key lesson from Australia's criminal justice system is prioritizing victim protection and support. Bhutan should establish a comprehensive victim support program that provides victims with access to speedy medical assistance, legal aid, shelter homes, and psychological counselling. Furthermore, vocational training may also be initiated to help rebuild their lives after escaping exploitation (Schloenhardt, 2009). Moreover, Bhutan should consider implementing a visa system like Australia's, where trafficking victims are granted temporary or permanent visas based

on their cooperation with law enforcement. This would encourage victims to come forward and assist in the prosecution of traffickers without fear of deportation (David, 2010).

4.4. Raising Public Awareness

Australia's emphasis on public awareness and education campaigns has been instrumental in its fight against trafficking. Bhutan should adopt similar strategies since awareness of trafficking risks among the public and vulnerable communities is an issue for now. Bhutan has made significant progress in awareness of law enforcement authorities. It could prevent, detect, and disrupt trafficking, as reported in recent *Kuensel* (Lhamo, 2025), which highlights the rising role of awareness in Bhutan. For a larger effort for anti-trafficking combat, a public awareness campaign may be initiated as a priority and institutionalized at the local level.

CONCLUSION

Human trafficking remains a significant challenge for Bhutan, as the country faces vulnerabilities related to economic instability, porous borders, and limited law enforcement capacity. By examining Australia's successful anti-trafficking strategies, Bhutan can adopt a more effective approach to combating trafficking within its borders. Key lessons include strengthening the legal framework through a bilateral process, enhancing multi-agency collaboration at the local level, prioritizing victim protection and counselling services, and raising public awareness. With a comprehensive and coordinated response, Bhutan can reduce the prevalence of trafficking and better protect vulnerable populations from being exploited.

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THE NORDIC APPROACH TO DEMOCRATIC EXCELLENCE

***KARMA TENZIN**

ABSTRACT

Democracy, as a governance system, is built on principles of popular participation, accountability, and the *rule of law.* This article explores the evolution and significance of democracy, analyzing the best democratic nations—particularly the Nordic countries (Denmark, Sweden, Norway, Finland, and Iceland)—which consistently rank as global leaders in democratic governance. Their success stems from transparent institutions, judicial independence, social equity, and strong civic engagement. The article examines their institutional safeguards, inclusive policies, and participatory governance, offering key lessons for strengthening democracy worldwide. By adopting these best practices, nations can enhance democratic resilience, political stability, and public trust in governance.

Keywords: Democratic resilience; institutional safeguards; civic engagement; transparency; accountability; political polarization; public trust; egalitarianism; freedom

INTRODUCTION

Democracy, in its most fundamental definition, is a system of governance in which political power resides with the people, either directly or through elected representatives. It is grounded in principles such as *popular participation, rule of law, accountability,* and the *protection of fundamental rights*. Going back to history, in 507 B.C., the Athenian statesman ***Cleisthenes*** ushered in *demokratia*, the 'rule of the people,' engraving the first chapter of democracy into the annals of history and illuminating a path toward governance by *collective will*. This system had three main institutions: *the Ekklesia*, which created laws and managed foreign policy; *the Boule*, a council representing Athenian tribes; and *the Dikasteria*, citizen-run courts with randomly selected jurors (History, 2024). Though Athenian democracy lasted only two

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centuries, Cleisthenes' reforms laid the foundation for modern representative democracies worldwide, making it one of ancient Greece's most significant contributions to governance.

Democracy has evolved over centuries, taking on different models, including liberal democracy, which emphasizes individual freedoms and constitutional protections; participatory democracy, which encourages direct civic engagement; and direct democracy, where citizens make policy decisions without intermediaries (Britannica, 2025). Regardless of the model, democracy remains a cornerstone of modern governance, ensuring that political authority is derived from the *will of the people*. The importance of democracy extends beyond political representation; it serves as a foundation for freedom, equality, justice, and human rights (United Nations, 2025). Democratic governance fosters an environment where citizens can freely express their opinions, participate in decision-making processes, and hold leaders accountable for their actions. Additionally, democracy is intrinsically linked to peace, stability, and sustainable development, as nations with robust democratic institutions tend to experience lower levels of conflict, higher economic growth, and greater social cohesion (Acemoglu & Robinson, 2012). The success of democratic governance is often measured by the extent to which it upholds the *rule of law*, protects minority rights, and prevents the concentration of power in the hands of a few.

This article analyses democratic governance by examining the best democratic countries—nations that have successfully upheld democratic principles and strengthened their institutions over time. The Nordic nations - Denmark, Norway, Sweden, Finland, and Iceland—consistently rank as the world's strongest democracies, achieving top scores in the *Democracy Index and Corruption Perceptions Index (CPI)* for their transparent governance, robust institutions, and civic engagement. To strengthen democracy globally, this article examines the best practices and key features that have made these nations models of democratic excellence and resilience in the modern world. By studying their best practices, core values, and governance strengths, this article identifies key lessons that can strengthen democracy worldwide. In doing so, it will explore policy mechanisms, institutional safeguards, and civic engagement strategies that have proven effective in sustaining democratic resilience. It will highlight how democratic nations have adapted to

contemporary challenges while preserving fundamental democratic values. It will offer a roadmap for nations seeking to strengthen democratic frameworks and foster more inclusive, accountable, and resilient governance structures.

1. DEMOCRACY IN THE NORDIC NATIONS: GOVERNANCE AND CIVIC ENGAGEMENT

Democracy in the Nordic nations represents one of the most successful and resilient governance models in the contemporary world. These countries have consistently ranked at the top of global democratic assessments, including the Democracy Index published by *The Economist Intelligence Unit* (2023) and the CPI by *Transparency International* (2023). Their high scores are attributed to transparent governance, strong *rule of law*, participatory political culture, and low levels of corruption, making them global benchmarks for democratic excellence. Unlike many democratic systems that struggle with political polarization, declining trust in institutions, and governance inefficiencies, the Nordic nations have managed to sustain a stable, inclusive, and highly functional democratic framework. This success is not accidental but rather the product of deep-seated political traditions, institutional integrity, and a commitment to social welfare. To understand the functioning of democracy in Nordic countries, it is essential to analyze how democracy is interpreted, practiced, and sustained in these societies.

For the Nordic nations, democracy is not merely a political system based on periodic elections; it is a fundamental societal value embedded in governance, civic participation, and institutional frameworks. These nations have adopted an inclusive interpretation of democracy, emphasizing egalitarianism, transparency, and political accountability. Unlike adversarial political models prioritizing majoritarian rule, the Nordic countries favour consensus-oriented governance, where decision-making is based on negotiation, compromise, and broad political agreement. The presence of proportional representation electoral systems ensures that multiple political parties, including smaller ones, have a voice in governance, preventing the concentration of power in a single party or individual. Moreover, Nordic democracies are characterized by high voter turnout, often exceeding 80% in national elections (IDEA, 2025). This high level of political engagement reflects not only the public's trust in

the electoral process but also the effectiveness of democratic institutions in ensuring free, fair, and transparent elections. The strict regulation of campaign financing and lobbying, particularly in countries like Sweden and Denmark, prevents the undue influence of wealthy individuals and corporate interests, reinforcing the principle of equal political representation.

The *rule of law* and government transparency are also central to the Nordic democratic model. These countries have *Independent and Impartial Judiciaries* that function without political interference, ensuring that constitutional rights are protected and democratic norms are upheld (Ginsburg & Huq, 2018). Unlike in many democracies where judicial appointments are often politically motivated, the Nordic nations maintain a meritocratic judicial selection system, reducing the risk of political bias within the Judiciary. Another crucial element that strengthens democracy in the Nordic region is the extensive *Freedom of Information* (FOI) laws, particularly in Sweden and Finland, which allow citizens to access government documents and monitor the decision-making process (Grigorescu, 2003). This culture of open governance significantly reduces corruption and increases public trust in state Institutions. According to *Transparency* International (2023), Denmark, Finland, and Sweden consistently rank among the least corrupt countries globally, demonstrating that political integrity and public accountability are non-negotiable aspects of Nordic democracy.

Beyond institutional structures, Nordic democracy is reinforced by high levels of *Social Trust and Civic Engagement*. Unlike in many democracies where political disengagement and voter apathy are prevalent, the Nordic nations have cultivated a culture of active citizenship, where people participate in governance through public consultations, civil society organizations, and direct democratic initiatives. The role of trade unions, civic groups, and grassroots movements is particularly strong, allowing citizens to influence policy beyond just voting in elections. It encompasses contextual elements such as the beneficial impact of social trust, societal norms, civic participation, and broader economic, political, and geographical factors. Additionally, it considers the varying effects of specific media events and communication strategies (Bergh, 2015). This deep-rooted civic culture ensures that democracy is not simply an institutional framework but an

ongoing participatory process in which the public actively shapes national policies. Furthermore, public confidence in government institutions remains exceptionally high, with over 70% of Nordic citizens expressing trust in their political institutions—starkly contrasting declining trust levels in many other democracies (OECD, 2022).

An integral component of democracy in the Nordic nations is the *Strong Welfare State*, which ensures that economic inequalities do not undermine political participation. Unlike in many liberal democracies where wealth disparities hinder equal political representation, the Nordic model integrates *universal social policies* with democratic governance, ensuring that all citizens, regardless of economic background, have equal access to education, healthcare, and social security (Scandinavian Perspectives, 2025). This approach prevents the creation of economic classes that dominate politics, fostering a more inclusive and representative democracy. The Nordic welfare state is also complemented by strong *Labor Rights and Collective Bargaining Systems*, which empower workers and ensure that economic policies reflect the interests of the broader population rather than elite groups (Nordic Labour Journal). By maintaining a highly redistributive tax system, these countries have successfully mitigated income inequality, often weakening democratic participation in other regions.

The success of democracy in the Nordic nations provides valuable insights for strengthening democratic governance worldwide. Their experience demonstrates that democracy thrives when *Institutions are transparent, political participation is high, economic equality is maintained, and civic engagement is actively promoted*. In an era where many democratic systems face challenges such as political polarization, declining trust, and governance inefficiencies, the Nordic model offers a compelling blueprint for fostering a *stable, resilient, and participatory democracy*. By prioritizing *institutional integrity, inclusive policymaking,* and *citizen empowerment*, these nations have created a governance model that not only upholds democratic principles but also ensures that democracy remains a lived reality for all citizens. As global democracies seek ways to fortify their systems against rising authoritarian tendencies and democratic backsliding, the Nordic experience stands as a powerful testament to the enduring strength and adaptability of democracy when it

is built on the foundations of transparency, participation, and social justice.

2. KEY LESSONS FROM THE NORDIC COUNTRIES FOR STRENGTHENING DEMOCRACY WORLDWIDE

Democratic resilience is not an inherent feature of governance but a result of strong institutions, inclusive policies, and active civic engagement. The Nordic countries consistently rank among the world's strongest democracies, as evidenced by their high scores on the Democracy Index and low levels of corruption on the CPI (The Economist Intelligence Unit, 2023; Transparency International, 2023). Their democratic success is built upon robust institutional safeguards, transparent governance, and deep-rooted civic participation. By examining their best practices, democratic nations worldwide can enhance their resilience against authoritarianism, political instability, and democratic backsliding.

3. INSTITUTIONAL SAFEGUARDS: ENSURING ACCOUNTABILITY AND RULE OF LAW

A key pillar of Nordic democratic strength is their independent institutions and commitment to the *Rule of Law,* which ensures *checks and balances, transparency, and accountability in governance*. First, Judicial Independence is a cornerstone of Nordic democracy. Courts operate free from political influence, ensuring laws are applied equally to all citizens, including political leaders (European Commission, 2023). For instance, in Denmark and Sweden, judicial appointments are made through merit-based, independent selection processes, reducing the risk of political interference. Second, *Decentralized Governance* has proven effective in promoting inclusive decision-making. The Nordic model of local autonomy empowers municipal governments to make policies tailored to their communities, ensuring that democratic governance is not just a national but also a grassroots phenomenon (OECD, 2023).

This approach strengthens trust in institutions and reduces citizen disenfranchisement, a challenge faced by many democracies with highly centralized power structures. Finally, *Anti-Corruption mechanisms* play a vital role in safeguarding democracy. The Nordic nations maintain high

levels of government integrity through strict campaign finance regulations and transparency laws. Political donations are closely monitored in Sweden and Denmark, and lobbying is strictly regulated to prevent undue corporate or elite influence over policymaking (Transparency International, 2023). These measures ensure that political power remains accountable to the people rather than financial interests.

4. POLICY MECHANISMS: ADVANCING SOCIAL EQUITY AND TRUST IN GOVERNMENT

Social trust is an essential component of democratic resilience. The Nordic countries have successfully strengthened democracy through policies that promote social cohesion, economic equality, and trust in governance. A crucial policy lesson from the Nordic model is the provision of *universal welfare* and *public services*. Access to education, healthcare, and social security is not tied to wealth or political privilege but is regarded as a fundamental right.

This approach reduces social inequality, prevents economic disenfranchisement, and ensures democracy benefits all citizens, not just the elite. When citizens feel economically secure and socially included, they are more likely to engage in democratic processes and resist populist narratives that exploit economic grievances (OECD, 2023). Additionally, *Education Policies* in the Nordic countries emphasize civic literacy, critical thinking, and democratic values from an early age. For instance, Finland's world-renowned education system integrates democratic principles into school curricula, ensuring that young citizens understand the importance of participation, deliberation, and the *rule of law* (Sahlberg, 2011).

This model could serve as a blueprint for other democracies seeking to counteract political polarization and misinformation through an informed citizenry. Furthermore, *Press Freedom* and *Media Transparency* are crucial democratic safeguards in the Nordic nations. *Independent media, freedom of information laws, and protections for investigative journalism* ensure that governments remain transparent and accountable. In contrast, many democracies today face increasing challenges from media censorship, disinformation campaigns, and state-controlled narratives. The Nordic commitment to open, fact-based

journalism serves as a critical defence against democratic erosion worldwide.

5. CIVIC ENGAGEMENT STRATEGIES: STRENGTHENING DEMOCRATIC PARTICIPATION

Democracy thrives when citizens actively participate in governance beyond just voting. The Nordic countries have demonstrated innovative strategies to deepen civic engagement and political participation. One effective strategy is *Open Government Initiatives*, which promote public participation in policymaking. In Norway and Denmark, digital democracy platforms allow citizens to propose and vote on policy initiatives, fostering direct engagement between governments and the people. This model enhances government responsiveness and strengthens public trust in democracy. Another lesson is *Inclusive Electoral Participation*. The Nordic countries maintain some of the highest voter turnout rates globally due to *accessible voting procedures, proportional representation, and automatic voter registration* (International IDEA, 2023). These measures eliminate barriers to participation and ensure that all voices are represented in the democratic process.

Additionally, Nordic *Labour Unions* and *Civil Society Organizations* are critical in shaping policies and protecting workers' rights. Unlike in many democracies where corporate interests overshadow grassroots movements, the Nordic model ensures that unions and civil society groups are active partners in governance. This strengthens democratic participation by ensuring that policymaking reflects the interests of the wider population rather than political or economic elites. Likewise, *Youth Engagement* in politics is a key factor in democratic sustainability. Nordic countries actively promote youth involvement in governance through youth councils, civic education, and political mentorship programs. For example, Sweden and Finland encourage student-led democratic initiatives, ensuring that young people are empowered as active democratic citizens from an early age (European Youth Forum, 2023).

Their model proves that democracy is not merely about holding elections but about fostering an *active, informed, and empowered citizenry*. In an era of rising authoritarianism, populism, and democratic

erosion, the Nordic approach provides a roadmap for countries seeking to revitalize and protect democratic governance. By implementing institutional safeguards, such as judicial independence and anti-corruption mechanisms, ensuring social equity through universal welfare policies, and enhancing civic engagement via participatory governance and digital democracy, nations can fortify democratic resilience and create societies where democracy thrives for all citizens, not just the privileged few.

CONCLUSION

The Nordic nations provide a compelling model of democratic resilience, demonstrating how transparent institutions, inclusive policies, and active civic engagement contribute to strong and enduring democracies. Their success is rooted in judicial independence, the *rule of law*, social equity, and participatory governance, ensuring that democracy remains a lived experience rather than just a theoretical ideal. These countries have built governance systems that foster public trust, political stability, and civic responsibility by maintaining strict anti-corruption measures, independent media, and robust electoral integrity. One of the most significant lessons from the Nordic model is the *integration of social welfare with democracy*, ensuring that economic security does not become a barrier to political participation. Universal access to education, healthcare, and social security creates an informed and engaged citizenry, strengthening democratic participation. Furthermore, *decentralized governance* and *digital democracy* initiatives in these nations empower citizens to actively engage in decision-making processes beyond just voting.

As democracies worldwide face growing challenges—political polarization, disinformation, corruption, and declining institutional trust, the Nordic experience provides a roadmap for revitalizing democratic governance. Strengthening institutional safeguards, promoting social cohesion, and fostering inclusive political participation are crucial for democratic resilience. Governments must prioritize transparency, accountability, and equal representation to ensure democracy remains a force for freedom, justice, and equality in an ever-evolving global landscape. By adopting these best practices, nations can fortify their

democratic foundations, resist authoritarian tendencies, and create governance systems that serve all citizens equitably and effectively.

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RESTORATIVE JUSTICE IN DOMESTIC VIOLENCE: A SOLUTION FOR BHUTAN'S RISING DOMESTIC VIOLENCE CASES

***TSHERING DENDUP**

ABSTRACT

This paper examines the potential role of restorative justice in addressing domestic violence cases in Bhutan. Despite legal frameworks like the *Domestic Violence Prevention Act of 2013*, domestic violence remains a significant issue. The traditional criminal justice system's punitive approach has shown limitations in addressing the complex dynamics of domestic violence, particularly in supporting victims and rehabilitating offenders. The paper argues that restorative justice programs, when implemented alongside existing criminal justice processes, can provide a more comprehensive response by empowering victims, facilitating offender rehabilitation, and addressing the underlying causes of abuse. While acknowledging critics' concerns about potential re-victimization and power imbalances, the paper suggests that Bhutan's existing legal framework and cultural acceptance of mediation provide a foundation for implementing restorative justice approaches. However, significant investments in infrastructure and professional expertise are needed.

Keywords: Domestic violence; restorative justice; rehabilitation; legal framework; victim; offender; survivor

INTRODUCTION

Domestic violence (DV), also referred to as intimate partner violence (IPV), dating abuse, or relationship abuse, is a pattern of behaviours used by one partner to maintain power and control over another partner in an intimate relationship (National Domestic Violence

* Legal Officer, Bar Council of Bhutan

Hotline, 2025). Domestic violence has no boundaries. People of any race, age, gender, sexual orientation, religion, educational level, or socio-economic background can be affected. Physical aggression, threats, emotional abuse, and financial control are all examples of behaviours that physically harm, intimidate, manipulate, or control a spouse or force them to perform in ways they do not want to. Although domestic violence is most commonly perpetrated by men against their female partners, it also includes violence perpetrated by women against men and violence between partners of the same gender.

Domestic violence was not addressed in most legal systems around the world until the 1990s; in fact, most countries had very little protection against DV before the late 20th century (Smith, 2008). Even today, social institutions, particularly the criminal justice system, have been repeatedly criticized for failing to adequately address the issues involving DV (Elias, 2015). As a result of the growing concern about DV, advocates for legal reforms in criminal justice systems, such as the creation of new offences and harsher punishments, have emerged (Frederik & Lizdas, 2003). Even so, these reforms fall short of adequately addressing the needs of victims, leaving the societal and family dynamics that underpin abusive and violent behaviour unaddressed.

The criminal justice system's shortcomings ultimately raise the question of whether the traditional retributive justice approach is sufficient to reduce the ever-increasing cases of domestic violence effectively. Is it time to look into alternatives such as restorative justice? It is reasonable to argue that more needs to be done to minimize the incidence of domestic violence by not only punishing offenders but also reforming and rehabilitating them while also assisting victims in recovering from their emotional and psychological wounds. Therefore, this paper explores how 'restorative justice' can be used to improve the criminal justice system's response to domestic violence in Bhutan. While doing so, the paper will first provide an overview of DV in Bhutan, followed by a discussion of the legal framework in place to address DV. After that, the paper will briefly explain what restorative justice is, why it is necessary, and how effective it is in DV. Finally, the paper will address some critics and conclude with a way forward for Bhutan.

OVERVIEW OF DOMESTIC VIOLENCE IN BHUTAN

There is no overt gender discrimination in Bhutan. Bhutanese women have more social freedom and equality than other women in the region (Priyadarshini, 2014). There is even a traditional epithet, *demi amai chha lu een* [the key is in the wife's hand], implying that women make the majority of household decisions, as opposed to Western norms in which males make the majority of family decisions. On the other hand, there are still beliefs that exist in rural areas that are not friendly to women. However, the genesis of women's rights is based on the sutras and tantras in which the woman is represented as a symbol of wisdom. Further, Buddhist sutras state that we should 'love women.'

According to the Bhutan Multiple Indication Survey (BMIS, 2010), 68% of women aged 15 to 49 believe a husband is justified in hitting his wife or partner in certain circumstances, such as going out without telling him, neglecting the children, arguing with him, refusing sex with him, or burning food (Dema, 2017). Similarly, the National Survey on Women's Health and Life Experiences done by NCWC in 2017 indicates that more than two out of every five women (44.6%) have experienced some form of relationship abuse in their lifetime, whether physical, sexual, psychological, or financial. In 2016, nearly one-third of people (30 %) have been victims of any of these types of violence (NCWC, 2017). The most commonly reported forms of violence were emotional, physical, economic, and sexual violence, followed by controlling behaviours. Surprisingly, 72.5 percent of victims never sought help from anyone due to the fear of social stigma, fear of being separated from children, and fear of threats.

Furthermore, The National Survey on Women's Health and Life Experiences done by NCWC in 2017 reveals that the majority of women and girls who experienced physical or sexual violence from their partners did not leave their homes since they believed violence was normal, they were afraid of bringing shame to their families, they expected positive change in their partners' behaviour, for the welfare of their children, and the victim had nowhere else to go. 42.2 percent (n=68) of those who left home returned because they could not support their children, could not stay where they went and relied financially on the offender.

As per the records maintained by Respect, Educate, Nurture, and Empower Women (RENEW), the number of people facing gender-based violence increased by 53.5% during the pandemic compared to 36.6% in the previous year (Dem, 2021). During the International Day for the Elimination of Violence Against Women, Her Majesty the Queen Mother Ashi Sangay Choden Wangchuck emphasized that preventing violence against women and girls is a shared responsibility that necessitates a community-based, multi-pronged, long-term engagement with multiple stakeholders. *"If left unaddressed, the existing crisis of gender-based violence and domestic violence is likely to worsen with multiple impacts on our health and well-being."*

LEGAL FRAMEWORK IN BHUTAN

Legal provisions on domestic violence crimes in Bhutan can be traced back to the *Thrimzhung Chenmo* of 1957, where section NA 1-3 states that any injuries caused by beating shall be dealt with by the provision on the offence of battery. Although not specific to domestic violence, there are provisions on violence against women in the *Constitution of the Kingdom of Bhutan, 2008*. Article 8 (5) of the *Constitution* states, *"A person shall not tolerate or participate in acts of injury, torture or killing of another person, terrorism, abuse of women, children or any other person and shall take necessary steps to prevent such acts"* and Article 9 (17) of the *Constitution* states *"the State shall endeavour to take appropriate measures to eliminate all forms of discrimination and exploitation against women including trafficking, prostitution, abuse, violence, harassment and intimidation at work in both public and private spheres."*

As reported by the *Committee on the Elimination of Discrimination Against Women* in its 44th Session, *'the Government has taken various initiatives to address sexual, gender-based, and domestic violence, including the commissioning of a report on violence against women, setting up mobile police stations, training the police on gender issues, and initiatives taken by civil society, such as opening a crisis and rehabilitation center for women victims of such violence'* (NCWC, 2017). However, until the *Domestic Violence Prevention Act* was passed in 2013 (DVPA 2013), reported cases of domestic violence were primarily dealt with under the provisions of the *Penal Code of Bhutan*, *2004.*

The *Domestic Violence Prevention Act, 2013* defines domestic violence as *"violence against a person by another person with whom that person is, or has been in a domestic relationship."* (DVPA, 2013) It covers four types of violence, namely physical, sexual, psychological, and economic violence. Furthermore, the *DVPA, 2013* covers abuse from former partners and within the family. According to sections 75 and 76 of the *DVPA, 2013*, DV is considered a criminal offence, and the perpetrators shall be liable for the offence as per the *Penal Code of Bhutan*. However, the *Act* allows mediation and conciliation in cases of domestic violence as section 22 of the *DVPA* states, *"if the offence is a misdemeanour the matter can be settled mutually if the victim wishes it and considering the nature and circumstance of the offence, the frequency and severity of the abuse, the age, maturity, and state of mind of the victims, the reparation of the injury and compensation to the victim, the safety of the family and the best interest of the victim."*

The *DVPA 2013* provides for establishing a Women and Child Protection Unit (WCPU) or Desk at every Police Station, and police personnel should investigate domestic violence and refer for prosecution. It also provides protection and services to victims, notably an *Interim Protection Order* or a *Protection Order.* Additionally, the act provides emergency shelters for domestic violence victims; as such, the Protection Officer shall maintain a list of all service providers that provide legal aid, counselling, Shelter Homes, and medical facilities and accommodate the victim in the Shelter Home.

The *DVPA 2013* also places responsibility on the Government to assist the community in establishing facilities for adequate shelter for victims. However, according to the CEDAW Committee (2016), shelters for women victims of domestic violence are limited and are solely run by Civil Society Organizations (Social Institution and Gender Index, 2019). The *DVPA 2013* also mandates comprehensive and accessible health services for victims of domestic violence; as such, police personnel are mandated to aid or assist victims in obtaining medical treatment. The Protection Officer and the Social Welfare Officer must get the victim medically examined and forward a copy of the medical report to the police station and the court. The Ministry of Health is also mandated to establish appropriate facilities with trained medical and health personnel and to establish One Stop Crisis Centres. The *Domestic Violence Prevention*

Rules and Regulations 2015 outlines guidelines and protocols for many actors, such as the National Commission for Women and Children, the Protection Officer, the Social Welfare Officer, the Courts, Government Institutions, Civil Society Organizations, the media, and the communities. Additionally, the *Rules and Regulations* provide for awareness-raising and education campaigns by all actors, including health personnel and educational institutions (Domestic Violence Prevention Rules & Regulations, 2015).

RESTORATIVE JUSTICE IN DOMESTIC VIOLENCE CASES

Dissatisfaction with the traditional justice system, as well as a renewed interest in preserving and developing customary law, have prompted calls in many countries for alternative responses to crime and social disorder (UNODC, 2006). One such alternative was the Restorative Justice (RJ) programs, which have evolved in a variety of legal and social contexts across Europe over the last few decades. Through the practice of RJ programs, it is claimed that we can not only control crime more effectively, but we can also accomplish a host of other desirable goals: a meaningful experience of justice for victims of crime and healing of trauma which they tend to suffer; genuine accountability for offenders and their reintegration into law-abiding society; recovery of the social capital that tends to be lost when we hand our problems over to professionals to solve; and significant fiscal savings, which can be diverted towards more constructive projects, including projects of crime prevention and community regeneration (Johnstone et al., 2007). Hence, in this section, the paper will briefly discuss why RJ must be used to address the issues of domestic violence cases in Bhutan.

A. INADEQUACIES OF CONVENTIONAL JUSTICE SYSTEM

While discussing the approach of the conventional justice system towards DV cases, one must consider the fact that numerous domestic violence incidents go unreported in Bhutan (Wangchuk, 2021). There are some fundamental problems with the criminal justice system's processing of crimes of DV. The conventional criminal justice system is designed to protect the rights of the accused, and victims are merely witnesses with little to no participation in the proceeding. There are some fundamental problems with the criminal justice system's processing of crimes of DV in Bhutan, starting with the fact that DV is considered a criminal offence

and, therefore, tried as per the standards of criminal proceedings. As domestic violence cases are considered criminal, the cases are subject to prosecutorial filtering. The *Office of Attorney General Act of Bhutan 2015* (OAG Act) states that the Office shall initiate prosecution only if the evidential and public interest tests are fulfilled (OAG Act, 2006). The test for prosecution shall be deemed to have been fulfilled if, in the opinion of the Office:

1. There is sufficient credible evidence to prove a case beyond a reasonable doubt; and
2. The prosecution of a case is required in the public interest.

Even if the DV cases fulfil the test of prosecution, it is still subject to the standard of proof required in criminal cases, i.e., proof beyond reasonable doubt (CCPC, 2001). After all this, if the perpetrator is convicted, sentences are often as lenient as domestic violence, the maximum sentence being less than three years (PCB, 2004). Furthermore, if the perpetrator is not a recidivist and an accustomed or habitual offender, the Court may order to pay a fine instead of imprisonment. Although these provisions are drafted to deter and change the behaviour of the offenders, it is debatable if the purpose is achieved in the case of domestic violence. It is quite evident that the criminal justice system's approach to punishment and deterrence is operating as a blunt instrument for changing offender behaviour.

Furthermore, while such tactics impose external constraints on action, for example, if the perpetrator cannot pay in place of incarceration, they are ineffective at changing an offender's underlying attitudes. As a result, if the criminal justice system is to make more progress in combating domestic violence, it must not only develop novel approaches to give the victims/survivors a greater presence in the proceedings but also assist offenders in changing their inner as well as outer attitudes and behaviours.

B. EMPOWERMENT OF SURVIVORS

Some supporters of RJ have cited the current judicial system's numerous flaws as justification for the need to create alternatives for domestic violence survivors. It was noted that many assaulted women, particularly but not exclusively in cases of domestic violence, opt out of

the system entirely, in part because they believe the outcome is not worth the effort (Daly & Bouhours, 2010). Furthermore, for women who have already been harmed by rape, sexual assault, or domestic violence, the adversarial process of a criminal trial, combined with attacks on the victims' credibility, is inherently retraumatizing (Randall, n.d.).

While the conventional criminal justice system merely treats victims as a witness, Restorative Justice, on the other hand, provides a forum for victims of crime to express their feelings about the crime. This is especially important for survivors of domestic violence because the power imbalance in a coercive, controlling, and/or abusive relationship frequently leaves them feeling unheard and powerless to speak up for themselves. Assisting individuals in expressing the emotional, psychological, and physical effects of abusive behaviour can be therapeutic and relieve some of the stress and anxiety they have felt as a result of the abuse.

Furthermore, by giving victims a voice, they can be heard about their psychological, physical, and financial needs. Listening to the needs of the victims is critical because many victims in Bhutan are financially dependent on their abuser and have no other options (NCWC, 2017). Because of the process's flexibility, RJ can be used to establish a victim-centred, customized approach to responding to domestic violence by taking into account the unique needs of each person affected by abuse. Among the requirements are a safe place, financial assistance, and psychological counselling, all covered under the *Domestic Violence Prevention Act of Bhutan, 2013.*

C. REHABILITATION AND REINTEGRATION OF PERPETRATORS INTO THE SOCIETY

According to Dobash & Dobash (2000), there was a greater emphasis in the 1970s on how we should deal with perpetrators of domestic violence. Indeed, in the fight against domestic violence, simply assisting victims was not always an effective strategy because many women returned to their abusive husbands after a brief stay in a shelter (Adams, 1982). Developing appropriate rehabilitation tactics, according to Mederos (1999), can aid in instilling in men a sense of responsibility for their abusive character, as well as assisting them in eradicating any abusive behaviours and elevating their understanding of equality in their

relationships (Cezario, 2013). Similarly, according to UK government research, RJ processes result in a 14% reduction in repeat offending for other types of crime (Wolthuis & Lünnemann, 2016). Positive outcomes in different contexts may give credence to the idea that people who have committed domestic violence may be able to stop doing so after receiving restorative services.

Hence, to tackle the rising issues of domestic violence, it is critical to first look at the perpetrator, the 'why' behind his actions, and the 'how' we can use rehabilitation tactics to break the cycle of violent behaviour. However, according to Collins (2013), the rehabilitation of domestic violence offenders has been a contentious issue for some time, and whether they can truly be rehabilitated remains an open question (Collins, 2013). Throughout his research, Collins discovered an unexpected finding: some domestic violence abusers express genuine regret for their violent behaviour and wish they had managed their rage better (McGregor & Collins, 2015).

Ty Schroyer, a former abuser, went through rehabilitation and says it was a life-changing experience for him. He began working with other domestic violence perpetrators after completing his recovery, teaching them how to manage their relationships without resorting to abusive acts, whether physical or verbal (McGregor & Collins 2015). According to Schroyer, abuse is about retaining power over one's partner, and almost all offenders are unaware that their actions are wrong until they are forced to look at them through the eyes of others. 'The process begins with acknowledging the facts of what is going on, followed by accepting responsibility' (McGregor & Collins 2015). Following the example, perpetrators must be encouraged to learn about the causes of their abuse, as well as how to treat their partners as equals and why they should respect their relationships.

Similarly, Don Chapin, a facilitator at Crossroads Programs in Portland, Oregon, who has been doing batterer intervention work for 27 years, believes that an abuser can change his behaviour if he understands his motives and accepts responsibility for his actions (McGregor & Collins 2015). Gondolf (2004) found that men who participated in batterer counselling programs stopped being hostile toward their partners and reduced their abuse in a four-year follow-up study (four-year follow-up

evaluation in four cities) (Gondolf, 2004). According to Gondolf, the offender's aggressivity declined due to the offender's intervention program. He believed that intervention programs had a positive impact on the majority of domestic violence abusers (Gondolf, 2004).

Therefore, it is critical to reform perpetrators before reintroducing them into the community to break the cycle of violence. Abusers frequently believe that their actions are justified because of pre-existing societal belief systems. So, even if the victims divorce the offender and move on, the offender may engage in violent behaviour with their new partner. As a result, while rehabilitating victims does not always result in fewer cases of domestic violence, rehabilitating offenders does. To summarize, Angela Neustatter (2014) correctly states that *'engaging with male perpetrators, in addition to intervention and protection for women, is critical to reducing violence that murders two women every week.'*

CRITICS OF RESTORATIVE JUSTICE IN DOMESTIC VIOLENCE

For many years, crimes involving violence in the private domain of intimate relationships (intimate partner violence) have been referred to Victim Offender Mediation (VOM). However, Intimate Partner Violence (IPV) dynamics present unique challenges for RJ, particularly in terms of safety and voluntary participation. As a result, the use of restorative justice in domestic abuse situations is a hotly debated topic. There is much talk about the dangers of re-victimizing the victim.

Both the domestic violence community and the restorative justice community have expressed strong reservations about the notion of whether restorative justice has an acceptable role in responding to domestic violence. Even the proponents of RJ have reservations about when and how such work should be done in domestic violence. Hence, there have been many theoretical objections and fears about such an idea and, or practice. Criticism comes from a variety of perspectives, such as medical sectors, feminist-supporting organizations, or survivors. Criticisms vary, for example, concerns of re-victimization and re-traumatization of victims when confronted with their offenders; the possibility of re-privatizing a crime that is ultimately debated and dealt with in the public arena in many countries; the possibility of diversion from the criminal justice system; or the fear that criminals may 'lightly' get away from it.

Based on the assumption that restorative justice is an easy way to get away from possible prosecutions, it was also discussed whether the use of restorative justice could be a sign of the authorities' unwillingness to take such crimes seriously. In addition, many health professionals believe that restorative activities between the victim and the offender can cause the victim to be retraumatized due to a power imbalance between the victim and the offender. Furthermore, there are also concerns that such an informal process may re-victimize victims, either as a result of a power imbalance between the victim and the offender or as a threat to the actual safety of survivors and a potential future victim (UNODC's Education for Justice (E4J), 2019). The concerns raised concerning the imbalance of power include the possibility of re-victimizing the survivor by: (a) pressing him or her to take part in the conference, reaching/accepting an unsatisfactory compromise to respond with forgiveness to the offender, and/or forcing the offender to offer an insincere apology, or (b) using the restorative process as an opportunity to exploit the victims and further endorse the victim's engagement in self-blame.

In addition, restorative justice may entail the so-called 'restorative risk,' which is likely to cause more damage to either party involved in restorative justice. The criminogenic risk associated with this is the risk of reoffending during or after the process of restorative justice. Some psychologists believe that sex offenders may find undue gratification in hearing their victims speak about distress and trauma during and after a crime, which can intensify their criminal behaviour rather than promote feelings of remorse and guilt. However, to tackle the widespread, ever-rising issues of domestic violence, there needs to be a progressive change in the way we deal with domestic violence cases by strengthening the options that are already available to the people who have been affected by domestic violence. This is not to dismiss or deny the many thoughtful critiques of restorative justice theory and practice offered by a wide range of commentators, including women's organizations, victim advocates, and medical practitioners. Nonetheless, responding to and engaging with these concerns should be the first step in the consultative and collaborative process that must precede any restorative justice model for issues concerning domestic violence, let alone implementing it.

A WAY FORWARD FOR BHUTAN

Time and again, the Royal Government of Bhutan has undertaken measures to address the widespread issue of domestic violence. The enactment of the *Domestic Violence Prevention Act of 2013* can be seen as a milestone for Bhutan in implementing policies with restorative justice principles. The *Act* provides for the development of reintegration programs and activities to facilitate the livelihood of the victims, community support for victims at risk, community to establish shelter houses for victims, counselling for victims or defendants at any stage of the proceeding, and the court-ordered mandatory rehabilitation for victims or offenders if the court deems it necessary. Furthermore, the concept of mediation and reconciliation is nothing new for Bhutan. Therefore, it is strongly felt that with the right resources and better training, the concepts or approaches of RJ, specifically victim-offender mediation, can be introduced in our country. Furthermore, section 22 of the *Domestic Violence Prevention Act of 2013* states that *"If the offence is of misdemeanour and below, and the defendant is not a recidivist, police personnel may release the defendant on surety if detained or may allow the matter to be settled mutually if the victim so desires."*

However, to avoid the possibility of re-victimization, processes of restorative justice should be started only with the expressed consent from the victims and the offenders. Furthermore, to mitigate restorative risk, such a process of restorative justice must be undertaken only by trained professionals under the supervision of the court or a designated authority such as the NCWC or RENEW with a clearance from a trained medical counsellor. That said, it is quite evident that Bhutan is open to the principles of restorative justice. However, Bhutan lacks the infrastructural and human resources expertise to deal with such cases. This is because, although the law provides for Shelter Homes to be built by the community, not everyone has an excess of such homes. After all, it is usually located in Thimphu or one or two Dzongkhags. Similarly, Bhutan lacks expert facilitators or counsellors to rehabilitate the victims and offenders effectively. Therefore, if Bhutan invests in infrastructure and human resources, Bhutan already has a legal basis and cultural acceptance for RJ to be introduced alongside the criminal prosecution of the perpetrator.

CONCLUSION

In contrast to the traditional criminal justice system, where victims have little say in the outcome of the proceedings, RJ prioritizes the victim's wishes and needs. Victims play an important role in RJ conferences and have a greater influence over the conversation's goals and outcomes. Furthermore, combining RJ with traditional judicial processes may be especially beneficial to people who want to be involved in the process because it allows them to play a role other than that of a witness or observer, and it also provides an opportunity for the offender to reflect on their actions and change their ways. Consequently, criminal law reforms must have an exponential and long-term impact on victims and perpetrators outside of the courts if they are to have a significant impact on the entire spectrum of domestic violence.

A 'one-size-fits-all' approach to dealing with offenders is unlikely to ever fulfill the requirements of all those who have been abused or the abuser due to the varied and unique needs of survivors of domestic and sexual abuse. As a result, it is vital to be more open-minded regarding RJ's potential benefits for all types of vulnerable people because it enables a more flexible and comprehensive response to such crimes. It allows us to keep talking about what works to empower survivors and satisfy their needs in ways that traditional approaches have not always worked. Similarly, offenders need help accepting responsibility for their actions as well as changing their attitudes and behaviours. There is a high chance that the offender's family, community, and some members of the criminal justice system may reinforce their ideas and aggressive behaviour. As a result, for offenders, having a community of people who promote and support reform is critical. It is also worth noting that the efforts required to change violent men's attitudes and behaviour may not always be as effective as program implementers hoped when developing specific offender intervention programs, but it is always worth the try.

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