Bhutan Law Review

Volume XXV February 2026

Bhutan National Legal Institute
Thimphu, Bhutan

Editorial Team

Pema Needup
Kinzang Chedup
Deki Zam Dorji
Karma Tenzin

Layout & Design

Sherab Zangmo
P.T. Printing & Publishing House.

Publisher

Bhutan National Legal Institute
Supreme Court Complex
Lhadrong, Thimphu
P.O. Box: 575
Tel: +975-2-331628/331630
Fax: +975-2-336701
www.bnli.bt

Bhutan Law Review

Volume XXV February 2026

Bhutan National Legal Institute
Thimphu, Bhutan

PLEDGE

His Majesty the King- The strategist and the seer of the future;
An inexhaustible treasury of wisdom and fortune;
The glorious and the radiance of an extraordinary being;
At your feet, we pray!
And with your vast qualities, activity, and blessings;
You are the splendour of the three worlds;
Self-arisen manifestation of the most revered gods;
The boat of compassion and wisdom.

On this most auspicious occasion of the 46th Royal Birth Anniversary of His Majesty the King, the Bhutan National Legal Institute rejoices in the perfect economic vision and wisdom.
With profound prayers, we pray for His Majesty's good health and long life.
May we be always guided by His Majesty's jewel of self-arisen wisdom, love, and perfection.

May all auspiciousness shine.

CONTENTS

PREFACE

Today, legal thinking at both national and international levels is expanding. The emergence of the digital economy, digital collaboration, and innovation is driving new approaches to legal thought and capability. The development of design thinking, together with the ongoing digital transformation, necessitates an ecosystem that fosters and supports the role of digital innovation and information technology. The growing influence of artificial intelligence, along with advancements in financial technologies, is reshaping investment opportunities. These developments are anchored in the GMC Project. In His Majesty's Address to the Nation on the occasion of the 118th National Day in Bumthang on 17 December 2025, it was emphasized that the GMC aims to create opportunities for prosperity and secure a confident and hopeful future for future generations. This vision requires reconceptualizing courts as catalysts for change and as active participants in modern governance processes.

Since 2011, the Bhutan National Legal Institute has published the *Bhutan Law Review* to promote academic discourse and provide a platform for legal and socio-legal scholarship. These publications aim to encourage innovative thinking and foster developments in the justice sector. Legal academics are expected to lead transformative approaches to legal education and scholarship. They should enhance intellectual rigor through meaningful academic engagement and discussions on relevant topics. Since its inception, as envisioned and pioneered by Her Royal Highness Ashi Sonam Dechan Wangchuck, the *Bhutan Law Review* has steadily gained momentum in strengthening legal academia in Bhutan.

Research indicates that traditional legal scholarship is under increasing pressure. Debates continue regarding the aims and methodologies of legal studies, particularly in light of the disruptive influence of digitization, machine learning, and Big Data. The relationship between empirical research and normative inquiry is giving rise to new forms of scholarship. However, the production of original research remains limited. This highlights the need to strengthen institutional capacity in empirical legal studies.

Empirical Legal Research (ELR) draws on diverse disciplines and has evolved into a growing field of study. At the international level, there is an increasing need to address epistemological, methodological, and

translational challenges in legal research. Epistemological issues concern the nature and accumulation of knowledge, while methodological issues involve research design, theoretical frameworks, data collection, and analysis, including the operationalization of legal concepts and the use of Big Data. In Bhutan, ELR should play a more prominent role in shaping legal scholarship by addressing critical legal questions and bridging the gap between empirical evidence and normative conclusions for policymaking.

Law is an argumentative discipline and a core legal science. Legal studies and academia should be regarded as an "experimental laboratory" where competing legal arguments are critically examined. Legal scholarship must move beyond purely theoretical approaches and contribute to more robust legal analysis. Today, research and publication have become key indicators of academic success. The concept of "publish or perish," along with the emergence of AI tools such as GPT-based language models developed by OpenAI, is transforming how legal writing, thinking, and analysis are conducted. While these technologies offer significant potential to enhance research processes, human oversight remains essential to ensure accuracy, coherence, and critical judgment.

This volume discusses contemporary legal issues, including deepfakes, pornography, judicial stress, and other matters of legal significance. It also highlights and celebrates the noble contributions of His Majesty the King. The Bhutan National Legal Institute is honored to publish the 25th Volume of the *Bhutan Law Review* in commemoration of the auspicious 46th Royal Birth Anniversary of His Majesty the King. This publication celebrates the visionary leadership that has ensured peace, prosperity, and stability in the country. Reflecting ongoing administrative reforms and contemporary developments, the articles in this volume aim to capture evolving aspirations and emerging legal thought. It is hoped that this volume will engage readers and contribute to a broader academic audience.

THE EXPOSITION OF CONSTITUTIONAL KUTHANGS

The constitutional foundation, the *law of the constitution,* and constitutional jurisprudence form the fundamental and permanent construction of statutes. It provides a fixed, uniform, and permanent legal doctrine that approximates Justice as a principled solution required today. Aristotle has designed the concept of virtuous friendship and connects it with virtue, friendship, and happiness as an interconnected phenomenon of benefit and reciprocity. The Constitution of Bhutan is referred to as the 'Diamond Vessel of Essence,' which has helped reshape Bhutanese political and governance history and transition the country into a democratic constitutional monarchy. By Western authors and writers, the Bhutanese Constitution is described as a blueprint for a Buddhist Democracy that establishes the institutional arrangements of government, professing national values, and protecting citizens' fundamental rights.

In others, authors from various parts of the world, based on the Principles of State Policy, mention the call for the creation of a GNH state and society based on the premise and the State's obligations to provide a ***'good quality of life.'*** So, the state's obligations include providing a "good quality of life" along with education and dignified work and upholding ethical principles of society. These are the outer circumstances that lead to individual and societal happiness. By satisfying its citizens' material, social, and environmental needs, the state is promoting Gross National Happiness by providing conditions conducive to developing higher mental states and achieving spiritual attainments. Thus, the state's purpose is in the service of specific virtues and ethics that go beyond liberalism's protection of equality and individual freedom. Including these ethical principles in the constitution is meant to help individuals make moral choices that transcend self-serving actions and provide for mutual care, which will help them overcome the delusion that individuals are separate and independent agents and help them recognize the interconnected nature of reality (Long, 2019).

Bhutan, unlike any other country, is unique. The principles and philosophies of the *Constitution of Bhutan* are uniquely placed, and each word has earned its sacred place with the blessings of Their Majesties the Kings and the people of Bhutan. That is why we call it the *People's Constitution.* In light of the various precious tenets that the Constitution of the Kingdom of Bhutan embodies, it is a metaphysical document that connects, at a fundamental level, to larger concepts that create dynamic

systems. As various writers describe it, the Constitution of Bhutan is proleptic, and more importantly, it fosters a constitutional culture that reflects Bhutan's development into a country of best value and governance. It has built and re-strengthened the ground for the common good with the best constitutional imaginations and thinking. These constitutional roots provide a very dynamic as well as responsive system of governance and a political system, and refashion constitutional ontology in governance and a strong political system.

Good governance and good government can only come if we have good leaders with a very good governance mechanism. Thus, **Article 16: Public Campaign Financing** provides a basis for a strong government mechanism that provides a fertile pathway for the elected government to best serve the nation and the people. Thus, this provides a rich avenue for constitutionalism that articulates a clear pathway for a transparent and accountable method of funding to negate plutocracy (Tobgye, 2015). In other political jurisdictions, political institutions allow crowdfunding campaigns without understanding their consequences: political and legal. The Bhutanese constitution, it recognizes freedom of choice and protects the spirit and practice of the Bhutanese democracy. These are both constitutional as well as institutional frameworks that separate Bhutan on the grounds of moral standards and ethical values. [This] helps to promote an equitable and clean political conscience that supports legitimacy in funding and ethics in mobilizing political funding.

In Bhutan, unlike in other countries, we have not adopted the institutional culture of crowdfunding, and this is based on the premise that sets a new constitutional and political institution. His Majesty the King has stated that ***'political parties' would be happy to collect donations and funds from private organizations*** (Tobgye, 2015). In short, the constitutional theory of Bhutan, which has been very wisely adopted by Bhutan, has rightly understood the impact of crowdfunding and its political culture. Thus, research studies in the United States have shown the lack of cognitive legitimacy of crowdfunding, and researchers say that crowdfunding negotiates legitimacy (Lewis et al., 2021). These foundational researches, which Bhutan has acutely understood provides the comprehensible legitimacy for the Public Campaign Financing.

Financing democracy is an expensive affair. Besides the constitutional theories that have been adopted in various countries, academic research on the financing of democracy indicates that there is a penetrating weight of private interest in financing. For example, in France, 800 donors funded half of Emmanuel Macron's presidential campaign. Here, 800 donors made a political party and a candidate, which led to tax breaks to the whole group. Here, the question is whether the laws must change in France. Essentially, the affluent among the affluent gain (Cage, 2020). [T]his is what Bhutan has meticulously avoided through a very wise constitutional provision that mandates the Parliament to establish a ***Public Election Fund.*** In many countries in Europe, ***one person, one vote*** has been replaced by ***one euro, one vote.*** This is what Bhutan needs to avoid, and choose the path to new progressivism, thereby avoiding the ill effects of populism. In this, Bhutan, through expert constitutional premise designing and crafting, avoided the economics of politics. In European countries, this raises the ***question of whether the vote is for sale.***

Despite recent progress in assessing the impact of party and campaign funding on the quality of democracy, party competition, membership rates, party-business relations, and political corruption through theoretical lenses, it is established that two fundamental challenges remain. It is stated that there is a lack of data and the existing limitations and research on the political financing regime (PFR) (Lipcean, 2022). These policy choices provide transparency and provide the basis for free and fair elections. Another big question that has been raised by researchers in the absence of public campaign financing, it raises the questions if the elected representatives are really serving the interests of their voters or serving the agendas of unidentified donors with significant financial capability (Sinha, 2024). [T]his helps to preserve the integrity of elections and the necessary function of responsibility, thereby guaranteeing a fair road that lets democracy flourish free from undue influence by latent financial interests.

Further, it does not restrict public knowledge of the origins and quantities of money political parties get, and allows openness, which is the foundation for a strong democracy. This enhances transparency in political financing, and this transparency guarantees fair elections and candidate openness, therefore improving responsibility and enabling voters to make informed decisions (Sinha, 2024). Elections are an

important moment in the transfer of power and ensuring a legitimate government supported in a fair and real way by the majority of voters. For this to be achieved, much depends on the style of political leadership of the leaders of political parties. The correct and fair delegation of the will of the people to the parliament is the main goal of the conduct of elections in any democratic country with a state of law. Political parties participate in elections to represent the people and to fulfill promises.

The struggle for power among political parties has led them to conduct unrealistic populist campaigns, based not on their political programs but on their populism, in an effort to obtain as much popular support as possible and gain power to govern. The prosperity of a country depends greatly on fair and honest elections. Elections should accurately reflect the real opinions of voters. In general, research shows that political parties use populist and ineffective styles of obtaining accurate and real support, and manipulate the support and opinion of supporters using a variety of methods (Alamanni et al., 2025).

In the Bhutanese constitutional, governance, and democratic perspective, public campaign financing occupies an important place in the constitutional framework of Bhutan, reflecting the country's commitment to ensuring free, fair, and equitable democratic elections. The ***Constitution of the Kingdom of Bhutan, 2008,*** recognizes this Article as a mechanism to regulate electoral competition, prevent undue influence of money in politics, and promote equity and Justice in the political field. Further, it provides the constitutional basis for public campaign financing. By mandating the Parliament to enact a law to establish a **Public Election Fund**, which is to be used for financing political parties and candidates contesting elections to the National Assembly and the National Council. This provides for the State's duty to support equal participation and safeguard the integrity of the political and election processes by anchoring finance. This is the most distinguishable constitutional provision that makes Bhutan different from many other democracies.

In strengthening the constitutional framework in this aspect of political and election processes, the Constitution further entrusts the ***Election Commission of Bhutan (ECB)*** with the ***Public Election Fund.*** Here, the ECB is required to allocate funds equitably, and these institutional arrangements promotes the independence and neutrality of election

financing, insulating it from partisan control and executive influence. The central role of the ECB also reinforces public confidence in the fairness of elections. In addition, the ***Constitution*** regulates private financial influence in elections, and the ECB is required to put a ceiling on the total expenditure that may be incurred by the political parties and their candidates. Moreover, the Commission is mandated to set limits on **voluntary contributions** made by members to political parties, subject to the provisions of the ***Election Fund Act***. These institutional controls are designed to prevent excessive spending and enhance integrity-based political campaigns. This institutionalizes the bastions of transparency and accountability as an integral part of Bhutan's constitutional approach to campaign financing.

Thus, the public campaign financing under the Bhutanese Constitution reflects a deliberate effort to balance democratic competition with ethical governance. By constitutionally mandating public funding, regulating private contributions, and ensuring oversight by an independent constitutional body, Bhutan seeks to minimize the influence of money in politics and promote substantive rather than financial competition in elections. This framework aligns with Bhutan's broader constitutional vision of democracy grounded in integrity, fairness, and public trust. This also promotes a value-based constitutional provision, as well as an election system that echoes the critical components of competency and clean voting.

The ***Exposition on Constitutional Kuthang*** is a fitting tribute to the forward-looking Constitution ofthe Kingdom of Bhutan, which in turn is a fitting tribute to the futuristic and enlightened visionof the Father of the Constitution, His Majesty the Fourth Druk Gyalpo. This book presents the 34 Articles of the Constitution, which are symbolic of His Majesty the Fourth Druk Gyalpo's 34years of glorious reign, in all their dimensions and significance through most vivid iconographicdepictions.

The 34 constitutional kuthang painted in our own iconographic tradition renderthe visions and principles of the Constitution meaningful artistically, lending them clarity and immediacy. I am confident that this will enable the citizens who are not legally literate and future generations of Bhutan to understand and appreciate the meaning and significance of the Constitution easily.

The *Kuthang* abundantly depict the provisions of the Constitution drawn from the salient principles of Buddhism, which have defined the reigns of the Bodhisattva Kings of Bhutan. They depict the marriage of the timeless Buddhist wisdom and the tactful astuteness of the modern world. The terse words and phrases in the Constitution immediately come alive when we understand this link and the profound significance it holds.

As a tribute to His Majesty the Fourth *Druk Gyalpo* on His 60th glorious Royal Birth Anniversary, the Supreme Court of Bhutan and the Bhutan National Legal Institute, under the noble guidance of Her Royal Highness Princess Sonam Dechan Wangchuck, initiated the paintings of 34 *Kuthangs* corresponding to the 34 Articles of the *Constitution*. Each *Kuthang* captures the essence of the Article, its significance, and its purpose. The *Bhutan Law Review* aspires to embrace and emulate such profound representations of wisdom and methods in its successive volumes as a continued tribute to His Majesty the King, His Majesty the Fourth *Druk Gyalpo,* and the *Tsa-Wa- Sum.* In this Volume, the *Journal* captures the *Public Campaign Financing* under the *Constitution* to reflect the sacrosanct constitutional premises for the operation of the democratic ideals in Bhutan.

ARTICLE 16

PUBLIC CAMPAIGN FINANCING

1. Parliament shall, by law, establish a Public Election Fund into which shall be paid every year such amounts as the Election Commission may consider appropriate to fund registered political parties and their candidates during elections to the National Assembly and candidates to the National Council.
2. The payment out of the Public Election Fund shall be made by the Election Commission in a non-discriminatory manner to registered political parties and candidates in accordance with laws made by Parliament.
3. The Election Commission shall fix a ceiling for the total expenditure that may be incurred by political parties and their candidates taking part in elections to the National Assembly.
4. The Election Commission shall fix a ceiling for contribution offered voluntarily by any of its registered members to a political party subject to the provisions of the Election Fund Act.
5. The funding received by political parties and their candidates shall be subjected to scrutiny and auditing as called for by the Election Commission in accordance with laws made by Parliament or law in force.

In line with Article 16, to enhance the best governance of funding of the Political Parties, Buddhist philosophies provide the genesis of new norms of governance and a just democratic thinking. Bridging it with Buddhist philosophies, it is reflected in various Buddhist canons and texts that outline the following cardinal values of Buddhist thinking and jurisprudence.

Sun and the Moon Disc

Jamyang Khyentse Wangpo said:

Lifespan is like the indestructible vajra and ***Mount Meru,***

Like the luminous, undying sun and moon.

Accordingly, it signifies the falling of the rays of four noble and altruistic activities on the people from the sky of the great Dharma King of the Glorious Wangchuck Dynasty.

The Formation of Rivers from Snow

The significance of the formation of rivers from snow on the tip of Mount Meru in the space of the light of the sun and moon represents the establishment of the Election Fund.

The Clear Mirror

The mirror, which is the resultant form of the great element, is as described in the Supportive ***Text of the Great Expanse*** of *Longchen* states:

On the surface, which is empty in reality

Reflects the appearance of the forms of existence and quiescence,

May the mirror that reflects the entire animate and inanimate world remain without ever disappearing!

Just as all the materials are reflected on the clear mirror, the image signifies the clearance of auditing of the Ruling and Opposition Party by the Royal Audit Authority after being elected.

The Four Harmonious Friends

As the story of the ***Four Harmonious Friends*** mentioned in the ***Wish-Fulfilling Tree,*** the text on the former lives of Lord Buddha, the Buddha commanded that prostrating to and honouring one another according to seniority is a good conduct of dharma. Like the five grounds of good conduct mentioned in the story of the ***Four Harmonious Friends,*** it signifies the fact that all integrity and good relations should prevail among political parties, putting the welfare of the country and people first.

The Golden Yoke

The ***Chronicles of Padmasambhava*** states:

Propagate both the bulky and heavy
golden yoke of secular law

And the soft and tight silken knot of
religious law.

The silken knot of religious law derived from the code of monastic discipline binds the mind afflicted with negative emotions, and the heavy yoke of secular law derived from the ***Ten Divine Virtues*** and the ***Sixteen Pure Human Laws*** binds the conduct of the body and speech. ***The Golden Yoke*** calls upon us to conform all our actions to the dual system of governance in gratitude to the successive monarchs and to fulfil the aspirations of the ***Gross National Happiness.***

REFERENCES

Allamani, S., Hysa, F., Shaqiri, A., & Ibraj, B. (2025). The discourse of political elections in Kosovo: Political leadership styles and the political election campaign on February 9, 2025—Populism, aggressiveness, and funding as instruments for securing support and manipulating opinion. *Erinatal Journal*, *33*(1), 328–338. https://doi.org/10.57239/prn.25.03310039

Cage, J. (2020). *The Price of Democracy: How Money Shapes Politics and What to Do about It.* Harvard University Press.

Lewis, A.C., Cordero, M.A., & Xiong, R. (2021). Too Red for Crowdfunding: The Legitimation and Adoption of Crowdfunding Across Political Cultures. *Entrepreneurship Theory and Practice 45*(3). pp. 471–504. DOI: 10. 1177/ 1042 2587 20915574.

Lipcean, S. (2022). Direct public funding of political parties: Between proxy measures and hard data. *Party Politics, 28*(6). DOI: 10.1177/13540688211037302.

Long, W. J. (2019). Bhutan's nascent democracy. In *Tantric state: A Buddhist approach to democracy and development in Bhutan* (pp. 70–112). Oxford University Press. https://doi.org/10.1093/oso/9780190843397.003.0004.

Sinha, A. (2024). The Electoral Bonds Dilemma: Balancing Political Funding with Election Fairness. *ShodhKosh: Journal of Visual and Performing Arts*, *5*(2), 597–605. doi: 10.29121/shodhkosh.v5.i2.2024.2743.

JUDICIAL WELLNESS: A NECESSARY STRATEGY FOR MANAGING OCCUPATIONAL STRESS AND PRESERVING JUDICIAL INTEGRITY

*PEMA NEEDUP

ABSTRACT

Judicial officers perform a uniquely demanding public function that requires independence, impartiality, emotional resilience, and sustained cognitive engagement. Increasing caseloads, complex legal disputes, exposure to traumatic evidence, complex decision-making, social isolation, institutional constraints, and heightened public and media scrutiny contribute to significant occupational stress within the judiciary. When left unmanaged, such stress not only impacts the mental and physical well-being of judges but also undermines the integrity, independence, and effectiveness of judicial systems and erodes public confidence in justice systems worldwide. Judicial well-being is a universal concern. Recent global initiatives, such as the *Nauru Declaration on Judicial Well-being* and the adoption of *July 25 as the International Day for Judicial Well-being,* have underscored the need for systemic responses rather than purely individual coping mechanisms. Empirical evidence reveals widespread stress among judges, persistent stigma around mental health discussions, and insufficient institutional support structures. This article emphasizes that judicial wellness must be understood and implemented as a *strategic institutional priority*, integral to safeguarding judicial integrity and the effective administration of justice. There is a lack of empirical research on the impact of occupational stress on judges and judicial officers in Bhutan's judiciary. Nonetheless, drawing on international best practices, this article discusses key components of a judicial wellness strategy, including leadership commitment, organizational culture, workload management, training, and peer support. It further explores how such a strategy can be contextualized

* Drangpon Pema Needup, Director General at the Bhutan National Legal Institute. The views expressed in this article are solely those of the author and do not reflect the views of the judges and the Judiciary of Bhutan or any institution with which the author is associated.

within Bhutan's judicial system, offering policy-relevant recommendations to strengthen judicial resilience, institutional integrity, and public trust.

Keywords: Judicial well-being, judicial stress, judicial burnout, vicarious trauma, judicial integrity, occupational stress, and Nauru Declaration.

I. INTRODUCTION

No one compelled me to join the Judiciary; I chose this career path willingly, believing it to be an honourable and fulfilling profession. When I was appointed as a judge, I felt a deep sense of pride. Over time, however, that perception has changed. Today, judges are frequent targets of criticism, both on social media and in everyday conversations. Many view judges with hostility, as though they were devoid of humanity.

Every judicial decision necessarily divides parties. A judge cannot satisfy both sides that appear before the court. Court cases, by their nature, culminate in a win–lose outcome. Those who prevail believe justice has been served; those who lose often feel wronged and perceive the judge as unfair. Judging, therefore, becomes a thankless and often maligned responsibility. In the past twenty-nine years of my judicial career, I have lived with a constant fear of criticism and public scrutiny. This is the irony of humanity in judging.

Are judges human? Because society demands much from judges. The judicial office is defined by ideals such as impartiality, fairness, independence, integrity, civility, and professionalism. These expectations are both necessary and noble. However, judges are, after all, human beings doing a job (Kirby, 2014). Judges are not automatons (Heilpern, 2017), but ordinary individuals entrusted with an extraordinary responsibility. The judiciary is made of human beings – individuals and independent persons appointed to judicial office; therefore, the judiciary is fundamentally a human system, dependent upon the collective human capacities and faculties of individual judges (Schrever, 2025). Like everyone else, judges are susceptible to the same pressures, stress, emotions, and limitations.

Jerome Frank (1931) aptly referred to the public perception of judges as the *"myth of the non-human-ness of judges."* This myth assumes

that judges can, and should, decide cases without being influenced by personal history or human limitations. In truth, judges are incurably human. Their personalities and lived experiences inevitably affect how they perceive facts, assess credibility, and reason through complex legal and moral questions.

Despite this reality, many members of the public continue to view judges as distant, awe-inspiring figures, removed from ordinary life. This perception, while intended to uphold the dignity of the judiciary, often overlooks judges' humanity and the emotional and ethical burdens they bear. Recognizing judges as human does not weaken judicial authority; instead, it deepens the public understanding of the weight of judging and the integrity required to exercise it conscientiously.

The judge's job is considered sacred on one hand, while on the other, they must lead their lives in isolation, sacrificing friends, relatives, and even those closest to them. As a result, they often struggle to maintain proximity with others, including family members (Bhavani & Neha, 2025). Even after the sacrifice of everything, the parties who are not satisfied with the judgments and orders of the judges file frivolous, vexatious complaints with baseless, concocted, absurd allegations, which are causing mental agony and stigma to the officers. If the judicial officer is of thin skin, the false allegations can lead to mental trauma, which impacts their health and mental well-being. Besides, judicial work is demanding and can lead to both satisfaction and occupational stress. Research has shown that judges and judicial officers worldwide are susceptible to judicial stress, judicial bullying, and judicial burnout. Acknowledging the reality of judicial stress and building the capacity to manage it effectively are crucial aspects of effective judging.

Judicial well-being has been directly linked to judicial integrity. *The Bangalore Principle of Judicial Conduct* recognized that *"integrity is essential to the proper discharge of the judicial office."* The well-being of judicial officers and all judiciary staff is necessary for the effective, efficient, competent, and diligent performance and functioning of the judiciary, as well as for the discharge of judicial functions (Jamadar, 2025). Judicial well-being is generally regarded as a vital prerequisite for judges to perform their judicial functions effectively. Optimal performance and competence on the part of judges and members of the

judiciary depend not just on knowledge of the law and analytical skills, but also on their well-being (physical, mental, emotional and psychological). Many believe that stress, burnout, fatigue, and anxiety undermine the impartiality, independence, integrity, efficiency, and effectiveness of judges and the judicial system as a whole (UNODC, 2022).

This article emphasizes that judicial wellness must be understood and implemented as a *strategic institutional priority*, integral to safeguarding judicial integrity and the effective administration of justice. There is a lack of empirical research on the impact of occupational stress on judges and judicial officers in Bhutan's judiciary. Nonetheless, drawing on international best practices, this article examines the stressors faced by judicial officers worldwide and key components of a judicial wellness strategy, including leadership commitment, organizational culture, workload management, training, and peer support. It further explores how such a strategy can be contextualized within Bhutan's judicial system, offering policy-relevant recommendations to strengthen judicial resilience, institutional integrity, and public trust.

This paper is not written in my professional capacity. I do not speak for the Judiciary of Bhutan, nor do I write as a judicial officer. It is not my intention for readers to infer, even momentarily, that this paper is an expression of dissatisfaction or complaint about the job itself.

To serve as a judge is an honorable profession and an extraordinary privilege—one that offers the opportunity to apply justice in ways that can positively transform lives. The work is intellectually stimulating, continuously challenging, and deeply fulfilling. I remain fully cognizant of the many dedicated and diligent judges and judicial officers who perform their duties with excellence and integrity within the judiciary.

This paper is therefore a personal and reflective exploration of certain issues, written in an individual capacity, with the hope of contributing thoughtfully to a broader and constructive discussion.

II. UNDERSTANDING JUDICIAL STRESS AND TRAUMA

Judicial stress, judicial burnout, and vicarious or secondary traumatic stress are common global phenomena. Judging can be a stressful business, yet stress is a subject which neither judge nor advocate is supposed to admit, still less write about it (Kirby, 1994). Acknowledging the problem of stress and burnout among judicial officers is an important starting point. The well-being of judicial officers is a high priority since it affects them and the public (Sadek, 2021). However, no one wants to talk about it, and the institution wants to run as if this does not exist. Judicial stress is a taboo topic (Jamadar, 2024). According to the Global Judicial Integrity Network (GJIN) Report 2022, 69% feel that talking about mental health or stress is taboo when it comes to judges and members of the judiciary.

'Judicial stress', once considered an 'unmentionable topic,' is now a universally recognized challenge facing judges and judiciaries (Kirby, 1995). The time has come to break the silence. Bringing stress out of the judicial closet will benefit us all. After twenty-nine years of service in various courts, I have experienced significant occupational stress firsthand. This lived experience gives me the confidence to write about the subject without embarrassment, knowing that other colleagues within the judiciary may share similar feelings but hesitate to express them. However, in Bhutan, generally, stress in the judiciary is mentioned only obliquely: not spoken of directly. Justice Brian of the Supreme Court of New South Wales observed that stress is often readily recognized in others but is often reluctant to acknowledge in ourselves (Kirby, 2014). This is not a subject that judicial officers can afford to ignore or dismiss lightly. It is time to lift the judicial veil (Heilpern, 2017) and understand judges' stress. Stress is no longer a distant or abstract concern; it is steadily and quietly taking root within our judicial system as well.

Judges witness emotional drama in the courtrooms daily. Judges are working under emotional labour. They have to manage not only their emotions, but also the emotional content of the cases while balancing the law. The public views the judges as persons of ultimate neutrality who dispense justice. However, in reality, judges also experience not only stress, but also secondary or vicarious trauma (Mossman et al., 2018). To be a good judge, one has to be a healthy judge (Ferguson, 2019). For the judicial system to function properly, legal actors (e.g., judges and juries) must be of sound mind and body (Miller & Flores, 2007).

A. Definition of Stress

The concept of stress has been defined in various ways. It is a state of worry or mental tension caused by a complex or demanding situation. Stress is a natural human response that prompts us to address challenges and threats in our lives. Everyone experiences stress to some degree. The way we respond to stress makes a big difference to our overall well-being. Stress affects both the mind and body. A little bit of stress is good and can help us perform daily activities. Too much stress can cause physical and mental health problems. Learning how to cope with stress can help us feel less overwhelmed and support our mental and physical well-being.

Stress is a psychological state arising from an individual's appraisal that the demands of a situation exceed their available coping resources, thereby threatening their well-being (Lazarus & Folkman, 1984). Stress may be defined as a psychological and physiological response that arises when an individual perceives that the demands placed upon them exceed their capacity or resources to cope effectively.

B. Definition of Trauma

In a judicial context, trauma refers to the psychological and emotional effects arising from repeated or acute exposure to disturbing material, high-stakes decision-making, or human suffering, where such exposure overwhelms normal coping mechanisms and has the potential to impair well-being, judgment, or functioning.

The fact cannot be denied that, in reality, judges experience not only stress but also vicarious trauma. Vicarious trauma refers to distress associated with working directly with traumatized people. Vicarious trauma is the cumulative psychological and emotional effect that arises

from sustained exposure to others' trauma, such as through listening to testimony, reviewing disturbing evidence, or deciding cases involving human suffering, which can alter an individual's sense of safety, worldview, or emotional well-being. Research supports the theory that judges are at risk for vicarious trauma. A 2019 study of over 1,000 U.S. judges revealed that 30% attributed (in some part) their stress-related difficulties to being exposed to dockets involving evidence of "severe trauma or horror." In a 2023 study of 105 family and juvenile court judges in the U.S., most (63%) reported one or more symptoms of work-related vicarious trauma. A similar result was found in a 2008 study regarding the U.S. immigration judges displaying symptoms of vicarious trauma (Hall, 2022).

C. Difference between stress and Trauma

Trauma is used in this paper to denote the psychological impact of exposure to events or material that are experienced as profoundly distressing, overwhelm normal coping mechanisms, and are not processed in the same manner as ordinary life experiences. Such events may disrupt an individual's sense of safety, stability, or control and can have enduring effects.

Stress, by contrast, refers to the psychological impact of ongoing demands encountered in the ordinary course of professional life. In the judicial context, sources of stress may include heavy workloads, inequitable workload allocation, inadequate administrative support, legal or institutional constraints on decision-making, heightened public expectations, and adverse public commentary on the judiciary.

Research supports the theory that judges are at risk for vicarious trauma. Vicarious trauma is also referred to as secondary trauma, secondary traumatic stress, or compassion fatigue. Judges and courtroom personnel are susceptible to vicarious trauma through repeated exposure to photos, videos, recordings, testimony, and victim impact statements of violent and/or deeply disturbing events of cases on their dockets. Judges and court staff, especially those with responsibility for specialized dockets or cases involving domestic violence, drugs, or mental health, are prone to experiencing vicarious trauma (Hall, 2022).

The secondary trauma broadly refers to the psychological distress a person can experience as a result of exposure to information about the primary trauma suffered by another. Numerous theoretical papers and, more recently, published personal accounts have highlighted secondary trauma as an occupational hazard of judicial work. It is axiomatic that judicial officers are exposed to potentially traumatic materials. Courts deal, daily, with the very worst that humanity does to itself, and judicial work entails regular contact with distressing subject matter and distressed court users (Schrever et al., 2019). In a 2023 study, 105 Family and Juvenile Court judges from across the USA were surveyed. The majority of judges (63%) reported one or more symptoms of work-related vicarious trauma (Heilpern, 2017).

D. Definition of Burnout

The research reveals that occupational burnout is a feature of judicial officers' work-related stress. Burnout is broadly defined as "a syndrome of emotional exhaustion, depersonalization, and reduced personal accomplishment that can occur among individuals who work with people in some capacity" (Schrever et al., 2019). Judicial burnout refers to a state of chronic physical, emotional, and mental exhaustion experienced by judges as a result of prolonged exposure to intense work-related stress. Burnout is distinguished from depression and anxiety in that those conditions are global, pervading all aspects of a person's life, whereas burnout is more distinctly linked to the working environment.

Judicial burnout often arises from factors such as heavy caseloads, time pressure, the inherent isolation of judicial work, exposure to traumatic material, public scrutiny, and the weight of decision-making with serious consequences. If left unaddressed, it can impair judgment, well-being, and confidence in the justice system itself. Burnout is a debilitating response to chronic stress that can have serious psychological and physiological effects. People experiencing burnout feel emotionally drained, callous toward others, cynical about the value of their work, and uncertain about their abilities. Burnout can negatively impact judges' physical and psychological health, as well as their ability to effectively function in their work (Brafford & Rebele, 2018).

III. KEY STRESSORS AMONG JUDGES IN OTHER JURISDICTIONS

Judges are usually not excused from stressful cases. They experience numerous causes of stress. Studies in other jurisdictions have shown that judges can experience several unique stressors related to their job duties, such as managing heavy dockets, time constraints, complexity of cases, uncooperative Bar, restrictions on their public speech and behaviour, intense media exposure, widespread public ignorance of the role of the court, relative isolation of the judicial position, deciding on motions, concern about being overruled by higher courts, inadequate or unskilled staff, safety concerns, lack of resources, frequent transfers, and maintaining a positive public image. Huchhanavar et al. (2025), in an explanatory study on occupational stress among India's district judges, reported that heavy workload (88%), apprehension of frivolous complaints (73.46%), excessive administrative burden (72.91%), antagonism from the Bar (69.38%), and limited control over court users (63.26%) are perceived as the most prominent stressors.

The 2017 Report of the National Task Force on Lawyer Well-Being (Swenson et al., 2020) identified several sources of occupational stress within the U.S. judiciary, including heavy caseloads (73.2%), unprepared attorneys (67.6%), self-represented litigants (62.5%), repeatedly dealing with the same parties without addressing underlying issues (58.1%), limited public understanding of the courts (55.5%), long working hours without adequate breaks (53.5%), frequent exposure to contentious family law matters (50.3%), professional isolation within judicial service (50.3%), and insufficient staff support (49.5%).

A. Nature of the Judicial Work Occasioning Stress

A significant source of stress for many judicial officers arises from the pressure to meet role expectations and to perform the judicial role in accordance with entrenched institutional and societal norms. Judicial officers are expected, as Sir Robert Megarry famously observed, "to be as wise as they are paid to look" (Kirby, 1995). By the very nature of their office, judges are expected to exhibit exceptional intellectual capacity, sound judgment, and heightened moral and emotional restraint—standards that presuppose an almost extraordinary level of human capability.

The Australia Research 2024 (Jamadar, 2024) identified eight overarching judicial stress and wellness themes around which both causation and solutions can be constructed. These resonate with and corroborate the GJIN Report already described in this paper. They are stated as follows:

a) Workload is an issue for almost everyone.
b) Most judicial officers feel that the sources of stress are increasing.
c) Stressors of injustice are felt most keenly.
d) There remains a cultural reluctance to discuss stress and seek support.
e) Alongside judicial stress, there is a deep sense of job satisfaction.
f) Judicial officers who derive the most enjoyment from the role prioritize their own well-being.
g) Judicial well-being requires judicial time. The GJIN Report indicated that 76% of judges and members of the judiciary do not have sufficient time to maintain optimal physical and mental well-being.
h) Judicial well-being requires committed leadership.

B. Workload and Workplace Limitations

Another significant source of stress for judicial officers today is the increasing workload they are required to handle. According to the GJIN Report 2022 (Jamadar, 2024), excessive workload emerges as the most common contributing factor to judicial stress. Many survey participants explained that heavy workloads create a vicious cycle: judges and other members of the judiciary experience sustained stress, which slows their work, prolongs case processing, and in turn generates further backlogs. The report further indicates that 92% of respondents experience stress arising from judicial work sometimes, frequently, or consistently. In comparison, 89% are aware of colleagues within the judiciary who have experienced stress or anxiety. Further, Huchhanavar et al. (2025) report that occupational stress among India's district judges is

predominantly driven by systemic and administrative deficiencies, notably inadequate staffing (97.92%), poor ICT infrastructure (83.33%), unfurnished courtrooms (77.54%), unmanageable staff (72%), conflicts with court staff and lawyers (68%), and concerns associated with seniority-based elevation (60%).

C. Non-Delegable Functions and Conditions of Service as Stressors

Another feature of the very nature of judicial work, which adds to stress, is the limited capacity of judicial officers to delegate their judicial functions. The role of judges involves adjudicative, administrative, and coordinative functions that require interactions with various actors, leading to stress (Kirby, 2014). The personal obligation of consideration and decision-making rests upon the shoulders of the sworn judicial officer alone. It cannot be shifted. Most judicial officers have a strong sense of that responsibility. It comes with their personal, non-delegable duty. Be that as it may, it adds to the stress. Whereas other occupations can shed intolerable workloads, judicial officers have a strictly limited power to do so.

In addition, Huchhanavar et al. (2025), in an explanatory study on occupational stress among India's district judges, identified frequent (81.24%) and premature transfers (77.54%), as well as the withholding of promotions for unjustifiable reasons (70.83%), as key sources of occupational stress. Another notable study found that judges experience higher levels of occupational stress than many other professional groups. In England and Wales, 67% of judges identified stressful working conditions as a factor most likely to prompt them to leave the judiciary. Comparable concerns were reported in Scotland, where 59% of judges indicated that stressful working conditions might force them to leave the profession early, and in Northern Ireland, where 50% of judges expressed similar intentions.

D. Burden of Isolation and Loneliness of the Judicial Role

On top of these problems comes the social isolation. Following an appointment, the judicial officer may find it harder to make close friendships. Friendships of the past are often diluted, both by the judicial officer's obligation to preserve manifest independence and judicial

integrity. Loneliness of the office is also, to some degree, inescapable and constitutes an additional source of stress. Justice Abe Fortas, an Associate Justice of the U.S. Supreme Court (1965-1969), once said that *"judging is a lonely job, in which a man is, as near as may be, an island entire."*

Having served in both districts and *dungkhags*, I have experienced this isolation first-hand. Despite the collegiate nature of the bench, the role can feel profoundly lonely. Many judicial officers sit in single-judge courts supported by only a small number of staff. I worked within the court's four walls from 9:00 am to 5:00 pm each day. The extent of my workload was largely invisible to others, known only to my staff and family members. Such sustained isolation can have serious personal consequences. Judges cannot remove their robes in everyday interactions outside the courthouse, which is a hallmark of their elevated status in society but can also contribute to social isolation (Swenson, 2020).

E. Lack of Appreciation and Public Expectations

A significant source of judicial stress arises from the lack of appreciation for judges' work, coupled with heightened public expectations. Judicial officers are often subjected to intense scrutiny and criticism, while their diligence, impartiality, and workload remain largely invisible to the public. At the same time, judges are expected to deliver swift, flawless, and socially responsive decisions, creating unrealistic standards that overlook the human limits of judging. This imbalance between public expectation and institutional recognition contributes to emotional strain, diminished morale, and long-term occupational stress within the judiciary.

F. Decision-Making and Judgment Writing

The most significant source of concern for judicial officers is the accumulation of outstanding judgments. As Bowskill (2024) observes, this aspect of judicial work is widely regarded as the most stressful. The pressure associated with unresolved judgments intensifies the cognitive and emotional demands of decision-making and judgment writing, rendering these core judicial functions particularly difficult and burdensome.

A UNODC report (2022), based on a global survey conducted by the GJIN, indicates that judges are required to handle a large number of

cases each day and often lack sufficient time outside working hours for study and judgment writing. As a result, much of the decision-making is done at home, leaving little or no time for personal well-being or family life. Many respondents expressed the view that when judicial work is excessively stressful, the quality of decisions inevitably suffers compared to when judges have adequate time for careful deliberation. Moreover, excessive workload reduces efficiency and contributes to judicial delay, creating a vicious cycle that further intensifies stress for both judges and court staff.

This finding resonates with my own experience as the Presiding Judge of the Punakha District Court, where increasing caseloads meant that judgment writing was routinely undertaken at home late at night and on weekends, leaving minimal time for personal well-being and family. Paragraph 194 of the 2007 *Commentary on the Bangalore Principles of Judicial Conduct* recognizes the link between judicial well-being and performance, emphasizing that judges must have sufficient time to maintain their physical and mental health to perform their judicial functions effectively.

IV. ADVERSE EFFECTS OF JUDICIAL STRESS

According to the UNODC (2022) survey, the most commonly reported negative consequences of compromised well-being include overall decline in performance; procedural and judgmental errors; diminished cognitive capacity, including reduced concentration, slowness, and impaired reasoning and clarity of thought; decreased openness and receptiveness to submissions; inadequate analysis of evidence; lack of empathy and indifference to the rights of parties; increased susceptibility to bias and stereotyping; hastily drafted, copy-pasted, and insufficiently researched judgments; miscommunication; impatience and irritability; interpersonal difficulties; and heightened anger.

The UNODC (2022) reported that inadequate judicial well-being significantly undermines the effective functioning of the justice system. According to respondents, diminished well-being negatively affects the efficiency of justice delivery and court administration (80%), the quality of judicial decisions and judgments (68%), public trust and confidence in the judiciary (46%), access to justice (40%), the integrity of judges and

the judiciary (35%), and procedural fairness (31%). Medical research also suggests that prolonged sitting adversely affects health, including cardiovascular disease, reduced blood circulation, elevated blood pressure, elevated blood sugar, abnormal cholesterol levels, and excess fat around the midsection (Swenson et al., 2020).

An extensive study of American jurists found that sleep disturbance (insufficient sleep, awakenings, daytime drowsiness) ranked second among the effects of stress from their employment. The adverse effects of vicarious trauma may include, but are not limited to, difficulties in emotional regulation; fatigue; sleep disturbances, including excessive sleepiness or difficulty falling asleep; impaired focus and concentration; and physical complaints such as aches, pains, and reduced resistance to illness. The report also revealed a concerning trend in which lawyers and judges' resort to alcohol consumption primarily as a strategy to cope with occupational stress, rather than for leisure, raising implications for professional well-being and performance.

Huchhnavar et al. (2025) reported significant psychological consequences of judicial stress, most notably memory impairment (76%), temper outbursts (70%), sleeplessness (70%), and feelings of being inadequately appreciated (68%), underscoring the pervasive impact of occupational stress on judges' cognitive, emotional, and motivational functioning. Further, the report identified several notable physiological symptoms of occupational stress among judges, including persistent tiredness or physical exhaustion, digestive problems, headaches, back pain due to prolonged sitting, physical tension, and dizziness.

Among the respondent judges, an overwhelming 94% reported tiredness as a key physiological manifestation of stress among district judges in India. An equal proportion (94%) reported digestive problems. Headaches were identified as a major health concern by 84.75% of respondents, and nearly 82% perceived back pain as strongly associated with occupational stress. In addition, 77.54% reported experiencing physical tension, and 80% of judges perceived dizziness as strongly linked to occupational stress.

I briefly narrate my personal experience of how occupational stress adversely affected my physical well-being during my judicial tenure. I served as the Presiding Judge at the Punakha Dzongkhag Court

from 1 January 2014 to December 2020, for nearly 7 years. To the best of my knowledge, I was among the longest-serving judges at the court during that period. Upon assuming office, I inherited a backlog of more than one thousand cases and worked with a limited staff.

Punakha, being one of the busiest Dzongkhags, entails not only a heavy caseload but also substantial protocol responsibilities, national events, and frequent ad hoc religious and public functions. These additional obligations significantly constrained the time available for judicial work. To cope with the mounting backlog, I routinely conducted between fifteen and twenty hearings a day. In order to meet deadlines, I regularly carried case files home and spent evenings and weekends drafting judgments. This demanding schedule left little time for rest, recovery, or meaningful engagement with my family.

Over time, the sustained workload began to take a toll on my physical and mental health. I gradually developed stress and anxiety, which led me to become increasingly absorbed in my judicial responsibilities while withdrawing from social interactions. Subsequently, I experienced a range of stress-related physical symptoms, including elevated blood pressure unrelated to lifestyle factors, deterioration of vision due to prolonged computer use, gastric acidity, persistent back and neck pain, palpitations, tremors in my hands, sleep disturbances, and a constant sense of exhaustion and fatigue.

This account should not be construed as a complaint against the judicial system or its institutional framework. Instead, it is offered as an honest reflection on the human cost of sustained occupational stress inherent in judicial work. Despite these challenges, I derive deep professional satisfaction from having discharged my duties with diligence, honesty, and integrity. Looking back on my judicial journey at the Punakha Dzongkhag Court, I remain proud of the service I rendered and the commitment with which I fulfilled the responsibilities entrusted to me without any complaints from the public.

V. GLOBAL DEVELOPMENTS AND INITIATIVES

The issues of judicial well-being have gained significant attention in recent years. For instance, the Nauru Declaration underscores the critical importance of judicial well-being. The Declaration stresses the

multifaceted nature of judicial well-being, encompassing occupational, physical, social, cognitive, emotional, and spiritual aspects of judicial officeholders' lives. It acknowledges that the judiciary, while exemplifying core values such as independence, impartiality, and integrity, is fundamentally a human system dependent on the collective capacities of individual judges (Huchhanavar et al., 2025).

A. The Nauru Declaration

The Nauru Declaration on Judicial Well-Being is a landmark international statement adopted on 25 July 2024 during the Regional Judicial Conference on Integrity and Judicial Well-Being held in Nauru. It was developed by nearly 20 judicial leaders from around the world to recognize and address the mental, physical, and emotional health of judges and other judicial officers. This issue historically has received little formal attention.

Justice Rangajeeva Wimalasena, President of the Court of Appeal in Nauru, spearheaded the initiative, with support from the United Nations Office on Drugs and Crime (UNODC) and the Global Judicial Integrity Network (GJIN), and input from chief justices and judicial figures from diverse regions (e.g., Canada, Singapore, England and Wales, the Caribbean, Nigeria).

B. Why It Matters

The Declaration reflects a global shift in recognizing that judicial well-being is not a luxury — it is essential for:

- Independent, impartial and effective justice systems.
- Judicial integrity and ethical conduct.
- Public trust in courts and the rule of law.

Without systemic support for health and wellbeing, judges face burnout, stress and isolation that can negatively impact decision-making and institutional credibility.

C. Core Principles of the Declaration

The document sets out seven commitments to guide judicial institutions and systems in promoting well-being:

1. Judicial well-being is fundamental and must be recognized and supported.

2. Judicial stress is not a weakness and must not be stigmatized.

3. Judicial well-being is a responsibility of individual judges and judicial institutions.

4. Judicial well-being is supported by an ethical and inclusive judicial culture.

5. Promoting judicial well-being requires a combination of awareness-raising, prevention, and management activities.

6. Judicial well-being initiatives must be tailored to the unique circumstances and requirements of each national jurisdiction.

7. Judicial well-being is enhanced by human rights.

These principles highlight that well-being isn't only about individual resilience but also about institutional health and the quality of justice.

D. Global Recognition and Follow-Up

The UN General Assembly formally acknowledged the importance of this work: on 4 March 2025, it adopted a resolution (co-sponsored by dozens of countries) to designate 25 July each year as the International Day for Judicial Well-Being — anchored in the date of the Declaration's adoption.

Since then, various global conferences, webinars, and judicial events have been held to discuss implementation, share best practices, and keep the momentum alive. The Nauru Declaration builds on existing judicial norms (such as the Bangalore Principles of Judicial Conduct) by

providing specific guidance on well-being, framing it as integral to judicial independence and integrity rather than peripheral or optional.

VI. POSSIBLE ACTIONS AND INITIATIVES FOR JUDICIAL WELL-BEING

Judicial well-being should be understood not as a personal privilege, but as an institutional condition necessary for judicial independence, integrity, procedural fairness, and public confidence in the justice system. Here are some coping strategies to promote judicial wellness as recommended by the *Nauru Declaration on Judicial Well-being*, and recommendations and suggestions by the Researchers:

1. Self-Care or Self-Awareness Practice

The self-care practices are the first step toward alleviating stress in judicial work, as in other spheres of life. The first thing is to admit its existence to oneself and to close friends. Self-care is essential for sustaining professional effectiveness and excellence in judicial office. Being kind to oneself is not an act of selfishness. To be an effective judicial officer, one must remain mindful of one's mental and physical health and overall well-being. Prioritize self-care activities, such as exercise, adequate sleep, healthy eating, and relaxation techniques like mindful self-regulation or meditation.

Mindfulness or self-awareness can help judges become aware of what is happening within themselves, to regulate emotions and think more positively. Mindfulness and reflective thinking allow one to notice what is happening, think about it, and take remedial measures. It is sometimes described as approaching each moment with a 'beginner's mind' or 'thinking about thinking while thinking' (Fogel, 2021). Approaching each case with a reflective mind and applying mindfulness in judging helps judges counteract unconscious biases, regulate their emotional responses, and maintain exemplary judicial demeanour. It is recommended to schedule regular health check-ups to monitor physical health and address any issues early. While self-care measures are beneficial and important, at times, what is really required is medical treatment.

2. Practice Stress Management Techniques

Developing stress management techniques such as deep breathing exercises, progressive muscle relaxation, or engaging in hobbies, games, or mindfulness meditation can help reduce stress in the moment and promote relaxation. Engaging in regular physical activity, eating a balanced diet, taking short breaks from sitting, and prioritizing sufficient sleep to support overall well-being and resilience against stress.

According to Swenson et al. (2020), the National Judicial Stress and Resiliency Survey identified several effective stress-management strategies. The most frequently reported were maintaining a nutritious diet (88.7%) and engaging in physical exercise (82.3%). Other beneficial practices included reading (77%), pursuing quiet hobbies and pastimes (73%), ensuring healthy sleep (66%), participating in spiritual or religious activities (49.3%), engaging in relaxed movement and stretching (51.3%), and practicing meditation and mindfulness (35.9%). These findings highlight the importance of adopting a balanced lifestyle that supports both physical and mental well-being in coping with stress.

3. Social and Peer Support

Cultivating and maintaining strong relationships with supportive colleagues, friends, and family members who understand the unique demands of your profession is crucial. Openly discussing challenges with trusted colleagues can provide reassurance, perspective, and practical support. Taking time to share light moments and laughter with friends or coworkers can also be restorative, as humour serves as a powerful tool for relieving stress and fostering resilience. Many survey participants have recognized peer support as a key value, including mentoring, coaching opportunities, informal discussions with colleagues and support networks to discuss issues in a safe environment. To cope with the lonely life of a judge, social events and team-building activities within the judiciary, aimed at promoting a culture of sharing and reducing feelings of isolation, are highly recommended.

4. Nutrition

The relationship between healthy eating and stress management is well established. However, what is often overlooked is that when the body is inadequately nourished, stress exerts an even greater toll on overall

health. Stress increases the body's demand for essential resources such as oxygen, energy, and nutrients. Ironically, individuals under stress often crave highly processed, nutrient-poor foods—precisely the opposite of what the body requires to function optimally.

Healthy eating is not only about choosing nutritious foods; it also involves how those foods are consumed. In high-pressure professions, fatigue and low energy—particularly after hearing several cases in a row—are frequently reported as significant stress-related effects. However, proper nutrition can form part of the solution. An extensive 2020 study of U.S. jurists found that nearly all judges (99%) expressed interest in balanced nutrition and regular meals as strategies for coping with stress (Yetter, 2022).

Resilience to stress can be strengthened through healthy nutrition and mindful eating practices. Mindful eating encourages individuals to slow down, make intentional food choices, focus on the experience of eating, and remain fully present during meals. Such practices not only help mitigate the adverse effects of stress on eating behaviours but also enhance the enjoyment of meals, improve digestion, and promote greater awareness of hunger and fullness cues.

5. Setting Boundaries

Establishing clear boundaries between professional and personal life is essential to preventing judicial burnout. This involves limiting work-related activities outside official working hours and taking regular breaks when necessary. Judges who routinely take case files home may unintentionally extend their workday, reducing opportunities for rest and recovery. For the sake of both physical and mental well-being, it is advisable to avoid this practice whenever possible. Research suggests that bringing official matters home increases stress levels, while allowing personal concerns to intrude into the workplace further compounds the problem. Maintaining clear boundaries between these spheres promotes balance, resilience, and sustained professional effectiveness.

6. Time Management

Effective time management is essential to reducing judicial stress. Prioritizing tasks systematically and managing workload efficiently can prevent feelings of overwhelm and burnout. Judges should distinguish

between urgent and important matters, allocate realistic time frames for drafting judgments, and avoid unnecessary multitasking. Sound case management practices, such as structured scheduling of hearings, minimizing adjournments, and setting clear timelines for submissions, can significantly ease the burden of heavy dockets. Regular review of pending cases and the strategic delegation of administrative responsibilities, where appropriate, can further enhance productivity while maintaining the quality of judicial decision-making. It is recommended that judges take time off from their judicial offices. This measure will allow them time to relax and reduce stress before returning to their duties in Court.

7. Judicial Mentorship Programs

It is suggested that judicial mentorship programs are necessary to help new judges adapt to their roles. Mentors can act as important confidants and help newer judges recognize and address their stress. Mentors can also help new judges conduct their duties in ways that minimize stress. Judicial well-being should be a priority in the recruitment process, in the orientation programme for new judges, as well as throughout the career of a judge. There has to be more training and programs to assist in de-stress, and they should include stress management.

8. Supportive Work Environment

Effectively managing judicial stress requires fostering a supportive, respectful, and collaborative workplace culture where judges feel safe to discuss challenges and seek assistance without fear of stigma. A positive work environment grounded in mutual respect, trust, and understanding enhances morale and enables judges to perform their duties with clarity, focus, and confidence. When individuals work in an atmosphere of peace and professional harmony, they are better able to concentrate and achieve higher levels of productivity and decision-making quality.

Adequate judicial workforce and institutional resources are equally essential. Competent and credible support staff, including court personnel and research assistants, play a vital role in assisting judges with legal research, case preparation, and administrative responsibilities.

Furthermore, integrating modern court technology can significantly reduce administrative burdens, streamline case management, and improve overall efficiency. Together, these measures contribute to a healthier judiciary and a more effective justice delivery system.

9. Judicial Wellness Policies

The judiciary must adopt a proactive approach to identifying existing and emerging risks affecting judicial officers and court personnel. Institutions must be prepared to provide timely and effective responses while establishing comprehensive strategies and policies that safeguard and promote the physical, psychological, and emotional well-being of all members of the judiciary.

The survey report by the Global Judicial Integrity Network (UNODC, 2022) reveals significant concern in this regard: 83% of respondents indicated that the level of support available within their judiciary is insufficient, and an overwhelming 97% expressed the view that greater priority should be accorded to promoting judicial well-being. These findings underscore the urgent need for institutional reform and structured wellness initiatives.

Importantly, survey participants emphasized the pivotal role of judicial leadership in fostering a culture that prioritizes well-being. Strong, empathetic, and committed leadership is essential to normalizing discussions about stress, allocating adequate resources, and institutionalizing wellness policies within the judicial system. By implementing these strategies, judicial officers can better cope with the stress inherent in their roles, maintain resilience, and sustain a fulfilling and productive career in the judiciary.

VII. CONCLUSION

Promoting well-being within the legal profession is not optional—it is essential, particularly for judges. The nature of judicial work exposes judges to unique and sustained stressors that heighten their vulnerability to burnout, potentially compromising their health, happiness, and professional effectiveness. However, judges may dismiss concerns about their own well-being as secondary or even self-indulgent, given the gravity of their responsibilities. This perception must change.

Judicial well-being is not merely a private matter. Given the profound and lasting impact of judicial decisions on individuals and communities, courts have an institutional duty to foster environments that support the health and resilience of judicial officers. Self-care is not selfish; it is foundational to sustained service. One cannot serve from an empty vessel.

Unmanaged stress can affect not only judges themselves but also the quality and timeliness of their decisions, as well as the experience of litigants, practitioners, and all court users. Judges are human beings performing demanding roles, and acknowledging this reality strengthens rather than weakens the judiciary. Mental health challenges and life stresses inevitably intersect with professional responsibilities. Recognizing this does not undermine judicial competence; rather, it enables transparency, support, and proactive solutions—much as in other high-responsibility professions such as medicine, aviation, law enforcement, and public service.

For these reasons, meaningful policy interventions are required. A robust legal system depends upon healthy, competent, and independent judges. The evidence demonstrates that persistent stress and insufficient institutional support erode judicial well-being. Structured stress-management programs, education about burnout symptoms, peer support initiatives, and systemic reforms to workload and resources are not luxuries—they are necessities.

Ultimately, judicial wellness is both an individual and institutional responsibility. By prioritizing judges' well-being, the judiciary not only safeguards its members but also strengthens public confidence in the administration of justice. A healthy judiciary is indispensable to a healthy

legal system. Prioritizing wellness is not personal luxury. It is a professional obligation to the public that they serve. A resilient judge ensures a fair and just Judiciary.

REFERENCES

Bommathi, B., & Neha, G. (2025, August). *An article on judicial well-being: A brief analysis on prospectus and challenges faced by the district judiciary*. *International Journal of Research in Academic World, 4*(8). https://academicjournal.ijraw.com/media/post/IJRAW-4-8-39.1.pdf

Bowskill, H. (2024, June 6). *Without fear, favour or affection* [Speech]. Council of Australasian Tribunals National Conference, Brisbane, Queensland, Australia. https://classic.austlii.edu.au/au/journals/QldJSchol/2024/9.html

Brafford, A., & Rebele, R. W. (2018). Judges' well-being and the importance of meaningful work. *Court Review: The Journal of the American Judges Association.* https://digitalcommons.unl.edu/ajacourtreview/680/

Cole-Mossman, J., Crnkovich, E., Gendler, L., & Gilerson, L. (2018). Reducing judicial stress through reflective practice. *Court Review: The Journal of the American Judges Association, 54*, Article 673. https://digitalcommons.unl.edu/ajacourtreview/673/

Ferguson, A. (2019). *Making wellness core business* [Speech]. Wellness for Law Forum. https://qldbar.asn.au/baq/v1/viewDocument?documentId=1452

Fogel, J. D. (2017). Mindfulness and judging. *Judicature, 101*(1). https://judicature.duke.edu/articles/mindfulness-and-judging/

Frank, J. (1931). Part one: The effect on legal thinking of the assumption that judges behave like human beings. *University of Pennsylvania Law Review, 80*(1), 17–54. https://scholarship.law.upenn.edu/penn_law_review/vol80/iss1/3/

Hall, D. M. (2022, July). *Vicarious trauma*. In National Center for State Courts (Ed.), *Judicial wellness*. National Center for State Courts. https://ncsc.contentdm.oclc.org/digital/collection/judicial/id/603/

Heilpern, D. (2017, October 25). *Lifting the judicial veil – Vicarious trauma, PTSD and the judiciary: A personal story*

[Speech presented at the Tristan Jepson Memorial Foundation]. https://www.judcom.nsw.gov.au/publications/benchbks/judicial_officers/lifting_the_judicial_veil.html

Huchhanavar, S., Mohammad, S., & Vaibhav, V. (2025). Occupational stress among India's district judges: An exploratory study. *International Journal for Court Administration, 16*(1) https://iacajournal.org/articles/10.36745/ijca.569

Jamadar, P. (2024, July 15). *Judicial wellness for judicial officers: Achieving work-life balance: Challenges, impacts, solutions*. Papua New Guinea Centre for Judicial Excellence. https://ccj.org/wp-content/uploads/2024/08/Jamadar__20240715.pdf

Jamadar, P. (2025, July). *Judicial integrity and judicial well-being* (Thematic brief). UNODC Global Judicial Integrity Network. https://track.unodc.org/track/uploads/res/track/resourcehub/thematic_brief_judicial_integrity_and_judicial_well-being_html/Thematic_brief_GJIN_Peter_Jamadar_Judicial_integrity_and_well-being.pdf

Kirby, M. (1995). Judicial stress: An unmentionable topic. *Australian Bar Review, 13*, 102. https://judicialcollege.vic.edu.au/resources/judicial-stress-unmentionable-topic

Kirby, M. (2014). *Judicial stress and judicial bullying.* QUT Law Review, 14(1), Special Edition: *Wellness for Law*. https://classic.austlii.edu.au/au/journals/QUTLawRw/2014/2.pdf

Lazarus, R. S., & Folkman, S. (1984). *Stress, appraisal, and coping*. Springer Publishing Company. https://doi.org/10.1007/978-1-4419-1005-9_215

Miller, M. K., & Flores, D. M. (2007). Addressing the problem of courtroom stress. *Judicature, 91*(2), 60–69.

https://www.researchgate.net/publication/261134876_Addressing_the_problem_of_courtroom_stress

Sadek, J. (2021, November). *Well-being of judges should be a priority for every judiciary*. United Nations Office on Drugs and Crime Global Judicial Integrity Network. https://www.unodc.org/dohadeclaration/en/news/2021/11/well-being-of-judges-should-be-a-priority-for-every-judiciary.html

Schrever, C. (2025). Judicial well-being: From an "unmentionable topic" to a global conversation. *Judicature, 109*(1). https://judicature.duke.edu/wp-content/uploads/sites/3/2025/07/SCHREVER_Vol109No1.pdf

Schrever, C., Hulbert, C., & Sourdin, T. (2019). The psychological impact of judicial work: Australia's first empirical research measuring judicial stress and well-being. *Journal of Judicial Administration, 28*, 141–168. https://judicialcollege.vic.edu.au/resources/psychological-impact-judicial-work-australias-first-empirical-research-measuring-judicial

Swenson, D. X. (2022, July). *Standing at the bench: Tradition, health effects, and solutions*. In National Center for State Courts (Ed.), *Judicial wellness*. National Center for State Courts. https://mnlcl.org/wp-content/uploads/2022/12/Judicial-Wellness-guides.pdf

Swenson, D., Bibellhausen, J., Buchanan, B., Shaheed, D., & Yetter, K. (2020). Stress and resiliency in the U.S. judiciary. *Journal of Professional Lawyer.* https://www.courts.michigan.gov/499539/siteassets/committees,-boards-special-initiatves/lawyer-well-being/stress-and-resiliency-in-the-us-judiciary.pdf

UNODC. (2022, March). *Exploring linkages between judicial well-being and judicial integrity: Report on the global survey conducted by the Global Judicial Integrity Network*. https://www.unodc.org/res/ji/resdb/data/2022/exploring_linkages_between_judicial_well-being_and_judicial_integrity_html/Global_Report_Judicial_Well-being.pdf

DIGITALIZATION AND THE AI ERA: ADAPTING THE LAWS AND JUSTICE

*KINZANG CHEDUP

ABSTRACT

This paper explores the transformative impact of artificial intelligence (AI) on the administration of Justice. Tracing developments from early legal informatics to contemporary generative AI following the first International Conference on AI and Law, it examines how predictive analytics, automated adjudication, and large language models are reshaping legal reasoning and judicial processes. While AI enhances efficiency and access to legal services, it also raises serious concerns regarding bias, transparency, accountability, and the erosion of human judgment. The paper argues that a human-centric and ethically grounded regulatory framework is essential to ensure that AI augments—rather than replaces—the normative foundations of Justice in the age of automation.

Keywords: Artificial Intelligence (AI); Administration of Justice; Legal Reasoning; Algorithmic Governance; Generative AI; Judicial Decision-Making; Legal Technology (LegalTech); Deep Learning; Predictive Analytics; Algorithmic Bias; Transparency and Accountability; Human-in-the-Loop Governance.

I. INTRODUCTION

We live in exciting and complex times. With it, the development of laws are constantly shaped and reshaped by technical developments and the 'algorithmic drama' (Bex, 2025). In the area of AI, research shows that generative language models like GPT can finally deliver on the various promises of AI, and that requires, at many points, enhanced governance and regulations. In brief, it steers many aspects of development, and the law and the administration of justice are not alone. In Bhutan, the *Copyright Act of Bhutan, 2001,* is scheduled, as we can say, for amendment. Today, data revolution and technical developments are able to cohabit various legal imaginations, and for that, legal prediction is emerging as a critical part of legal tech. This component is essential for the administration of Justice. Legal technology is becoming

*Drangpon, Royal Court of Justice, Dagana

a very heavy investment, and countries like China are capitalizing on ChatGPT hype by developing derivative products for legal services. Robotics, AI, and the future of law, as various authors suggest, requires balancing and structuring a normative framework that addresses the normative challenges.

Globally, the first *International Conference on AI and Law* was held in 1987 in Boston. In the 1980s, AI was conceptualized and concerned with symbolic representation. They took a connectionist approach, and most ideas were centered around the retrieval of ideas. This created the new paradigm of hybrid knowledge, integrating symbolic and non-symbolic representation. Further, in the legal sense, the corpus of the cases was digitally represented, and digital searches provided a new opportunity for easy access to cases through a database (Capon et al., 2012). Today, legal experts are creating legal rules that computers can understand and process automatically. They are finding avenues to integrate and apply legal rules through the aid of technologies, and many terminologies such as *computer-encoded regulation*, *computable* or *computational law, legal informatics*, *legal tech*, and *legal artificial intelligence* (AI). Now, the concepts of law and AI have been channeled towards leveraging automation to extract and apply legal rules. In brief, they can call this the *automatically processable regulation.*

Automating legal processes might be seen as an efficient method of administration of Justice, and these practices are applied through "legally knowledgeable" machines. For example, in Brazil, there is an array of new applications of automated systems within the judiciary. In China, there is a concept called Internet Courts, which include "non-human judges" who handle cases related to e-commerce. Aside from these examples, there are other examples of legal processes that are automated, and the famous *DoNotPay* application was heavily used to contest parking tickets, and other legal software was used to automate various often repetitive tasks, such as contract drafting or the filing of mandates (Guitton & Mayer, 2025).

More recently, with the increased public access to large language models (LLMs), natural language processing has come to the forefront of the discussion, especially with a recent version of a Generative Pre-trained Transformer (GPT) model, where OpenAI's GPT- 4 can solve

bar exam questions better than the average human bar exam taker in 2023 (Katz, 2023; Martínez, 2024). This raises the question of how far off the sci-fi future is, and how it would shape society. While the technological and AI developments enhance a techno-driven society, [these] developments raise legal, ethical, technological, and social questions. With the rise of generative AI, which generates new data based on learned patterns of training data, policymakers around the world have started deliberating about the best ways to enable further research within the field while mitigating its risks of this new development. Further, in today's context, deepfakes and disinformation put a new perspective on understanding that both law and science should merge to integrate AI and law through specialized logic programming legal interventions. The paper will explore how AI influences social and legal dynamics and analyze the legal meta-interference and its risks in the administration of Justice.

II. AI AND JUSTICE: TRADITIONAL CONCEPTUALIZATIONS

Artificial intelligence applications in the legal domain have long relied on symbolic and conceptual modeling approaches to represent legal knowledge and reasoning mechanisms. Studies show that early expert systems achieved automated reasoning by formalizing legal provisions into ***"if-then rules or decision trees,"*** while case-based systems supported analogical reasoning through abstract representations of key factors in precedents. This is a significant debate over a vast legal information system that alters the conceptual framework of legal analysis, reasoning, and the legal system (Mei & Duan, 2025). In a series of legal-AI achievements, including Taxman and MYCIN-like systems, which were utilized for tax law and criminal legal advice, it demonstrated strong analogical reasoning capabilities in areas such as trade secrets and contract disputes. However, legal experts now discuss the semantics of legal documents, which give purpose and meaning[s] to legal rules. This indicates that the alignment between the traditional interpretation of legal texts and contexts, and the traditional explanation of Justice predicate logic, to achieve formal reasoning.

Arguably, AI, law, and the administration of Justice- when integrated can effectively simulate the deductive structure of legal

reasoning. As said before, it neglects the semantic context of situational factors in legal interpretation and becomes robotic, but it can display high accuracy in tasks like legal case analysis and prediction, legal interpretation, and the application of laws in a judicial setting within the context of a case. Interestingly, one of the key aspects of legal interpretation and analysis is the use of human analysis: through the use of human reasoning, through a multidimensional analysis. Study analysis indicates that AI uses over-abstract legal knowledge and fails to capture the multidimensional understandings that judges, lawyers, and parties involved in a case bring to legal practice. For instance, in classical syllogistic reasoning, purely conceptual legal application may mechanically apply legal provisions but fail to assess whether the judgment truly fulfills legislative intentions or is perceived as fair and just by stakeholders. This phenomenon reveals the fundamental challenge faced by current legal AI systems: how to maintain formal rigor while achieving semantic richness and value sensitivity in legal reasoning. In short, it lacks the ***'humanness in law.'***

The role of AI, law, and Justice is emerging as one component for legal analysis. In another, the legality, copyright, and 'other fundamental questions' for copyright law and policy are also seen as existential legal issues. Understanding the symbiotic relationship with technology, and how technological innovation has shaped the evolution of copyright law and policy, and other legal architecture in photography, motion pictures, and computer programs, new methods of copying, and new means of distribution through the Internet are also seen as significant. In recent decades, the pace of change has sharply accelerated, and today's generative AI tools have picked it up even further. With evolving technology, not only laws, but the traditional idea of Justice has to change, evolve, and adapt, so that Justice is responsive, but also evolves beyond the barriers of traditionality. Besides the publicity rights, the new character and purpose of Justice is determined by the ***'fair use' principle.*** This is seen as a ground for a rational judicial basis for the administration of Justice.

The concept of Justice 5.0 helps to provide a systematic review of the intersection of artificial intelligence (AI) and Justice, analyzing the evolution of AI-driven innovation in the legal sector within the Justice 5.0 paradigm. It states that enhancing legal systems with AI technology

(Legal AI) is not only a challenge that promises a variety of advantages, but also a series of unintended side effects. In general, within the modern legal infrastructure and legal architecture landscape, innovation with AI in the public sector and Justice system is crucial for enhancing efficiency, transparency, and accessibility of legal processes. It strengthens the structure of services and helps to bring in transformative conceptions on the laws, structure of legal processes, along with a change in legal services. This is called disruptive innovation, which brings disruptions to the traditional approach to legal processes in routine tasks such as document review, case management, and legal research (Razmetaeva & Razmetaev, 2021).

AI algorithms and predictive case management, as well as legal analysis, can help in data analytics and machine learning, and improve online judicial case security. Arguably, the concerns about the erosion of human judgment and discretion in legal decision-making processes as AI systems become more prevalent disrupt the traditional human analytics in the administration of Justice is always present. Further, there is a growing fear that the rapid advancement of AI technologies may outpace regulatory frameworks and ethical guidelines, leaving legal systems ill-equipped to address emerging challenges and risks (Borgesano et al.,2025).

III. JUSTICE IN THE AGE OF AUTOMATION

AI has become an integrated technology interface, where it assists in the prediction of the outcomes of the courts' cases and provides investigative assistance in criminal matters (Glavina, 2025). As stated, AI is transforming the ways in which Justice is accessed and administered. Within the Justice paradigm, AI has introduced new norms that require navigating trade-offs between efficiency and fairness, speed and transparency, accessibility and quality of Justice. This is a new thought in judicial prowess from the perspective of the administration of Justice. In Europe, courts and legal authorities are cautiously experimenting with AI, with varying degrees of public acceptance and regulatory oversight. For example, in Estonia, they have piloted a semi-automated tool that adjudicates small administrative claims up to €7,000, issuing AI-generated payment orders.

These have the status of judgments for enforcement purposes. In the Netherlands, they have outlined a comprehensive ***AI Strategy*** that outlines a plan to use AI-driven tools to detect patterns in case law and enhance consistency in judicial reasoning (Glavina, 2025). In addition, papers show that law firms across Europe have integrated AI-powered platforms such as Lexlegis AI, Lucio AI, Harvey AI, and Luminance to accelerate legal research, among other judicial tasks. Despite the noble tasks undertaken by AI, the AI tool in Justice poses significant challenges. Algorithmic bias, data reliability, transparency, and accountability are especially acute in the judicial contexts where decisions must meet the highest standards of fairness and legitimacy. AI applications touch on a pillar of the rule of law and judicial independence.

Bridging law and Justice, it requires expertise in navigating the nuances of time and the basic rights of the litigants. Research papers in Spain show how civil liability may arise from damages that may be caused by the implementation and development of AI systems in the public Justice service. Further, they have enacted the *AI Act* and legislation thereunder, and this law sets out harmonized rules for placing AI systems on the market or putting them into service. In this, they have specifically defined 'who is a provider' and a 'deployer.' For example, in Spain, AI is used in judicial intervention through an automated judicial proceeding, which is carried out by an information system that is properly programmed, without the need for human intervention in each case (Navarro, 2025).

In many countries, public administrations are increasingly using AI technologies for public services. [T]his increasingly leads to the assessment of the AI technology and the AI technology assessing human beings. AI is based on machine learning and various input data. This has led to a reflection about values: core personal and social values. Thus, in any public service scenario, the use of 'better AI' implies data-driven scenario analysis of 'techno-futures' in which they solely depend on the ***algorithm value chain.*** Burk (2019) argues that, from a sociological perspective, technology is to be analyzed as a reflection of the social value system. And more importantly, it is deduced that algorithms do not make judgments; they are the products and the tools of human judgments. These conceptions are crucial for understanding the ethics of technology design;

developers and users must comprehend the context of ethics-by-design to make them responsive to human needs and evolving aspirations.

The idea of participatory artificial intelligence requires a participatory reconstruction and review of existing systems to allow for a participatory anticipation, projection, and realization of the desired systems. Importantly, the concept of 'result' is relevant for decision-making. Both at the Justice-related institutions and other institutions, most critically, the policy community, including people working in the policy cycle, should identify problem definition, policy formation, policy development, policy implementation, policy enforcement, policy evaluation, as a part of a research and co-design process. This is how integrative policy-making should work in all spheres of development and decision-making. Special formats have been created to communicate science effectively to policymakers, policy analysts, and public administrators, building on prior research about target-specific requirements (Ahrweiler, 2025).

In this quest, a useful overarching framework that understands how AI and Justice interact is important. One of the arguments that is ongoing today is the emergence as well as the prevalence of the "age of AI Empire." According to this new developmental phenomenon, they refer to as a period marked by the deep and pervasive influence of AI on many aspects of governance, including Justice. Further, the framework and the mechanisms under which AI Empire operates are said to be based on extractivism, which requires the extraction of data and the automation of physical and cognitive labour. In another, they have a new concept called essentialism, which requires the reduction of complex and diverse information into online accessible digital services and instructions. This highlights how different mechanisms interact and play out in the context of AI (Sahebi & Formosa, 2025). This is how data, and only data, make the results. If any data input is wrong, it may result in wrong conclusions.

Justice in the era of AI and automation has to be calculated, structured, and informed. This is to prevent the misapplication of AI and enhance its most effective use, if we ever do it. A recent study in some places has investigated how humans interact with AI. These interactions and the way people conceptualize AI have important ramifications for how AI may be treated legally, including granting more and more

deference to AI models and decisions as they increasingly appear to "understand" us and the world we inhabit. This, in short, requires enabling an understanding of AI and how AI-mediated legal initiatives would appear and function, thus exploring the intersection of mind, law, and AI. In Bhutan, and others, it takes the premise of AI as a new kind of hermeneutic "other" which is different from other agents. Further, as stated earlier, Justice requires the application of the best human minds guided by judicious wisdom and best learnt intellectual capacity. In this category, it is not clear what kind of mind (if any) may be required for AI.

In the administration of Justice, inferring the mental states of others is the bedrock for making a credible Judgment. Being able to interpret and predict the intentions, beliefs, and emotions of others has allowed for the development of empathy, moral reasoning, social cognition, and legal systems. This is how Justice is built on. The 'mental model' on which humans have dwelled, and human inference based on human knowledge, learning, and intuition, forms another critical component of human interaction and Justice. In this evolving technology and data landscape, the interactions of non-humans, which are AI-based interventions, are at least only agent-like, and the capability for interpreting intentions is at best diminished and at worst wholly absent. Thus, the best question is whether AI replaces human minds. The conception of mind and human abilities attached to the mind provides that 'although AI can summarily replace human interventions,' it raises critical discussions about whether AI can contextualize knowledge by operating with a way of distinguishing between points of view or perspectives. Secondly, the analysis points out whether there is an ability to make these different perspectives visible as such in an interface that is designed for interaction with humans.

In other terms, from the perspective of law, the functioning of Justice and law goes beyond the spreadsheet calculus. These interventions may neglect various considerations of law and Justice, and at times, can give only indicative prompts. A nuanced understanding of how other individuals think, make decisions, and interact with others is, therefore, vital to a legitimate system of governance under the rule of law. But when faced with a machine, it is questionable what kind of "thinking" we are dealing with. Intuitively, the institutions of Justice have not evolved

beyond the tools of machines in any meaningful way. In this context, there are two contexts of discussion. One is the use of AI in the administration of Justice, and the evolution of AI in the path of administration of Justice. In the second one, we will have to contextualize the evolution of AI in the making of the laws, and administration of Justice, in which the administration of Justice has to catch up with the speed of the evolution of AI, and AI-related legal issues (Olsen et al., 2026).

IV. LEGAL REASONING AND UNDERSTANDING

With the evolution of AI systems and AI – assisted legal issues, it will change the direction of legal reasoning and understanding. Traditionally, as well as modern juristic thinking, has theorized many aspects of legal reasons based on modern and ancient legal thoughts. These aspects of reasoning have changed how legal or factual issues have to be interpreted, so that the tenets of Justice lie within the circles of good human reason. Legal arguments in modern times, and legal reasoning from the Judiciary, have to be based on an extensive understanding of AI and AI-generated legal issues and facts. To be persuasive, the traditional nomenclature of legal arguments has to be within a specified legal position supported by legislation. But within these legal case scenarios, understanding a new norm of legal and dispute architecture, which is based on AI and modern normative circumstances, requires that we are constantly engaging with new knowledge in the field of science and technology. This further has to change the perspectives of the Judges, and Judging has to rise towards drawing pristinely logical inferences, from legal and factual premises to arrive at an uncontested true conclusion. To do this, we have to be experts in science and technology, and the AI-driven systems.

Now, with the emergence of a new domain of scientific development, it provides a new lens towards legal thought, reasoning, and applications. Legal inferences have to be based on an effective understanding of scientific evidence, which arises with increasing patterns of ambiguity. Interpreting a law requires an understanding of the facts. The ‘fact’ here is understanding the context of the fact, which is constantly distorted by the new positions of AI and AI-generated content. Here, the community of practice and habitus of judicial thinking and legal reasoning in general have to change. This is called existential

understanding, which, in short, is an ‘expanded understanding’ of things. The two complementary issues, which may coexist, are the role of AI in Justice and the role of Justice in the field of AI. While AI can undertake legal tasks, as said before, it can also co-create a situation where judicial tasks are stifled through enhanced knowledge and creation in the field of AI.

Beyond the AI-assisted judicial decisions and machine intelligence, AI-generated messages or other legal issues are black boxes, and people generally do not understand how things operate. Both in the working of Justice, in which AI-input data is processed, this means that we cannot observe how a given input is processed to produce the output text. But this argument against using AI for law is also somewhat ineffective. In the decision-making process, as well as AI as an agency in a legal matter, requires viewing the field of knowledge that has to be applied to a structure or pattern that has floated free from its human creators. The interpretation of this ‘knowledge’ means the reconstitution of the meanings of the corresponding sentences by a human interpreter (Olsen et al., 2026). There are multi-disciplinary perspectives in this matter. The deep learning revolution and machine learning led to remarkable developments in applications where symbolic methods did not perform well, such as computer vision, speech recognition, and natural language processing. The adjective ‘deep’ refers to the use of multiple layers in neural networks, although other approaches that do not use neural networks also fall into the scope of deep learning (LeCun et al. 2015).

Importantly, deep learning commonly resorts to neural network architectures with many layers, leading to new applications and optimized implementations, mainly due to the availability of very large datasets for training these large structures with many parameters and very efficient special-purpose computer processors, such as GPUs (graphics processing units). In deep learning, each neural network layer learns to transform its input into a somewhat more abstract and composite representation. For instance, in image recognition or classification, the raw input may be a matrix of pixels, the first layer may abstract the pixels and encode edges or corners, the second layer may compose and encode arrangements of edges and corners into lines and other shapes, and so on up to semantically meaningful concepts, such as faces or objects, or tumors in medical

images. At the very core of the algorithms that learn these deep neural networks is the backpropagation algorithm (Antunes et al., 2024).

In this context, it is pertinent to explore how AI-related issues have to be dealt with by understanding the legal issues, that is associated or brought in with AI. For example, if we undertake a legal case scenario that involves a spoken language technology, it is also becoming increasingly pervasive, mostly because of the significant increase in performance achieved by deep learning techniques. The state of the art in ***automatic speech recognition (ASR)*** before the advent of deep learning was predominantly based on the GMM-HMM paradigm. In this, the models used were acoustic models with perceptually meaningful features, and combining them with additional knowledge sources provided by n-gram language models. However, today, the ***hybrid paradigm*** has emerged. And, now, a fully end-to-end architecture has also been developed to perform the ASR pipeline. Now, this requires an understanding of the ASR technology as well as how ASR can manipulate speech and voice conversion. This can manipulate legal reasoning if we are not able to understand the science, technology, and technological adaptations.

V. LEGAL ISSUES ASSOCIATED WITH AI

In Bhutan, there have been issues of deepfakes and other legal issues that were created by AI and AI technology. This can be just a beginning. With evolving science, the issues of manipulation can be a serious ethical and legal issue. A decade ago, the state of the art in ***text-to-speech (TTS)*** was dominated by concatenative techniques that selected the best segments to join together from a huge corpus of sentences read by a single speaker. The concatenative synthesis module was typically preceded by a complex chain of linguistic processing modules, which took text as input and produced a string of phonemes together with the prosodic information that specified the derived intonation. Despite significant improvements, namely through the use of hybrid approaches that combined statistical parametric and concatenative techniques, the synthetic speech quality was still very different in naturalness from human speech, expressiveness was very limited, and the costs of building new synthetic voices were often prohibitive. However, in 2010, a breakthrough was achieved by replacing the traditional concatenative synthesis module

with a deep neural network module that took as input time-frequency spectrogram representations.

These advances led to multi-speaker TTS systems leveraging speaker embeddings and opened the possibility of building synthetic voices with only a few seconds of a new voice, using, for instance, flow-based models. The synthetic speech quality became very close to human speech. The possibility of disentangling linguistic contents and speaker embeddings was indeed crucial not only for text-to-speech systems but for voice conversion (VC) systems as well. In VC, the input is speech instead of text, and the goal may be changing the voice identity, the emotion, the accent, among others. Now, this requires an understanding of how VC works and operates. Moreover, the artificial voice may not correspond to a target speaker but, for instance, to an average of a set of speaker embeddings selected among the ones farthest from the original speaker embedding. This is, in fact, one of the many approaches proposed for speaker anonymization. Now, learning how science works to apply the laws potentially requires new learning on how 'scientific things' work, and connecting technology with the offence is critical, which can be very difficult. Another challenge to be addressed is keeping legal provisions adaptive by smoothly integrating the laws with development in technology and AI.

Although the increasing use of AI can provide great benefits, it represents a shift in our interaction with data and machines that also entails fundamental social and legal threats. These can derive from technological or implementation mistakes, but also from profound changes in decision-making (Gonçalves & Pinheiro, 2024). In addition, the Digital Revolution is expected to have serious consequences on the social, ethical, and legal domains. Today, every step of accessing online documents and creating an interaction platform requires personal data, which is unconsciously typed into. With the unparalleled amounts of individual-level data that are currently shared and collected, machines will be increasingly able to identify patterns, create profiles, predict behaviors, and make decisions. Therefore, it is fundamental to understand the limitations of these tools to anticipate and minimize negative consequences. The concept of machine-learning (ML) models, with the Recommendation Systems (RS).

In this, scientifically, RS refers to algorithms that recommend some item X to a user A, in which an algorithm identifies ***'something matching'*** our interests. For example, in the context of social networks, such as a new friend on Facebook. Now, in this, there is a certain dimension of information profiling that can take place, leading to abusive targeted advertisement with disinformation, to name a few. There are also specific examples of how mistakes in data selection or coding might lead to discrimination and injustice. The threats can be real and damaging. For example, discussing the recommendation systems that predict, as accurately as possible, is a new item for a user. To understand this, these systems leverage information on users to find accurate matches between them. At the core of RS is the assumption that items and or users of a service can be mapped in terms of their similarities and that person A (or item X) can serve as a proxy for person B (item Y). These assumptive accumulation and profiling of data are possible due to reasons of large accumulation of data about users' past choices; large datasets on details about items, and the increasingly sophisticated algorithms that take advantage of such data and take value from growing numbers of features and instances.

Although stemming from a seemingly intuitive and simple problem, recommendation systems have matured to highly complex algorithmic solutions that are able to leverage a multitude of data sources to improve services that underlie the success of some of the largest companies in the world. The success of RS and their ubiquity stem from their capability to enhance user retention and to seemingly help users find the relevant content for their profile. On the legal implications, first, although these processes involve consent, terms of service are often unintelligible, sharing is not always voluntary, and might be a requirement to access content or services. Secondly, even if it is voluntary, it can have unexpected implications. For example, in 2012, the New York Times reported a case in which the US-based chain Target generated predictions about the pregnancy of its customers, precisely by analyzing shopping profiles. In one store, it was visited by a father outraged that his teenage daughter had received promotions for baby products; later, when the store manager called to apologize, the man embarrassedly replied that his daughter was indeed pregnant: the supermarket chain knew before the family. Such anecdotal situations corroborate our increasing reliance on

such systems, which also makes us vulnerable to manipulation. For instance, nothing keeps online stores from showing more expensive products to people who did not previously compare prices online.

This, therefore, can create legal or legal-ethical issues that can be contested. This addictive attention can create echo chambers and increase polarization threatening the user's mental health. From researchers to data protection advocates, many have voiced concerns about the data that large platforms collect and how their recommendation systems can manipulate the information individuals are exposed to, whether prioritizing posts or search engines displaying sponsored advertisements. In fact, it is studied that the personalized algorithms on search engines and social network feeds might strengthen these already existing biases in at least three different ways, such as information filtering based on history, which can potentially magnify availability biases. In addition, there are times when RS fails. Generally, RS uses fine-grained information to train AI models to target specific individuals. Typically, RS uses data where there is no real distinction between the model, the data used to train it, and the assumptions that the coder made. If the data or the target is biased, the model will result in bias.

These bias might appear at different steps and have different consequences, but it is important to realize that: (1) it is virtually impossible to have a complete dataset and all datasets are samples, biased by the sampling process; (2) there are human decisions involved in defining targets; (3) targets often rely on proxies, (4) the predictions might turn into self-fulfilling prophecies because they frequently impact outcomes and it is often very difficult to have external validation. Again, this might be of little importance in the case of a user who never gets to seem movie X because it is not suggested, but very serious in the case of someone who gets a credit request denied and, consequentially, defaults on another payment: the system might find confirmation that the credit refusal was the best decision when indeed, it was what caused the default.

The potentials of machine learning and the techno-solutionist approach are seen as the creators of an equitable society. While artificial intelligence (AI) has penetrated many Justice systems, including the criminal Justice system, AI systems create new spaces and technologies that aid computer- mediated communication (CMC). And research shows

that the digital platform is changing the dynamics of data collection and analysis. The simulation of human intelligence by machines, including learning, reasoning, and self-correcting, provides large language models (LLMs). In many places, they have initiated smart prisons with digital surveillance and are organized through a Digitally Organized Rapid Information System to manage their affairs. They call this carceral automation (Canli, 2022).

Further, AI and policing have become one of the cornerstones of the criminal Justice system. For example, papers suggest that if the Judges apply artificial intelligence or use it in their decisions, it may raise the risks of judicial overconfidence and overreliance. This may erode their decision-making skills, and therefore, the judicial use of AI skills has to be regulated. Further, AI has its own risks and problems. This is called the '***Black Box Problem.'*** This issue stems from the use of algorithms. And the sophisticated analysis and generation of AI-related data undermine the issues of data generation transparency, as it is not explainable. Thus, it lacks credibility and undermines the trust in the Justice system (Alqatawna, 2024).

In policing and criminal Justice, crime prediction is closely associated with AI. For example, in the Netherlands, they use the Crime Anticipation System (CAS) that predicts crimes using statistical data from multiple channels. This is done through automated risk assessment tools, and it is found that the court cannot heavily rely on algorithmic findings, and there is the existence of bias (Alqatawna, 2024). There is a paradox. An algorithm processes a slew of statistics and comes up with a probability that a certain person might be a bad hire, a risky borrower, a terrorist, or a miserable teacher. That probability is distilled into a score, which can turn someone's life upside down. It is said that artificial intelligence (AI) brings effects going far beyond the bright perspective of scientific, economic, and societal benefits usually associated with technological development. While it brings the extraordinarily wide horizons of development and applications, it is marked by serious drawbacks. The analysis of human-machine collaboration provides an understanding of how AI and Justice operate. The analysis from ongoing research on the boundaries between legal informatics and computational social science indicates that digital AI and Justice have blind spots. The

border between AI and Justice, although AI has undertaken numerous tasks, there are serious concerns about the impact of AI in the legal world.

Empirical investigations and legal cases recount the emergence of new issues that are far from adequately framed, even before being solved. Mostly embedded in algorithmic decision-making systems, AI has shown that it can turn into threats that, due to their inherent nature and technical complexity, are often difficult to identify before becoming hard to counter. In the digital labor world, to give just an example, intelligent workforce analytics systems often lead to management choices - relating, for example, to shifts, earnings, or disciplinary measures—that have proven to impinge on fundamental safeguards for workers spanning from the right of workers. Similar issues emerge in the judicial field, where intelligent technologies are spreading quickly. The peculiar sector we take into account here is criminal justice. Across the globe, law enforcement agencies and courtrooms are increasingly using intelligent systems to forecast criminal activity and allocate police resources. But there is a lack of "trustworthy, ethical, and human-centric AI." The challenges to the legal world are clear, and according to evidence available, such an outcome largely depends on the capacity of finding new ways to "keep humans in the loop", solutions ensuring not only human control "ex-post, but also new forms of integration and collaboration between humans and machines."

VI. CONCLUSION

The accelerating convergence of artificial intelligence and legal systems marks a decisive turning point in the evolution of Justice. From the early symbolic systems discussed at the International Conference on AI and Law to contemporary deep learning architectures inspired by Yann LeCun and others, AI has shifted from rule-based automation to complex, data-driven systems capable of generating legal arguments, predicting case outcomes, and simulating aspects of judicial reasoning. Yet this transformation is not merely technical—it is normative, institutional, and philosophical.

Across many jurisdictions and places, experiments such as China's Internet Courts and Estonia's semi-automated adjudication tools illustrate how AI is entering the judicial sphere not as a distant possibility, but as an operational reality. These developments promise efficiency, consistency, and improved access to Justice. However, they simultaneously expose structural vulnerabilities: algorithmic bias, opacity, overreliance, and the erosion of human discretion. The so-called "black box" problem challenges transparency, while predictive systems risk reinforcing systemic inequities under the guise of statistical objectivity.

At a deeper level, AI compels a re-examination of what constitutes legal reasoning itself. Traditional adjudication rests on interpretation, contextual understanding, moral judgment, and empathy—capacities grounded in human cognition and social experience. While AI can replicate deductive structures and pattern recognition at scale, it lacks the existential and hermeneutic dimensions that animate Justice as a lived and value-laden practice. Legal reasoning is not merely a computational exercise; it is an interpretive act embedded in culture, ethics, and institutional responsibility.

The implications for Bhutan are particularly significant. As the *Copyright Act of Bhutan*, *2001*, and other regulatory frameworks move toward amendment in response to generative AI, deepfakes, voice synthesis, and data-driven technologies, the country stands at a formative juncture. Legal reform must move beyond reactive patchwork amendments and toward a principled, forward-looking architecture that integrates technological literacy with constitutional values, judicial

independence, and human dignity. Bhutan's legal imagination must evolve in tandem with scientific advancement, ensuring that Justice remains responsive yet anchored in its normative foundations.

Ultimately, the question is not whether AI will shape the administration of Justice—it already does. The critical question is how societies structure their role. A human-centric, participatory, and ethically grounded approach is indispensable. "Keeping humans in the loop" must not be symbolic; it must ensure meaningful oversight, accountability, and interpretive authority. AI should augment, not supplant, the moral and deliberative capacities that define adjudication under the rule of law.

In the age of automation, Justice must remain more than an algorithmic output. It must preserve its essential character as a reasoned, humane, and value-sensitive endeavor. The future of law, therefore, lies not in surrendering to technological determinism, but in cultivating an integrative framework where innovation and human judgment coexist—structured, regulated, and guided by the enduring principles of fairness, legitimacy, and constitutional governance.

REFERENCES

Ahrweiler, P. (2025). *Participatory Artificial Intelligence in Public Social Services: From Bias to Fairness in Assessing Beneficiaries*. Springer.

Alqatawna, E. (2024). Utilizing Artificial Intelligence (AI) in the Criminal Justice System and Policing. *Comparative Law Review, 30* (2024).

Antunes, H. S., Freitas, P. M., Oliveira, A. L., Pereira, C. M., Sequeira, E. V. d., & Xavier, L. B. (Eds.). (2023). *Multidisciplinary perspectives on artificial intelligence and the law.* Springer International Publishing. https://doi.org/10.1007/978-3-031-41264-6.

Bex, J. (2025). AI, Law, and beyond. A transdisciplinary ecosystem for the future of AI & Law. *Artificial Intelligence and Law, 2025* (33).

Borgesano, F., Maio, A.D., Laghi, P., & Musmanno, R. (2025). *Artificial intelligence and justice: a systematic literature review and future research perspectives on Justice 5.0*. Emerald Publishing Limited.

Canli, E. (2022). Smartification of Punishment: AI, criminal justice, and the future of carceral communication. *Interactions: Studies in Communication & Culture, 13* (3).

Glavina, M. (2025). *AI and Justice: Between Promise and Peril.* Erasmus School of Law, Rotterdam.

Gonçalves-Sá, J., & Pinheiro, F. (2024). Societal Implications of Recommendation Systems: A Technical Perspective. In H. Sousa Antunes, P. M. Freitas, A. L. Oliveira, C. Martins Pereira, E. Vaz de Sequeira, & L. Barreto Xavier (Eds.), *Multidisciplinary Perspectives on Artificial Intelligence and the Law* (pp. 47–63). Springer, Cham. https://doi.org/10.1007/978-3-031-41264-63.

Guitton, C.L., & Mayer, S. (2025). *AI and Law: How Automation Is Changing the Law*. CRC Press.

Mei, Y., & Duan, Y. (2025). DIKWP Semantic Judicial Reasoning: A Framework for Semantic Justice in AI and Law. *Information*, 16 (8). DOI:10.3390/info16080640.

Navarro, S.N. (2025). AI and the Justice System: Approach From the EU AI Act. *Asian Journal of Social Science Studies, 10* (4).

Olsen, P.H., Slosser, L.J., Ravn, L.J., Eddebo, J., & Rosenberg, H. J (Eds.). (2026). *Artificial Intelligence, Human, and Law.* Routledge.

Razmetaeva, Y., & Razmetaev, S. (2021), "Justice in the digital age: technological solutions, hidden threats and enticing opportunities", Access to Justice in Eastern Europe, Vol. 2 No. 10, pp. 104-117, doi: 10.33327/AJEE-18-4.2-a000061.

Sahebi, S., & Formosa, P. (2025). Artificial Intelligence (AI) and Global Justice. *Minds and Machines 2025* (35). https://doi.org/10.1007/s11023-024-09708-7.

INSTITUTIONALIZING RESTORATIVE JUSTICE FOR CHILDREN IN CONFLICT WITH THE LAW IN BHUTAN

*DEMA LHAM AND THUJI WANGMO

ABSTRACT

Restorative Justice (RJ) is widely regarded as an appropriate response to children in conflict with the law due to its emphasis on accountability, healing, and reintegration rather than punishment. In Bhutan, RJ is philosophically and culturally compatible with Buddhist ethics, community dispute resolution traditions, and the governance values reflected in GNH. *The Child Care and Protection Act 2011* formally incorporates restorative mechanisms such as diversion and family group conferencing. Yet RJ remains inconsistently practiced.

This article asks whether Bhutan has adopted RJ as a coherent legal framework or merely as a discretionary set of practices. It argues that the central challenge is not normative acceptance but institutional under-specification. Although restorative mechanisms exist in law, they lack procedural clarity and operational prioritization. Diversion often functions as behavioral supervision rather than participatory repair, while the *Family Group Conference* (FGC) remains underutilized.

Drawing on statutory analysis and comparative experience from jurisdictions, the article demonstrates that the current framework produces uneven application that undermines child-centered justice. It proposes a shift from discretionary incorporation to structured institutionalization through clearer legal mandates and standardized procedures. Bhutan's experience illustrates that RJ may fail not because of cultural resistance but because of legal architecture.

Keywords: Restorative justice; Children in conflict with the law (CICL); Family group conferencing; Diversion

---

* Dema Lham and Thuji Wangmo are faculty members at Jigme Singye Wangchuck School of Law. The authors would like to express their gratitude towards Professor Chan Wing Choeng from Yong Pung How School of Law, Singapore Management University, and Professor Stanley Yeo from the National University of Singapore for reviewing this paper.

I. INTRODUCTION

Children in conflict with the law (CICL) (Child Care and Protection Act, 2011) represent a vulnerable demographic within the criminal justice system. Their cognitive development, emotional maturity, and capacity for reform necessitate justice responses that prioritize rehabilitation and reintegration over punishment (Goldson & Muncie, 2015 (2nd ed.)). Yet, child justice systems, both globally and regionally, rely predominantly on punitive approaches that do not adequately address the root causes of offending and often fail to prevent recidivism (Daly, 2006). In response to these limitations, RJ has gained prominence as an alternative framework that emphasizes genuine accountability, healing, rehabilitation, reintegration, and restoration of relationships (Marshall, 1996).

In the Bhutanese context, restorative justice is neither a novel nor an externally imposed concept. Rather, it is deeply embedded in Bhutan's cultural traditions, Buddhist values, and long-standing practices of community-based dispute resolution. Historically, mediation and reconciliation facilitated by local leaders and elders have been preferred over adversarial adjudication, reflecting a social ethos that prioritizes harmony and collective well-being. This orientation is further reinforced by Bhutan's philosophy of GNH, which places societal harmony, compassion, and inclusivity at the centre of governance. Bhutan's ratification of the United Nations Convention on the Rights of the Child (UNCRC) and the enactment of the *Child Care and Protection Act of Bhutan 2011* (CCPA) formalize these values within the child justice framework (Child Care and Protection Act, 2011). Today, RJ principles and practices are being incorporated more into the procedures of CICL, which includes manuals on the Administration of Justice for Children in Bhutan and *Standard Operating Procedures* (SoPs) on the matter.

Despite this strong normative, cultural, and legal foundation, the practical implementation of RJ for CICL in Bhutan remains fragmented and inconsistent. While the CCPA recognizes restorative mechanisms such as diversions, community service, and Family Group Conferencing (FGC), their application is largely discretionary, unevenly understood, and inconsistently employed by justice sector actors. Consequently, RJ functions more as an aspirational principle than as a systematically

institutionalized practice, limiting its potential to deliver meaningful rehabilitative outcomes for CICL, victims, and communities.

This paper maintains that the principal challenge in Bhutan is not the absence of RJ but rather the lack of coherent institutionalization, operational clarity, and capacity for its effective implementation within the child justice system. Drawing on Bhutan's legal framework, policy documents, and comparative experiences from jurisdictions such as New Zealand, Canada, and South Africa, the paper critically examines the status of RJ for CICL in Bhutan. It identifies key gaps and challenges, including limited awareness among stakeholders, legal ambiguities, capacity constraints, and weak community engagement that impede the consistent application of restorative practices.

The paper further contends that strengthening RJ for CICL is not only consistent with Bhutan's international obligations under the UNCRC but also integral to advancing GNH principles within the justice system. By embedding restorative practices through clearer legal mandates, standardized procedures, targeted capacity building, and enhanced community participation.

II. CONCEPTUAL FOUNDATION AND RESTORATIVE JUSTICE IN BHUTAN

RJ has been most influentially articulated by Howard Zehr (2015) as a framework that reconceptualizes crime not merely as a violation of law, but as a violation of people and relationships.

According to this view, the central questions of justice shift from "What law was broken?" and "What punishment is deserved?" to "Who has been harmed?" "What are their needs?" and "Who has the obligation to address those needs?" (Zehr, 2015). This reframing fundamentally alters the orientation of the justice process, prioritizing accountability, dialogue, repair, and reintegration over retribution and state-centered punishment (Zehr, 2015).

However, RJ is more than a method of dispute resolution or a diversionary tool within the criminal justice system. As O'Mahony & Doak (2017) argue, it represents an alternative paradigm of justice, one that challenges the dominance of retributive, deterrent, and incapacitative philosophies that have traditionally shaped modern criminal law. Rather

than viewing crime as an abstract offence against the state, restorative justice locates the harm within concrete human relationships and seeks to repair that harm through participatory and consensual processes (Ness & Strong, 2013). Johnstone (2013) argues that ownership of the conflict is thereby partially returned to those most directly affected—the victim, the offender, and the community—while the role of the state becomes facilitative rather than exclusively punitive.

Central to RJ is the notion of "making amends." Yet, making amends is not confined to material compensation. It encompasses acknowledgement of wrongdoing, acceptance of responsibility, expression of remorse, and the taking of meaningful steps toward behavioral change and reintegration (Ness & Strong, 2009). Importantly, Ward & Langlands (2009) mention that restorative justice does not necessarily exclude consequences that may be experienced as burdensome or demanding by the offender; rather, such consequences are justified not as instruments of retribution, but as part of a broader process of repair and moral accountability.

Scholarly debates further distinguish between "fully restorative" justice processes and practices that are only partially restorative (Mahony & Doak, 2017). A fully restorative process ordinarily requires voluntary participation, active engagement of victims and offenders, dialogue regarding the harm caused, and the development of an agreed plan for reparation and reintegration. By contrast, practices that incorporate restorative elements such as compensation orders without dialogue or victim awareness programs without direct participation may be described as "restorative practices" rather than "restorative justice" in its fuller sense (Mahony & Doak, 2017). This distinction is important in assessing the depth and authenticity of restorative mechanisms within any legal system.

A. RJ AND BHUTANESE LEGAL CULTURE

In the Bhutanese context, RJ is not an externally imposed reform but one that resonates deeply with longstanding cultural and legal traditions. Rooted in Buddhist values of compassion, interdependence, and communal harmony, Bhutanese communities have historically prioritized mediation and reconciliation over adversarial adjudication. The widely held perception of the courthouse as an "institution of last

resort" reflects a normative preference for relational settlement within the community.

Even the *Thrimzhung Chenmo* encouraged reconciliation and mediation for most offences, with only a limited category of serious crimes excluded. These early legal provisions demonstrate that the principles underpinning contemporary restorative justice-community-based resolution, collective responsibility, and reintegration were already embedded within Bhutan's legal consciousness before the formal adoption of RJ terminology.

Bhutan's ratification of the UNCRC (Convention on the Rights of the Child, 1989) and the enactment of the CCPA 2011 further institutionalized these principles within the formal justice system. Unlike jurisdictions that adopted restorative justice primarily in response to prison overcrowding or systemic crises like the United States and the United Kingdom, Bhutan's approach has been proactive and normatively grounded, aligned with its GNH philosophy and commitment to child-centered justice. The critical question, therefore, is not whether restorative justice aligns with Bhutanese values. It clearly does, but whether its implementation within the child justice system reflects the fuller restorative paradigm or remains confined to partial practices.

B. DIVERSION: RESTORATIVE PRACTICE OR RESTORATIVE JUSTICE

Diversion is among the most frequently utilized mechanisms under the CCPA. In practice, diversion allows CICL to be redirected from formal prosecution towards counseling, community service, or educational programs. Data from the Office of the Attorney General demonstrate increasing reliance on diversion, signaling a growing institutional preference for rehabilitation over custodial punishment (Office of the Attorney General, 2023).

From a restorative justice perspective, however, diversion must be examined critically. While diversion reduces stigmatization and avoids the harms associated with formal conviction, it does not automatically amount to a fully restorative justice process. This is especially true when diversion focuses primarily on supervision or behavioral correction without structured dialogue between all the stakeholders. Such a process

may constitute a restorative practice rather than restorative justice in its fuller sense.

This distinction is not merely semantic. If diversion lacks participatory engagement or collective determination of reparative outcomes, it may address rehabilitation but fall short of relational restoration. Strengthening diversion's restorative character would therefore require greater emphasis on stakeholder engagement, acknowledgment of harm, and reintegration.

C. FAMILY GROUP CONFERENCING: STRUCTURAL POTENTIAL AND PRACTICAL LIMITS

Family group conferencing, as provided under the CCPA, holds greater structural potential to embody the restorative paradigm. By convening victims, offenders, families, community representatives, and justice officials, FGC reflects the participatory and dialogic ethos that restorative justice theory envisions. It provides a forum for direct acknowledgment of harm, collective deliberation, and agreement on reparative measures.

In theoretical terms, FGC aligns closely with the conception of restorative justice as a process that redistributes and reinforces meaningful accountability. When properly facilitated, conferencing may demand deeper accountability than conventional sentencing, as children must confront the human impact of their actions and participate in determining how to repair it (Maxwell & Morris, 1993).

However, FGC remains underutilized within Bhutan's child justice system (National Commission for Women and Children & Save the Children, 2022). Its discretionary application and restrictive eligibility criteria limit its systemic impact. When conferencing is used sparingly or implemented without full stakeholder participation, its transformative potential is diluted. In such circumstances, RJ risks functioning at the margins rather than as a central organizing principle of justice for children (Maxwell & Morris, 1993, p.92).

D. ASSESSING THE DEPTH OF RESTORATIVENESS IN BHUTAN'S JUSTICE FOR CHILDREN FRAMEWORK

Bhutan's legislative framework clearly incorporates restorative mechanisms. Yet the degree to which these mechanisms operate as fully

restorative processes varies. Diversion and community-based measures reflect rehabilitative intent; FGC embodies participatory potential. The challenge lies in ensuring that these mechanisms consistently operationalize core restorative principles: voluntary participation, inclusive dialogue, collective problem-solving, acknowledgment of harm, and reintegration support.

The question, therefore, is not whether restorative justice exists in Bhutan's child justice system but whether it functions as a coherent and institutionalized paradigm capable of advancing agency, accountability, and communal harmony. The following section examines the structural and practical barriers that limit this transformative potential.

III. GAPS AND CHALLENGES IN IMPLEMENTING RJ IN BHUTAN

While Bhutan's legal framework and social ethos provide a strong foundation for integrating RJ principles, significant barriers hinder its effective implementation. These challenges risk perpetuating reliance on punitive approaches and limiting RJ's transformative potential.

A. *Lack of Awareness Among Stakeholders*

Awareness is critical for successfully implementing RJ, yet it remains notably deficient in Bhutan. Despite provisions under the CCPA, mechanisms like FGC are underutilized due to a lack of understanding among judges, police officers, and probation officials. Reports (National Commission for Women and Children, 2020) indicate that judges and police officers often lack the necessary knowledge and training to assess when and how to employ these restorative measures effectively. As a result, opportunities for RJ implementation, especially for diversion and FGC, are frequently missed, even for eligible first-time offenders. In cases where FGC was applied, it was not always implemented correctly. For instance, in one case (National Commission for Women and Children, 2020), the Family and Child Bench used FGC but could only invite the families of the victim and offender rather than ensuring the participation of all relevant stakeholders in the conference, thereby limiting its intended restorative impact.

This lack of awareness is not unique to Bhutan. For instance, in Canada, early adoption of RJ among Indigenous communities faced similar barriers, as judicial and law enforcement bodies were unfamiliar with the principles of RJ. Targeted training and collaborative efforts with Indigenous leaders eventually enhanced understanding and application (Gaverielides, 2020 (2nd eds.). Bhutan could benefit from structured awareness programs tailored to its cultural and legal context.

B. Legal Ambiguities and Lack of Operational Guidelines

Although the CCPA provides a normative foundation for RJ, it lacks sufficient doctrinal precision to ensure consistent implementation. Section 20 of the CCPA mentions RJ in principle (Child Care and Protection Act, 2011) but does not operationalize this commitment through standardized procedures or mandatory pathways. The result is a system in which restorative mechanisms remain structurally available but unevenly applied.

Discretion, while indispensable in Justice for Children, becomes problematic when unaccompanied by principled criteria. Interviews and discussions with judges and prosecutors indicate significant variation in the interpretation and application of diversion and FGC. In some cases, restorative measures were extended to second-time offenders; in others, similarly situated first-time offenders are processed through conventional punitive channels. Such inconsistency raises concerns regarding procedural equality and predictability, both central to the legitimacy of any justice system.

The Office of the Attorney General (OAG) has sought to address the gap through diversion guidelines grounded in training manuals that categorize fourth-degree felonies and misdemeanors as potentially eligible for diversion (Office of the Attorney General, 2022) which states that "offenses of a felony of the fourth degree and misdemeanor and below *may* be considered non-serious offenses based on factors such as the best interest of the child, the severity of the charges, the suspect's past criminal record, the likelihood of flight, and the potential threat posed to civil society, as well as the suspect's age and physical or mental health conditions" (Office of the Attorney General, 2022). However, this initiative remains discretionary and is not uniformly applied across the

criminal justice system. Reports demonstrate a lack of coordination among agencies in managing diversion cases and monitoring mechanisms (National Commission for Women and Children, 2020).

The legal ambiguities surrounding FGC further illustrate this tension. Section 196 does not mandate FGC as a pre-court intervention, leaving its application to judicial discretion. Yet RJ theory consistently emphasizes the importance of early, dialogic intervention before formal adjudication entrenches adversarial positions. Where conferencing is optional rather than structurally prioritized, its transformative capacity is diminished. This limits the restorative potential of FGC, which is most effective as a form of early intervention before a CICL has to go through the trauma and stress of trial. In contrast, other jurisdictions, such as New Zealand's *Young Persons and Their Families Act* 1980, provide for FGC to be used before judicial proceedings in almost all juvenile cases, ensuring restorative processes are prioritized (Maxwell & Morris, 2006).

A further issue concerns the CCPA mandating the presence of victims in the conferences (Child Care and Protection Act of Bhutan, 2011). This can be a contributing factor to why FGC is underutilized because not all victims can or are interested in attending such conferences. In New Zealand, the incorporation of RJ into the juvenile justice system has been supported by comprehensive legislation, such as the *Children, Young Persons, and Their Families Act (1989),* which makes FGC a mandatory step in juvenile cases. This legal clarity ensures uniformity and minimizes judicial discretion, fostering equity. Bhutan's lack of such comprehensive and mandatory provisions for the use of FGC risks perpetuating disparities and undermining public confidence in the system.

C. Perception of RJ as a Lenient Measure Incapable of Ensuring Deterrence

Resistance from certain stakeholders stems from the perception that RJ is lenient and undermines accountability. Critics argue that RJ may embolden offenders, particularly in cases of serious crimes, by failing to provide sufficient deterrence. They perceive that without the threat of severe punishment, individuals may not give weight to justice outcomes or may fail to respect agreements reached through restorative processes.

This skepticism mirrors challenges faced in the United States, where early RJ initiatives were criticized as "soft on crime."

However, empirical studies, such as Sherman and Strang (2007), have demonstrated that RJ can effectively reduce recidivism, providing a robust counter-narrative to such claims (Sherman & Strang, 2007). Another study published in *Criminal Justice Studies* (Daly, 2006) found that RJ processes can lead to genuine offender accountability and satisfaction among victims, challenging the notion that RJ is inherently lenient. Moreover, empirical evidence does not support the perception that RJ may embolden offenders by allowing them to evade meaningful consequences. It is reported that RJ programs were associated with significant reductions in recidivism rates compared to traditional justice approaches, suggesting that RJ can effectively deter future offending (Dowden & Muise, 2005). As O'Mahony and Doak argue, RJ does not diminish accountability but reconfigures it. Rather than allowing offenders to passively endure state-imposed punishment, restorative processes require them to confront the human consequences of their actions, acknowledge the harm caused, and actively participate in repairing that harm (Mahony & Doak, 2017).

D. Capacity Constraints and Lack of Professional Training

Implementing key RJ mechanisms requires facilitators with specialized knowledge and skills in processes such as mediation, trauma-informed care, child psychology, and child-sensitive communication. In Bhutan, the absence of structured training programs for judges, police officers, and probation officials exacerbates the underutilization of RJ. The Balanced and Restorative Justice for Juveniles Framework (1997) highlights the critical role of trained facilitators in fostering meaningful dialogue and achieving restorative outcomes. A study by Gavrielides (2017) highlights that the successful implementation of RJ hinges on the competency of facilitators and professionals involved in the process. Facilitators must be adept at fostering dialogue, ensuring inclusivity, and managing emotionally charged interactions between victims, offenders, and community members (Gavrielides, 2017).

In the absence of structured training, these competencies are often underdeveloped, leading to inconsistent application and suboptimal outcomes in RJ practices. The lack of training also perpetuates greater reliance on punitive measures within the criminal justice system. Judges and police officers who are unfamiliar with RJ processes may hesitate to employ diversion mechanisms or restorative dialogues, even when legal provisions allow for their use. Furthermore, child-sensitive approaches, a critical aspect of RJ for CICL, require specialized training to address the unique psychological and developmental needs of children. Research by Sherman & Strang (2007) underscores that child-sensitive RJ practices, when implemented correctly, can facilitate meaningful rehabilitation for offenders and significantly reduce trauma for victims (Sherman & Strang, 2007). However, without targeted capacity-building initiatives, justice professionals may inadvertently cause secondary victimization or fail to achieve the intended restorative outcomes.

E. Limited Community Engagement

RJ thrives on active community involvement, yet Bhutan faces weak participation from families and local leaders in processes like diversion programs and FGC (National Commission for Women and Children & Save the Children, 2022). While a lack of awareness about the issue is a contributing factor in this situation, the community's perception of CICL as risky to communal harmony or security magnifies the problem. Furthermore, perceptions of RJ as a lenient approach over punitive measures intensify the resistance. Without community buy-in, RJ risks being perceived as a top-down, foreign initiative disconnected from the community, thus affecting its success. Gordon Bazemore and Mark Umbreit, in their Balanced and Restorative Justice Project, acknowledge this problem, highlighting the need to place equal emphasis on ensuring public safety and security when implementing RJ. They also advocate redefining the role of community members in the juvenile justice system.

In the traditional juvenile justice system, the state’s role in protecting the public usually includes incarcerating child offenders. The community, on the other hand, has no active role in protecting itself other than being passive receivers or observers of the intervention that the state provides. By contrast, the Balanced and Restorative Justice Project

encourages active community involvement in the process. It first calls for a clear assessment of whether the CICL poses a risk to public or community safety. If the CICL does not, they are suggested to be kept in the community, where community members are encouraged to contribute by helping through means such as structuring the CICL's time and taking a proactive stance to help supervise or monitor the CICL, especially in their free time. Through such means of involving the community in the process, the community connects with the CICL, thus allowing for smoother reintegration.

One significant way to strengthen community involvement in RJ is through community service, which serves as both a rehabilitative and reintegrative measure rather than a punitive one. Community service entails engaging CICL in meaningful activities that benefit society, such as cleaning public areas, planting trees, or volunteering at shelters or public hospitals. Its primary goal is not to punish but to foster behavioral change, prevent reoffending, and provide a sense of accountability. Most importantly, it allows the opportunity for the CICL to connect back with their community without subjecting them to shame or humiliation.

Currently, there are no official guidelines from the competent authority for implementing community service as an RJ measure. A thorough study is necessary to identify appropriate services and establish clear conditions under which they should be carried out. Without proper guidelines, the implementation of community service could become inconsistent or counterproductive, limiting its effectiveness as a restorative tool.

IV. RECOMMENDATIONS FOR RJ IN BHUTAN

To address the identified gaps and challenges presented in Part III, Bhutan must adopt a multifaceted approach that combines advocacy, legal reforms, capacity building, and community engagement. By learning from international best practices while respecting its unique cultural heritage, Bhutan can develop an RJ framework that aligns with its values and creates a transformative impact on its juvenile justice system.

A. *Enhance awareness and public education*

Awareness and education are foundational to the successful implementation of RJ. Limited understanding among key stakeholders, judges, law enforcement, probation officials, and the public undermines the effective utilization of RJ mechanisms.

Comprehensive training programs must be developed for judges, police officers, probation officers, and social workers. These programs should cover RJ principles, child psychology, child-sensitive communication, and trauma-informed practices. Research underscores that effective training builds confidence and consistency among justice practitioners (Sherman & Strang, 2007). Bhutan could draw upon resources like the *Child Justice Training Manual* (OAG, 2022), which provides frameworks for child-centric practices, to structure these training modules.

Public awareness campaigns can demystify RJ principles and counter perceptions of leniency. Misconceptions about RJ being "soft on crime" persist without exposure to its proven benefits, such as reduced recidivism and victim satisfaction (Gavrielides, 2020, 2nd eds.). Highlighting successful RJ cases, such as the previously described Trongsa District diversion case (Nazhoen Lamtoen, (n.d.), where young offenders benefited from diversion and community service, can showcase RJ's potential to transform lives while maintaining accountability. This can, in turn, build trust and confidence among community stakeholders. Educational programs in schools can also embed restorative values in younger generations, fostering long-term cultural shifts.

B. *Strengthen Legal Provisions*

Bhutan's legal framework needs explicit legislative provisions to institutionalize RJ practices and address inconsistencies. While the CCPA provides a foundation, its discretionary nature regarding key RJ mechanisms limits the uniform application of RJ in practice. Amendments to the CCPA should mandate the use of RJ practices for all eligible juvenile cases. Provisions on FGC should be amended to require FGC as a pre-court step for all eligible CICL cases. This will foster early

resolution, align with the UNCRC, and reduce the adversarial nature of judicial proceedings (UNICEF, 2013) that may exacerbate stigma and secondary harm. While the introduction of mandatory referral to FGC would strengthen consistency and institutionalization, such reform is not without potential challenges.

Concerns may arise regarding the over-formalization of what is intended to remain a flexible and dialogic process, as well as the administrative and resource implications of expanding conferencing mechanisms nationwide (Johnstone, 2013, 2nd eds.). There may also be apprehension that mandatory referral could dilute the voluntary ethos central to RJ (Zehr, 2015). However, comparative experiences, most notably in New Zealand, demonstrate that structured early conferencing does not undermine restorative values but instead embeds them within routine child justice practice (Maxwell & Morris, 2006). Properly designed, mandatory referral does not compel participation; rather, it ensures that restorative processes are systematically offered before resorting to adversarial adjudication. In this sense, institutionalization strengthens, rather than weakens, the restorative paradigm.

To enhance clarity and consistency in implementation, the term "community members" within FGC provisions should be more precisely defined. Community participants should include individuals with direct or contextual connections to the parties, such as friends, teachers, mentors, local leaders, or religious representatives, whose involvement can meaningfully support reintegration (Maxwell & Morris, 2006). Clarifying eligibility for participation would enhance the collaborative character of conferencing while ensuring that involvement remains purposeful and aligned with the best interests of the child (Maxwell & Morris, 2006).

Mandatory victim participation in FGC should be reconsidered, as seen in New Zealand, where FGC proceeds even without victim involvement. Flexible participation models, such as indirect dialogues (through virtual platforms or written submissions) (Raye & Roberts, 2007), can ensure inclusivity without excluding cases where victims are unable or unwilling to engage. This option accommodates the victims' comfort levels while ensuring their voices are heard (Zehr, 2002).

Serious offenses should not automatically be excluded, but should allow for alternative RJ models, such as indirect dialogue (Raye & Roberts, 2007) or victim-offender dialogue between offenders and victims who were involved in a similar nature of crime but are not in a direct relationship with each other. In jurisdictions like South Africa (Skelton & Batley, 2008), such flexibility has permitted the inclusion of restorative elements even in cases of violent crime, with an emphasis on healing and accountability rather than reconciliation.

To enhance the effective implementation of RJ practices, comprehensive Standard Operating Procedures (SOPs) should be developed to ensure uniformity and consistency across the judiciary. These SOPs should outline eligibility criteria, structured steps for conducting FGC, and mechanisms for monitoring compliance with agreements. Bhutan could draw from New Zealand's well-established SOPs under the *Children, Young Persons, and Their Families Act (1989)*, which have been instrumental in ensuring the success of RJ initiatives.

Additionally, there is a need for clear guidelines on coordination and monitoring mechanisms, particularly to facilitate effective inter-agency collaboration and ensure that RJ processes are implemented consistently. Specific guidance on community service programs should also be developed, ensuring that they are contextually relevant and aligned with Bhutan's socio-cultural landscape. By tailoring RJ implementation strategies to the local context, Bhutan can create a more sustainable and community-driven approach to juvenile justice reform.

C. Build Institutional Capacity

Institutional support is crucial to the sustainable implementation of RJ. Dedicated infrastructure and trained facilitators can create an enabling environment for restorative processes. Training of facilitators is often described as a policy improvement. In child justice, however, it is a legal necessity. A justice process that depends on dialogue, acknowledgment, and reintegration cannot function fairly without competent facilitation.

Untrained facilitation risks coercion, misunderstanding of rights, and unequal participation. This implicates procedural fairness and the child's right to be heard. Capacity building should therefore be understood as a requirement for the lawful implementation of restorative justice rather than an optional enhancement.

Child-friendly RJ centers should be established across Bhutan, providing safe spaces for restorative dialogues. These centers could integrate culturally rooted practices, such as *Nangkha Nangdrig* (meditation), into modern RJ frameworks. Research that has been conducted shows that culturally sensitive RJ practices enhance community participation and legitimacy (Maxwell & Morris, 1993).

D. Promote Evidence-based Action and Build a Database to Track Progress

Data-driven action is essential to sustaining RJ practices and securing institutional and public support. Evidence from Bhutan and other jurisdictions can showcase the effectiveness of RJ in achieving justice outcomes. Longitudinal studies should examine the outcomes of RJ practices in Bhutan, focusing on metrics such as recidivism rates, victim satisfaction, and community restoration. Empirical evidence from international studies, such as Sherman and Strang's (2007) work, demonstrates the transformative impact of RJ. Bhutan should build a robust database to track its progress and inform policy decisions.

Bhutan can also learn from successful RJ frameworks in countries like New Zealand, South Africa, and Canada. For example, New Zealand's mandatory FGC model under the *Children, Young Persons, and Their Families Act (1989)* has been lauded for reducing juvenile recidivism and enhancing victim participation (Maxwell & Morris, 1993). By adapting these lessons to its cultural and legal context, Bhutan can strengthen its RJ framework.

E. Strengthen Community Participation

Community involvement is central to the success of RJ, fostering collective responsibility and trust in the justice process. Bhutan's rich tradition of community-based conflict resolution provides a strong foundation for enhancing participation. Formalizing and adapting

traditional practices, such as *Nangkha Nangdrig*, can bridge Bhutanese customs with modern RJ approaches. Engaging local leaders and elders as facilitators or participants can enhance community ownership and ensure culturally sensitive resolutions.

Under Section 198 of the Child Care and Protection Act (CCPA), community representation in Family Group Conferencing (FGC) includes local leaders such as *Gups* and *Mangmis.* This requirement is commendable, as local leaders hold significant influence within their communities and can play a crucial role in the reintegration of children in conflict with the law. Given their leadership positions, they can foster community acceptance, facilitate restorative processes, and provide long-term support mechanisms.

Furthermore, under the Local Government Act of Bhutan 2009, local leaders, particularly *gups,* are recognized as mediators in resolving community disputes that are civil in nature (Local Government Act, 2009). Their involvement in FGC as a member aligns with their broader mandate to promote social harmony and justice at the grassroots level. In this context, the paper recommends that standardization initiatives emphasize the potential of local leaders in reintegration efforts and actively encourage their participation in FGC. However, this should be done selectively, ensuring the inclusion of only those leaders whose roles and expertise align with the objectives of FGC and the best interests of the child.

In sum, the law should recognize community involvement as part of the reintegration process, not as an ancillary social service. Structured participation of appropriate community representatives aligns with the justice response to the child's social environment and supports long-term compliance with agreements. By embedding restorative practices more effectively, Bhutan can strengthen community ties, reduce recidivism, and enhance the child justice system's credibility.

VI. CONCLUSION

Bhutan possesses a distinctive normative and legal foundation for the meaningful integration of restorative justice within its child justice system. While restorative principles are formally recognized under the CCPA, 2011, and resonate strongly with Bhutan's cultural traditions and GNH philosophy, their practical application for children in conflict with the law remains inconsistent and under-institutionalized. The analysis in this paper demonstrates that the primary impediments lie not in conceptual resistance to RJ but in fragmented implementation, legal ambiguities, limited institutional capacity, and uneven community engagement.

Addressing these gaps requires a shift from discretionary and ad hoc application towards a more coherent and structured RJ framework. Clearer legislative mandates standardized operational guidelines, and targeted capacity building for justice sector actors are essential to ensure consistency and equity in the treatment of children in conflict with the law. Equally important is the deliberate involvement of families and community stakeholders, whose participation is central to the rehabilitative and reintegrative aims of restorative justice.

Strengthening restorative justice for children in conflict with the law is not merely a procedural reform; it reflects a deeper commitment to child-centered justice and the broader constitutional and development values underpinning Bhutan's legal system. By embedding restorative practices more firmly within institutional processes, Bhutan can enhance accountability, reduce recidivism, and promote social harmony in ways that align with both international child rights obligations and domestic governance ideals.

Ultimately, Bhutan's experience illustrates that RJ can be effectively grounded in local culture while operating within a formal legal framework. With sustained institutional commitment and carefully calibrated reforms, RJ has the potential to function not as an exception within the child justice system but as a central mechanism for achieving rehabilitation, reintegration, and long-term societal well-being.

REFERENCES

Barry Goldson, & Muncie, J. (2015). *Youth crime and justice* (2nd ed.). Sage.

Child Care and Protection Act of Bhutan, 2011.

Convention on the Rights of the Child, 1989.

Daly, K. (2006). The limits of restorative justice. *Criminal Justice Studies, 19*(1), 47–68.

Gavrielides, T. (2020). *Restorative justice theory and practice: Addressing the discrepancy* (2nd ed.). Routledge.

Johnstone, G. (2013). *Restorative justice: Ideas, values, debates* (2nd ed.). Routledge.

Latimer, J., Dowden, C., & Muise, D. (2005). The effectiveness of restorative justice practices: A meta-analysis. *Journal of Criminal Justice, 33*, 225–238.

Local Government Act of Bhutan, 2019.

Marshall, T. F. (1996). The evolution of restorative justice in Britain. *European Journal on Criminal Policy and Research, 4*, 21–43.

Maxwell, G., & Morris, A. (1993). *Family, victims and culture: Youth justice in New Zealand*. Social Policy Agency and Institute of Criminology, Victoria University of Wellington.

Maxwell, G., & Morris, A. (2006). *Youth justice in New Zealand: Restorative justice in practice?* Ministry of Social Development.

National Commission for Women and Children, & Save the Children. (2022). *Assessment report on the implementation progress of the Child Care and Protection Act of Bhutan 2011 and its rules and regulations*.

National Commission for Women and Children. (2020). *Assessment report on the implementation progress of the Child Care and Protection Act of Bhutan 2011 and its rules and regulations*.

Office of the Attorney General. (2022). *Administration of child justice in the Kingdom of Bhutan*.

Office of the Attorney General. (2023). *Annual report*.

Raye, B. E., & Roberts, A. W. (2007). Restorative processes. In G. Johnstone & D. W. Van Ness (Eds.), *Handbook of restorative justice* (p. 211). Willan Publishing.

Sherman, L. W., & Strang, H. (2007). *Restorative justice: The evidence*. The Smith Institute.

Skelton, A., & Batley, M. (2008). *Restorative justice: A contemporary South African review*. Restorative Justice Centre.

UNICEF. (2013). *Child protection systems in South Asia: A thematic report*.

Van Ness, D. W., & Strong, K. H. (2014). *Restoring justice: An introduction to restorative justice* (5th ed.). Routledge.

Ward, T., & Langlands, R. (2009). Repairing the rupture: Restorative justice and the rehabilitation of offenders. *Aggression and Violent Behavior, 14*, 205–214.

Zehr, H. (2002). *The little book of restorative justice*. Good Books.

Zehr, H. (2015). *Changing lenses: Restorative justice for our times*. Herald Press.

DEEPFAKE PORNOGRAPHY AND PROTECTION OF INDIVIDUAL DIGNITY IN BHUTAN: A LEGAL ANALYSIS OF AI-GENERATED INTIMATE CONTENT AND THE ADEQUACY OF THE BHUTANESE LAWS

*SONAM KHAMSUM

ABSTRACT

This paper examines the growing threat of deepfake pornography in Bhutan and its impact on privacy, dignity, and reputation. It analyzes the nature of AI-generated intimate content and the psychological, social, and legal harm suffered by victims, particularly women. The study evaluates the adequacy of Bhutan's existing legal framework, including constitutional and criminal provisions, in addressing this emerging form of digital abuse. It argues that while current laws offer partial protection, they lack specific provisions targeting deepfake pornography. The paper concludes that targeted legal reforms and stronger regulatory mechanisms are necessary to effectively protect individual dignity in the digital age.

Keywords: Deepfake, pornography, digital age.

I. INTRODUCTION

In this digital age, seeing is no longer believing: advanced AI can fabricate reality itself, creating images and videos that never existed but can destroy reputations and invade privacy. Rapid developments in digital technology have transformed how information is produced and shared, but they have also facilitated new forms of cybercrime (Tan et al., 2023). Among these, deepfake technology, AI-generated media that manipulates audio and video, poses significant risks to privacy, dignity, and legal norms (Kılıç & Tuysuz, 2023). Deepfake pornography, which creates a person's likeness onto sexually explicit content without consent, violates sexual privacy and personal autonomy even without physical intrusion (Sahajuddin et al., 2025). The rise of deepfake content is driven by widely

*Jigme Singye Wangchuck School of Law, Paro.

accessible AI tools, with the majority of such material being non-consensual and pornographic (Tan et al., 2023).

In Bhutan, rising Internet penetration and social media use have amplified these risks, particularly for women and minors, with reported cases of blackmail and harassment via digitally manipulated images (Dema, 2025). At its core, deepfake pornography undermines human dignity and can cause severe psychological, social, and reputational harm (Keren-Paz, 2025). Bhutan's current legal framework, including the *Penal Code and the Information, Communications, and Media Act,* addresses general offences such as defamation and harassment but lacks targeted provisions for AI-generated sexual content, raising questions about its adequacy in protecting individual dignity. This article examines the legal challenges posed by deepfake pornography in Bhutan, situates it within the framework of privacy and dignity, and considers comparative approaches from other jurisdictions.

II. CONCEPTUAL FRAMEWORK

Deepfakes are AI-made media generated using Artificial Intelligence and machine learning, often through GANs (Generative Adversarial Networks), where a generator produces content and a discriminator evaluates its authenticity, resulting in hyper-realistic images and videos (Tuysuz & Kılıç, 2023). Unlike traditional photo editing, deepfakes can depict individuals saying or doing things that never occurred (Pascale, 2023). Deepfake pornography can take several forms, including face-swapping, voice cloning, and entirely fabricated videos using "nudification" tools that digitally strip clothing from ordinary images (Tan et al., 2023; Ningtias et al., 2024). While deepfakes have legitimate applications in entertainment and advertising, most online content is non-consensual, involving the unauthorized use of a person's likeness for sexual depictions (Tan et al., 2023). Since its emergence in 2017, deepfake pornography has spread rapidly, with estimates reaching over 720,000 videos by 2022, and is now expanding into political and informational domains (Schick, 2021).

Privacy is a fundamental human right that protects an individual's personal space, including control over access to one's body, voice, and personal information, thereby safeguarding dignity and intimacy (Islam, 2022). Human dignity, a cornerstone of human rights, is maintained

through the management of one's public persona and social "face" (Goodyear, 2025). Deepfakes dehumanize and objectify individuals, stripping them of agency and control over their digital representations. Violations of sexual privacy through deepfakes constitute intrusions into an individual's personal privacy, even in the absence of physical contact, and undermine bodily autonomy. International human rights standards recognize privacy as essential for dignity and personal freedom (Sahajuddin et al., 2025).

In that regard, victims of deepfake pornography suffer profound psychological trauma comparable to survivors of sexual abuse, experiencing shame, humiliation, anxiety, depression, and post-traumatic stress disorder (Tan et al., 2023). Socially, victims may withdraw to avoid harassment, and reputational harm can lead to ostracization and loss of employment or educational opportunities (Ningtias et al., 2024; Tan et al., 2023). Deepfake pornography is also highly gendered, with women and minors disproportionately targeted, while public figures may be victimized to discredit or silence them (Nguyen, 2025; Garcia, 2025). Once uploaded, digital content often becomes permanent, spreading rapidly across jurisdictions and creating irreversible harm despite legal remedies like the "right to be forgotten" (Pascale, 2023). Enforcement is further hindered by the accessibility of AI tools and the anonymity provided by platforms such as Telegram and Discord, which outpace detection tools and current legal capacities (Sharma, 2024).

1. Legal Protection under Bhutanese Law

1.1. Constitutional Protection

The Constitution of Bhutan provides a foundation for the protection of individuals against digital and reputational harms. Article 7(19) explicitly states that no person shall be subjected to arbitrary or unlawful interference with their privacy, family, home, or correspondence, nor to unlawful attacks on their honour and reputation. Furthermore, the State is directed under Article 9(3) to strive toward creating a civil society that ensures the protection of human rights and dignity. Dignity is thus treated as a core constitutional value that the State must protect and ensure for all people

1.2. Penal Code of Bhutan

Furthermore, the *Penal Code of Bhutan* contains several provisions that can be applied to digital harms, including those involving AI-generated content. Under Section 317, a person is guilty of defamation if they intentionally cause damage to the reputation of another through communicating false or distorted information regarding that person's actions, motive, or character. Section 322 defines blackmail as occurring when a defendant threatens to expose a true or allegedly true fact about a person that would cause harm to their reputation unless they are given money, property, or other gratifications. Sexual harassment is defined in Section 205 as making unwelcome physical, verbal, or non-verbal abuse of a sexual nature. Indecent representation is covered under Section 209, which involves exposing private parts or performing obscene acts in public places. Section 462 defines harassment as conduct that places a person in reasonable fear of emotional or mental distress. While the *Penal Code* does not explicitly use the term "deepfake," the provision for defamation under Section 317 provides a legal basis for prosecuting the creation and distribution of non-consensual AI-generated sexual imagery.

1.3. Information, Communications and Media Act

The Information, Communications, and Media Act of Bhutan 2018 (ICM Act) provides a regulatory framework relevant to addressing deepfake pornography and protecting individual dignity. The Act establishes the Media Council as an independent body with broad powers to manage digital content. Under Section 71(4), the Council is mandated to regulate or curtail any harmful, offensive, illegal, or antithetical content on the internet and other ICT services, which is central to removing deepfake content that violates an individual's dignity. Section 71(9) requires the Council to protect the general public, especially vulnerable sections such as children and young persons, from undesirable media influences. The Council also has authority under Section 71(6) to hear complaints and settle content disputes, provided the matter does not amount to a criminal offence.

Moreover, the *Act* places significant responsibility on service providers to prevent illegal activities, with Section 119 mandating that licensees take reasonable actions to prevent their users from committing offences under Bhutanese law. Section 123 clarifies that a provider cannot

claim a limitation of liability for any offence under the Act unless such limitation has been expressly authorized. Specific obligations are placed on media entities to safeguard individual rights. Section 179(2) requires broadcasters to respect the right to privacy, and Chapter 17 is dedicated to the protection of online and offline privacy, establishing it as a regulated concern within the ICT sector.

Given that deepfakes are purely digital, the evidentiary provisions in the Act are crucial. Section 279 ensures that information cannot be denied legal effect simply because it exists as an electronic document or data message, while Section 300 provides a framework for courts to assess the evidential weight of a digital message by considering its generation, integrity, and the reliability of the originator. Finally, Section 4 specifies that the *Act* applies to any offence committed outside Bhutan if it involves a computer system or network located in Bhutan, which is particularly relevant for deepfake content uploaded to global platforms affecting Bhutanese citizens.

1.4. Evidence Act of Bhutan

The *Evidence Act of Bhutan 2005* governs how digital content is treated in legal proceedings. Evidence is defined to include electronic records, and Section 4(b) explicitly categorizes documentary evidence as including electronic records. Section 43 confirms that electronic documents, including those with electronic signatures, are admissible in court. Sections 98 and 99 address the burden of proof, stating that the party asserting a fact, such as the existence of a deepfake offence, bears the burden of proving it, while the burden for facts within the knowledge of a specific person falls upon them.

2. Gaps and Challenges in the Existing Legal Framework

Although the Constitution of Bhutan and statutory provisions under the *Penal Code of Bhutan 2004*, the *ICM Act,* and the Evidence Act provide a foundational framework for addressing digital harms, certain gaps remain in effectively regulating and remedying AI-generated deepfake pornography. One of the most pressing issues is the absence of deepfake-specific legislation. While existing statutes criminalize defamation, harassment, and blackmail, no law explicitly addresses the

creation, dissemination, or possession of deepfake pornography. This lack of dedicated legal provisions generates ambiguity regarding the scope of liability, applicable sanctions, and procedural safeguards, thereby limiting the legal system's capacity to deter such offences effectively.

Evidentiary and proof challenges further complicate enforcement. Under the *Evidence Act of Bhutan*, the burden of proof rests with the complainant to establish both the authenticity of the digital material and the involvement of the perpetrator. Given the sophisticated nature of generative AI technologies and the ease with which deepfake content can be manipulated and anonymized, proving authorship and the non-consensual creation of such material presents substantial technical and procedural obstacles.

Moreover, the existing legal framework provides insufficient protection for the psychological and reputational harm caused by deepfake pornography. Although the *Penal Code* offers remedies for harassment under Section 462 and defamation under Section 317, these provisions are primarily reactive and do not comprehensively address the long-term emotional, social, and professional harms inflicted by non-consensual intimate deepfake content. Victims may therefore remain exposed to enduring stigma, trauma, and reputational damage even after legal intervention.

Limitations on intermediary liability under the *ICM Act* also pose challenges. While the Act obliges service providers to take reasonable measures to prevent illegal online activity under Sections 119 and 123, these provisions allow certain limitations on accountability. As a result, harmful deepfake content may continue to circulate online, undermining the rights of victims to privacy and dignity.

Enforcement and resource constraints present another significant barrier. Law enforcement agencies, including the Royal Bhutan Police and the Department of Law and Order, face practical difficulties in detecting and prosecuting deepfake offences. Offenders frequently use multiple fake accounts and anonymous digital channels, while law enforcement agencies are constrained by limited technical expertise, inadequate AI detection tools, and the absence of centralized investigative mechanisms, all of which hinder timely and effective enforcement (Dema, 2025; Dolma, 2025).

Finally, a lack of public awareness and legal literacy exacerbates the problem. The general public, including potential victims, often lacks knowledge of existing legal remedies and the risks associated with AI-generated sexual content. Without sufficient education on privacy rights, cyber hygiene, and reporting mechanisms, individuals remain highly vulnerable to exploitation, blackmail, and harassment. Collectively, these gaps indicate that while Bhutan's legal framework provides a basis for protection, significant reforms and capacity-building measures are required to address the unique challenges posed by deepfake pornography.

III. COMPARATIVE PERSPECTIVES

The gaps and challenges identified in Bhutan's legal framework are not unique to Bhutan. Globally, legal systems are grappling with the unprecedented implications of AI-generated deepfake pornography, which exploits advanced technologies to manipulate visual and audio media, often in non-consensual sexual contexts, implicating privacy, dignity, and human rights. In the United States, federal legislation targeting deepfakes, such as the DEEP FAKES *Accountability Act* and the Preventing Deepfakes of Intimate Images Act, primarily imposes transparency obligations rather than criminal liability (Tan et al., 2025; Sharma,2025). A significant federal action occurred in May 2025 when the *Take It Down Act* was signed into law.

This act makes it a federal crime to create and share computer-generated non-consensual sexual images and requires platforms to remove such content within 48 hours after notification. The law also provides for penalties, with a maximum federal prison term of three years, particularly where minors are involved (Nguyen, 2025). State-level laws provide more direct protection, for instance, Section 1708.86 of *California's Civil Code* permits compensation for victims that includes statutory and punitive damages. Other states, including Virginia, Texas, Alabama, and New York, have enacted criminal statutes addressing the creation and distribution of sexual deepfakes, although the scope of these laws varies significantly. (Guerrero-Sierra et al., 2025).

South Korea provides a more cohesive model, with its 2024 amendments explicitly criminalizing the creation, possession, distribution, and viewing of sexual deepfakes, with penalties of up to

seven years' imprisonment (Nguyen, 2025). The law recognizes harm caused by possession and viewing, reflecting a preventative, victim-centered approach aimed at curbing the circulation and consumption of illicit material (Guerrero-Sierra et al., 2025).

Similarly, Australia criminalizes non-consensual intimate images, including deepfakes, under the Online Safety Act 2021, which broadly defines "intimate image" to include altered or fabricated depictions of a person's body or sexual acts (Equality Now, 2023). The Online Content Scheme empowers the eSafety Commissioner to remove seriously harmful material and restrict access to inappropriate content (Equality Now, 2023). The Crimes Amendment (Intimate Images) Act 2019, amended through Section 221BA, also criminalizes the production or distribution of intimate or sexual images without consent, regardless of digital alteration (Guerrero-Sierra et al., 2025; Rodrigues, 2023).

In the European Union, the Digital Services Act (DSA) limits unlawful and non-consensual sharing of private images, which can cover sexual deepfakes in some cases, and the proposed AI Act requires disclosure when content is artificially generated or manipulated (Equality Now, 2023). In addition, the Directive 2024/1385 on combating violence against women and domestic violence criminalizes producing, manipulating, and distributing pornographic deepfakes without consent, with a minimum one-year prison sentence, thereby harmonizing protections across Member States (Guerrero-Sierra et al., 2025).

In the *United Kingdom, the Online Safety Act 2023* and amendments to the Sexual Offences Act 2003 explicitly criminalize sending or threatening to send intimate images, encompassing deepfakes, while the *Data Protection Act 2018* reinforces privacy and intermediary accountability (Sharma, 2025).

When viewed in this comparative light, three overarching regulatory trends emerge. First, jurisdictions that have adopted deepfake-specific criminal provisions provide greater legal certainty and symbolic denunciation of harm. Second, intermediary accountability mechanisms, particularly rapid takedown regimes, are essential given the viral and cross-border nature of digital content. Third, the most effective frameworks conceptualize deepfake pornography not merely as

defamation or obscenity but as a violation of consent, dignity, and gender equality.

In light of these developments, Bhutan's current legal framework provides a basic foundation but remains incomplete. Although the *Constitution* strongly protects privacy and human dignity in principle, there is no clear law that directly criminalizes deepfake pornography, no structured system for quickly removing harmful content, and no clearly defined responsibilities for online platforms. These gaps reduce the practical effectiveness of existing protections.

Comparative experience shows that Bhutan does not need to copy foreign laws entirely. Instead, a balanced and practical approach would be more suitable. This could include introducing a specific offence that directly addresses deepfake pornography based on lack of consent and protection of dignity, strengthening the power of authorities under the ICM framework to remove harmful content more efficiently, and improving the technical and investigative capacity of law enforcement. Such reforms would bring Bhutan's law closer to emerging international standards while still considering the country's institutional and practical realities.

IV. CONCLUSION

Deepfake pornography represents a profound threat to individual dignity, privacy, and bodily autonomy in Bhutan, exploiting the rapid advances of AI to inflict psychological, social, and reputational harm. *While Bhutan's Constitution, Penal Code, Information, Communications and Media Act,* and *Evidence Act* provide a foundational legal framework addressing defamation, harassment, and digital harms, they lack deepfake-specific provisions. This gap creates challenges in establishing liability, ensuring effective enforcement, and protecting victims from long-term harm. Comparative experiences from South Korea, Australia, the European Union, and the United Kingdom highlight the effectiveness of targeted legislation, proactive regulatory oversight, clear intermediary accountability, and robust digital evidence standards. For Bhutan, addressing the unique legal and technical challenges posed by AI-generated intimate content will require a combination of legislative reform, capacity building for law enforcement, and public awareness initiatives to safeguard human dignity in this digital era.

REFERENCES

Alliance for Universal Digital Rights (AUDRi), & Equality Now. (2024, January 16). *Deepfake image-based sexual abuse, tech-facilitated sexual exploitation and the law* (Briefing Paper). https://audri.org/wp-content/uploads/2024/01/EN-AUDRi-Briefing-paper-deepfake-06.pdf

Dema, T. (2025, January 11). *Fake accounts won't hide offenders, says Home Ministry on deepfake crime. The Bhutanese*. https://thebhutanese.bt/fake-accounts-wont-hide-offenders-says-home-ministry-on-deepfake-crime/

Dolma, Y. (2026, February 18). *Sexual offence cases rise sharply with Thimphu leading national figures; online abuse and deepfake misuse emerging as key concerns. Bhutan Today.https://www.bhutantoday.bt/%*

Garcia, E. (2025). *Nonconsensual deepfake pornography and the challenges it poses* (Master's thesis, California State University, Fullerton). Zenodo. https://doi.org/10.5281/zenodo.15283756

Goodyear, M. (2025). *Dignity and deepfakes* (Arizona State Law Journal, forthcoming). SSRN. https://doi.org/10.2139/ssrn.5199514

Guerrero-Sierra, H. F., Palacio Puerta, M., & Garavito Rincón, D. F. (2025). *Threats and regulatory challenges of non-consensual pornographic deepfakes: An analysis of the Colombian case. Cogent Social Sciences, 11*(1), 2552342. https://doi.org/10.1080/23311886.2025.2552342

Islam, M. T. (2022). *A brief introduction to the right to privacy: An international legal perspective. Globalex (NYU School of Law)*. https://www.nyulawglobal.org/globalex/right_to_privacy_international_perspective.html

Keren-Paz, T. (2025). *Pornographic deep fakes: Liability for breach of privacy in cases of parody? Journal of Technology*

Law, Advance online publication. https://doi.org/10.1515/jtl-2025-0030

Nguyen, N. T. (2025, August 13). *How deepfake pornography violates human rights and requires criminalization*. Czech Centre for Human Rights and Democracy. https://www.humanrightscentre.org/blog/how-deepfake-pornography-violates-human-rights-and-requires-criminalization

Ningtias, A. D., Wardatun Nabilah, & Ardiansyah, D. (2025). *Attributing legal responsibility for deepfake pornography generated by artificial intelligence: A juridical analysis*. *Jurnal Independent, 13*(2), 140–151. https://doi.org/10.30736/ji.v13i2.384

Pascale, E. M. (2023). *Deeply dehumanizing, degrading, and violating: Deepfake pornography and the path to legal recourse. Syracuse Law Review, 73*(1), 335–366. https://lawreview.syr.edu/wp-content/uploads/2023/03/Pascale-335-366.pdf

Sahajuddin, A., Hafid, A., Tantri, E., Sutisna, E., & Najiyati, S. (2025). *Beyond regulation: Rethinking deepfake pornography prevention through digital literacy. JURIS (Jurnal Ilmiah Syariah), 24*(2), 357–367. https://doi.org/10.31958/juris.v24i2.15775

Schick, N. (2020, December 20). *Deepfakes are jumping from porn to politics. It's time to fight back. WIRED*. https://www.wired.com/story/deepfakes-porn-politics/

Sharma, M. (2025). *Deepfake pornography: Examining the impact on women's digital privacy and consent. International Journal for Multidisciplinary Research (IJFMR), 5*(2). https://www.ijfmr.com (ijfmr.com)

Tan, Z. K., Chong, S. Z., Kuek, C. Y., & Tay, E. S. (2023). Individual legal protection in the deepfake technology era. In Proceedings of the 3rd International Conference on Law and Digitalization 2023 (ICLD 2023) (pp. 119–129). Atlantis Press. https://doi.org/10.2991/978-2-38476-154-8_7

Tuysuz, M. K., & Kılıç, A. (2023). *Analyzing the legal and ethical considerations of deepfake technology*. *Interdisciplinary Studies in Society, Law, and Politics, 2*(2), 4–10. https://doi.org/10.61838/kman.isslp.2.2.2

WHEN ARTIFICIAL INTELLIGENCE (AI) TAKES THE STAND: THE EVOLUTION OF EVIDENCE AND THE VERDICT OF TOMORROW

*DECHEN TSHOMO DORJI

ABSTRACT

Who speaks when Artificial Intelligence (AI) takes the stand? As AI systems increasingly generate and interpret evidence from facial recognition outputs to deepfake videos, courts confront a doctrinal vacuum. Bhutan's Evidence Act 2005, like many evidentiary regimes, is structured around human witnesses and experts, leaving uncertainty as to how AI-generated material should be classified and scrutinized. Using the fictitious case *OAG v. Pema Dorji* as an analytical framework, this article examines admissibility, authentication, digital chain of custody, algorithmic reliability, burden allocation, evidentiary presumptions, and proof beyond a reasonable doubt. It argues that AI is neither a traditional witness nor an autonomous expert, and that human accountability must remain central to judicial truth-seeking. The article proposes a structured four-step admissibility test, authentication, reliability validation, transparency, and constitutional safeguards, to guide Bhutanese courts. By advocating calibrated judicial scrutiny rather than presumptive reliability, it offers a principled roadmap for integrating AI into contemporary evidence law. This analysis proceeds on the assumption that readers possess foundational familiarity with AI and the Evidence Act of Bhutan 2005.

Keywords: Artificial Intelligence, AI Admissibility, Expert Opinion, Algorithmic Evidence, Digital Chain of Custody, Hearsay, Burden of Proof, Constitutional Safeguards, Judicial Scrutiny, Admissibility Test.

I. INTRODUCTION

Picture a criminal trial in progress. The accused sits motionless as surveillance footage is played before the court. On screen, she appears to enter a convenience store, approach the counter, and commit armed

*Court Registrar, Supreme Court of Bhutan.

robbery. The timestamp aligns precisely with the charged offence. The gait, the hand movements, the hesitation before speaking, all mirror her own. The voice carries her cadence and inflection. The prosecution presents the recording as compelling proof. The court detects no visible manipulation. For a fleeting moment, even the accused feels the destabilizing weight of doubt.

Yet the evidentiary record tells another story. At the time of the crime, she was more than 300 kilometers away, attending her sister's wedding, an alibi supported by witnesses, photographs, and digital travel data. The video is not a recording of reality. It is a synthetic fabrication; a deepfake. This is not science fiction; it is a foreseeable courtroom scenario in the age of Artificial Intelligence. For centuries, courts have relied on human testimony, physical objects, and analog recordings. Evidence law developed as a filtration system with a structured method for separating reliable information from misleading or prejudicial material. AI changes the equation. Not only does it not merely produce new types of evidence, but it also challenges the very architecture of admissibility, reliability, and proof.

AI is entering courtrooms to transform the way evidence is produced, interpreted, and assessed (Ashley, 2017). While AI systems can generate, analyze, and even authenticate digital information, legal frameworks remain largely human-centered in their conceptualization of testimony, expertise, and reliability, particularly in developing jurisdictions (Ashley, 2017). The Evidence Act of Bhutan, like many modern evidence statutes, recognizes expert opinions (Evidence Act of Bhutan, 2005), documentary evidence, and electronic records – (s.4(b), Evidence Act of Bhutan, 2005), yet it does not contemplate the epistemic and procedural complexities introduced by algorithmic decision-making.

Even so, several sections provide procedural standards relevant to digital evidence. The Act recognizes electronic records as a category of admissible documentary evidence (*ss.3-4,* Evidence Act of Bhutan, 2005) and allows their admission "to the same extent as a non-electronic document" unless questions are raised about system integrity (s.43, Evidence Act of Bhutan, 2005). Parties must object at the time of presentation (s.7, Evidence Act of Bhutan, 2005), and the court may

hear arguments on admissibility (s.8, Evidence Act of Bhutan, 2005) and even limit the scope of evidence if necessary (s.11, Evidence Act of Bhutan, 2005). With this, it becomes necessary to explore how AI might reshape the very essence of courtroom proof and the procedural mechanisms that ensure reliability and fairness.

Courts may conceptualize AI in multiple ways, as an expert, where its output is treated analogously to expert opinion; as a tool, comparable to a scientific instrument operated and interpreted by a human witness; or potentially as hearsay, where the algorithm's output is viewed as an out-of-court assertion offered for the truth of its contents (Seng & Mason, 2021, Casey, 2019). This classification is not merely semantic; it determines the evidentiary safeguards that apply.

II. AI AS AN EXPERT

If AI is treated as an expert, the doctrinal foundation in Bhutan lies in Sections 4(d) and 48 of the *Evidence Act of Bhutan*. Section 4(d) recognizes expert opinion as a category of admissible evidence, while Section 48 permits expert testimony where scientific, technical, or other specialized knowledge will assist the Court in assessing evidence or determining a fact in issue. The provision identifies qualifying attributes such as skill, knowledge, experience, training, or education, but it does not define the threshold of expertise, nor does it articulate criteria for assessing methodological reliability. The statute assumes that expertise can be identified and validated through judicial evaluation, yet it provides no structured framework for testing the reliability of the underlying method.

The justification for admitting expert opinion explains why this silence becomes consequential. Expert evidence is admitted as an exception to the general rule against opinion evidence, precisely because it furnishes the judge with criteria for testing accuracy, thereby enabling the court to exercise its own independent judgment rather than substituting the expert's conclusion for its own (The Opinion Rule and Its Exception, 2010). The rationale is assistance, not deference. Expert testimony is permissible only insofar as it equips the court with specialized knowledge beyond ordinary experience while preserving the adjudicative function of the judge.

Accordingly, expert evidence is never binding. Courts must scrutinize the factual foundation of the opinion, the expert's credentials, and the methodological pathway used to conclude, because unsupported assertions or poorly grounded opinions risk misleading the tribunal or usurping the judicial fact-finding role (Parakh, 2011). The admissibility of expert testimony, therefore, presupposes defensibility; the reasoning process must be capable of explanation and adversarial testing.

Even in human contexts, expertise is institutionally fragile. Scholars note phenomena such as "expert shopping," in which litigants strategically seek favorable opinions, and bias arising from advocacy pressures or financial incentives (Damien, 2023). These concerns demonstrate that credibility in expert testimony is neither automatic nor immune from distortion. If human experts who can be examined, cross-examined, and evaluated for bias require structured vigilance, the evidentiary challenge posed by artificial intelligence becomes even more acute. Unlike human experts, AI systems do not possess education, experience, or professional judgment in any conventional sense; they operate through algorithmic models trained on data. (Burrell, 2016; Russell & Norvig, n.d.).

If an AI-generated output is presented as "expert opinion," the Court must confront a fundamental question: who, or what, is the expert: the machine, the programmer, the deploying institution, or the methodology itself? Section 48 was drafted with human witnesses in mind. Its language presumes a person who can take an oath, explain reasoning, respond to cross-examination, and defend methodological choices. An AI system cannot meaningfully perform these functions. Treating AI as an expert, therefore, exposes a structural gap within the Act.

The contrast with the United States sharpens this concern. *The Federal Rules of Evidence* define who may qualify as an expert by knowledge, skill, experience, training, or education and impose explicit reliability requirements. Expert testimony must be based on sufficient facts or data, be the product of reliable principles and methods, and reflect a reliable application of those methods to the facts of the case. *(Rule 702. Testimony by Expert Witnesses, Federal Rules of Evidence) U*.S. courts thus perform a formal gatekeeping role, scrutinizing not merely qualifications but the validity of the reasoning process itself. By

comparison, the Bhutanese framework does not codify a comparable reliability test, leaving greater reliance on judicial discretion (s.48, Evidence Act of Bhutan, 2005).

Therefore, the AI problem forces a deeper doctrinal inquiry: if expertise under Section 48 is grounded in human qualifications and adversarial testability, can algorithmic systems meaningfully fit within that category? If they cannot, AI outputs may be more coherently treated as sophisticated evidentiary tools rather than as experts. In such cases, the relevant witness would be the operator, programmer, or institution responsible for deploying the system. Authentication, methodological transparency, independent validation, and the opportunity for effective challenge would become essential safeguards.

Ultimately, the question is whether AI outputs alone satisfy the foundational rationale of expert opinion doctrine that evidence admitted under the expert exception must assist the court while remaining subject to principled judicial evaluation and adversarial scrutiny. The answer determines not only admissibility under Section 4(d), but also the integrity of adjudication in this AI era.

III. AI AS A TOOL

Here, AI is treated as a sophisticated evidentiary tool, analogous to scientific instruments such as polygraphs, breathalyzers, or DNA sequencing machines (Ayub et al., 2025). The court's inquiry centers on operational integrity, calibration, validation, and human oversight. The reliability of the system depends not on the "intelligence" of the machine, but on whether it was properly designed, maintained, and applied in the particular case (Ayub et al., 2025), so that AI outputs must be interpreted and explained by a qualified human witness who can be meaningfully cross-examined. The classification chosen, therefore, directly influences who testifies, how cross-examination operates, and where responsibility for error ultimately lies.

Sections 3, 4(b), and 43 of the *Evidence Act of Bhutan* provide a statutory foundation for admitting AI outputs as electronic documentary evidence, subject to challenges regarding system integrity and authenticity.

IV. IS THE OUTPUT HEARSAY?

Hearsay doctrine traditionally concerns out-of-court statements made by persons who are not subject to cross-examination. Section 76 of the *Evidence Act of Bhutan* defines hearsay as a statement made outside court by a person who is not examined as a witness, subject to the exceptions set out in Part VII. The provision focuses on statements attributable to a person, reflecting the underlying concern that second-hand human assertions cannot be tested through cross-examination.

At first glance, an algorithm is not a person and therefore cannot be a declarant in the traditional sense. An AI system does not perceive, remember, or narrate events in the human manner (Russell & Norvig, n.d.,). However, AI outputs often incorporate layers of human input, including labeled training data, design parameters, and embedded evaluative judgments. The key question under Section 76 is whether such output can properly be characterized as a "statement" made by a person who is not examined as a witness.

If the output is treated as purely mechanical, it may fall outside the hearsay prohibition. If, however, it is understood as reflecting underlying human assertions embedded in its training or design, concerns arise about reliability and the absence of cross-examination. The challenge for courts, therefore, lies not in labeling AI as a declarant but in determining whether its output should be attributed to identifiable human sources for hearsay analysis. The doctrinal tension is therefore clear: AI is not a declarant, yet its outputs may reflect layers of human statements.

Whether courts conceptualize such outputs as mechanical readings, expert opinions, or quasi-hearsay will significantly influence admissibility, weight, and procedural fairness in the age of machine-generated evidence.

V. THE GATEKEEPER'S DILEMMA

The fictitious case, *Office of Attorney General (OAG v. Pema Dorji*) illustrates the potential procedural and doctrinal challenges of introducing AI-generated evidence in a Bhutanese courtroom. Now, let us step inside a Bhutanese courtroom. The OAG presents a facial recognition report claiming:

"Match Probability: 98.7%"

The prosecution contends that this links the accused, Pema Dorji, to a CCTV image of an armed robbery. The defense responds sharply:

"This is not a witness. It is a machine. And no one in this courtroom understands how it reached that number."

Under the *Evidence Act of Bhutan*, the judge must determine whether AI-generated outputs like this facial recognition report satisfy the twin requirements of relevance and reliability. At first glance, the report satisfies relevance; if accurate, it makes the accused's presence at the scene more likely. But relevance alone cannot carry the day. The court must ask deeper questions about authentication. Is this document genuinely what it claims to be? Was it produced in the ordinary course of duty, and has it remained unaltered?

The police officer testifies about system operation, chain of custody, hash verification, and secure storage. At this first layer, document integrity, the evidence appears sound. But a second, more challenging layer emerges: algorithmic reliability. Was the AI algorithm functioning properly? Was it trained on representative Bhutanese data? Has it been independently validated? Traditional doctrines of electronic records under Sections 3, 4(b), 43, and 48 of the *Evidence Act* strain to answer these questions.

Faced with these challenges, the court could adopt a structured, multi-pronged approach to AI evidence. First, authentication requires verification not only of the operator and system version but also examination of metadata logs and operational history. Maintaining a proper chain of custody could ensure the outputs were not tampered with and could be traced from creation to courtroom presentation (Casey & Niblett, 2017; Seng & Mason, 2021). Second, reliability validation calls for disclosure of the AI's training data, known error rates, and independent testing, with expert testimony assessing adherence to accepted standards and whether its outputs could reliably inform judicial decision-making (Reiling, 2020). Third, transparency and disclosure demand that algorithmic assumptions, data preprocessing steps, and limitations be fully revealed, allowing the defense to cross-examine both the AI operator and human experts to preserve procedural fairness (Burrell, 2016; Seng & Mason, 2021). Finally, constitutional and procedural safeguards require careful judicial

scrutiny to ensure that reliance on AI does not prejudice the accused or undermine the presumption of innocence due to automation bias, which is the risk that judges might overvalue algorithmic outputs without adequate scrutiny (Seng & Mason, 2021).

Only upon satisfying these foundational requirements, the court may assess reliability and probative value. In criminal proceedings, the burden of establishing this foundation rests squarely on the prosecution; the defense bears no obligation to disprove the technology but needs only raise a reasonable doubt as to its reliability, bias, or methodological soundness. Crucially, a reported "98.7%" probability does not equate to proof beyond a reasonable doubt. In this way, even as AI generates probabilistic conclusions resembling expert opinion, Bhutanese courts can mitigate the tension between innovation and fairness.

VI. THE BLACK BOX

Even after implementing all these safeguards, just when it seems that AI is under control, the Black Box Problem reintroduces uncertainty. Consider the defense cross-examining the AI engineer:

"Can you explain exactly how the 98.7% match was calculated?"

The response:

> "I can describe it generally. But the exact mathematical parameters are proprietary."

Here lies the black box problem. Data goes in, a decision comes out, but the reasoning in between is opaque. Imagine a human witness saying, "I know he is guilty, but I cannot explain why." Courts would reject such testimony outright. Yet advanced neural networks operate in much the same way. Explainable AI (XAI) seeks to shed light on these processes, but meaningful transparency remains limited. Moreover, AI systems can generate or hallucinate outputs that align plausibly with the input data, but the reasoning behind those outputs cannot be fully explained (Doshi-Velez & Kim, 2017, Burrell, 2016). Although the inputs are clear, the internal transformations, weighting, and predictive mechanisms remain opaque, leaving human evaluators uncertain about what the system has actually done.

The judge now could face a dilemma: admit the report and risk over-reliance on numeric certainty, exclude it and risk ignoring potentially valuable evidence, or admit it cautiously while reducing its evidentiary weight. The Judge may choose the last path, admit the report but explicitly limit its weight, thereby preserving human evaluative control over algorithmically generated outputs, and thus ensuring that AI informs but does not supplant judicial reasoning (Seng & Mason, 2021, Casey, 2019).

VII. DEEPFAKES; WHEN SEEING IS NO LONGER BELIEVING

Deepfakes present an extreme challenge to procedural fairness in the courtroom. Consider the earlier example of the woman attending her sister's wedding, whose likeness could be digitally inserted into a video depicting a criminal act she did not commit. The *Evidence Act of Bhutan* was drafted for an era in which visual media were largely presumed to reflect reality, and photographs and videos carried inherent reliability. In the age of synthetic media, proving innocence becomes significantly more complex, as fabricated evidence can distort recollection, mislead investigators, and unduly influence judicial perception. Even credible eyewitness testimony and corroborating documentation may be diminished by the powerful, seemingly authentic impression created by manipulated visuals (Chesney & Citron, 2019).

To counter these risks, courts must apply rigorous procedural and technical safeguards. Authentication should go beyond confirming metadata and system integrity; it should include forensic AI analysis, cross-validation with independent data, and expert examination of how the deepfake was generated. Transparency and disclosure of the AI methods, data sources, and potential error rates are essential. Judges may also need to limit the evidentiary weight of AI-generated media (Seng & Mason, 2021).

The frightening reality is that deepfakes are continuously evolving. (Vaccari & Chadwick, 2020) Generative AI can hallucinate content based on minimal data, producing images, audio, or video that even trained experts struggle to detect. What seems like clear, reliable evidence may, in fact, be a sophisticated fabrication (Chesney & Citron, 2019). This means that courts must not only adapt traditional rules of evidence but also embrace new technological literacy to safeguard

justice. In other words, deepfakes make the courtroom a place where seeing no longer equals believing, and where truth must be actively verified rather than assumed.

VIII. COMPARATIVE APPROACHES

Different legal systems are responding in divergent ways to AI-generated evidence, reflecting distinct philosophies about reliability, transparency, and fairness in adjudication.

In the United States, courts evaluate novel scientific and technical evidence under the framework established in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). Under Daubert, trial judges act as evidentiary gatekeepers, determining whether proposed expert evidence is sufficiently reliable and relevant before it reaches the jury. Admissibility depends on factors such as testability, peer review and publication, known or potential error rates, and general acceptance within the relevant scientific community.

AI systems challenge this model. Many rely on proprietary algorithms that resist disclosure, lack transparent error metrics, and are not subject to peer-reviewed validation, undermining adversarial testing (Casey, 2019; Seng & Mason, 2021). In response to the increasing use of algorithmic tools, U.S. evidentiary reform discussions have emphasized that AI-generated outputs must satisfy the same reliability requirements imposed on expert testimony under *Federal Rule of Evidence* 702 (Raymond, 2025).

Judicial concern has also emerged outside formal Daubert challenges. Courts have questioned the credibility of AI-generated narratives when generative tools such as ChatGPT, Perplexity AI, and DeepSeek are used in investigative or reporting contexts without adequate safeguards, particularly where sources, accuracy, and human verification cannot be demonstrated. These developments reflect a system that prioritizes methodological accountability and adversarial scrutiny before algorithmic outputs may influence adjudication (Seng & Mason, 2021).

Singapore's evidentiary regime, governed by the Evidence Act, has long incorporated electronic records within established documentary categories. The statute provides structured rules for authentication and

includes presumptions that permit the admission of electronic records where system integrity and chain of custody are not genuinely disputed.

Singapore courts, therefore focus primarily on procedural integrity rather than technological novelty. As Low (2012) observes, once authenticity is established, electronic records are routinely treated as documentary evidence. While this framework efficiently accommodates digital material, it leaves unresolved how courts should approach data that is digitally altered or autonomously generated. Rather than imposing AI-specific admissibility thresholds, Singapore's approach allows doctrinal development to occur incrementally through judicial interpretation.

India has modernized its evidentiary framework through the Bharatiya Sakshya Adhiniyam, 2023, which replaces the Indian Evidence Act, 1872. The new statute explicitly recognizes electronic records as admissible documents and empowers courts to require authenticity certificates, metadata disclosure, and expert explanation where necessary (Neel, 2024).

Judicial practice under the new framework relies heavily on expert mediation, particularly forensic and technical experts, to interpret complex digital systems. Courts have begun applying these provisions to require verification and certification before admitting electronic evidence (Na, 2025). However, the statute does not articulate AI-specific standards, leaving issues such as deepfakes or algorithmic risk assessments to judicial evaluation on a case-by-case basis. India's approach thus reflects statutory adaptation combined with continued reliance on expert interpretation.

Under the Evidence Act of Bhutan, evidence encompasses testimonial, documentary, including electronic records, and expert opinion. Section 43 provides that electronic documents are admissible on the same footing as non-electronic documents unless system integrity is genuinely questioned, while Section 48 permits expert testimony where specialized knowledge would assist the court.

In Bhutan's judge-led adjudicatory system, the same judicial authority evaluates both admissibility and evidentiary weight. AI-generated material may therefore enter proceedings either as electronic documentary evidence, subject to authenticity and integrity safeguards, or as expert-

type evidence accompanied by a human explanation of methodology, limitations, and error margins.

Unlike the United States, Bhutan does not apply a formalized reliability test comparable to Daubert. Unlike India, it has not enacted AI-specific statutory reform. Unlike Singapore, it does not rely on detailed statutory presumptions tailored to electronic records. Instead, existing doctrinal categories remain sufficiently flexible to accommodate algorithmic material. This flexibility places interpretive responsibility squarely on judges when confronting opaque or autonomous systems.

The comparative analysis thus highlights Bhutan's opportunity: rather than awaiting legislative reform, courts may articulate principled admissibility criteria grounded in statutory text, procedural fairness, and constitutional oversight, shaping the integration of AI within Bhutan's existing evidentiary framework.

IX. PROPOSED FOUR-STEP ADMISSIBILITY TEST FOR AI EVIDENCE

To responsibly admit and assess AI-generated evidence, Bhutanese courts could adopt a structured four-step framework rooted in the *Evidence Act of Bhutan* and constitutional safeguards:

1. Authentication

   Authentication requires verification that the AI system and operator are properly identified, and that digital evidence has been preserved intact. This includes confirming the software version, operational integrity, and the identity and role of the human operator or programmer. Chain of custody must be maintained, with metadata, access logs, and operational history preserved to ensure the outputs are traceable from creation to courtroom presentation (Casey, 2010, Seng & Mason, 2021).

2. Reliability Validation

   Courts must rigorously assess technical validity. Independent testing of algorithms, verification of accuracy and error rates, evaluation of training data for biases or gaps, and consistency checks across software versions are essential to ensure that AI outputs are reliable and do not mislead the court (Marcia, 2024,).

3. Transparency & Disclosure

   Procedural fairness requires that opposing parties have sufficient information to challenge AI-generated evidence. Even if the full source code is confidential, courts should demand disclosure of assumptions, limitations, and decision-making pathways embedded in the AI (Seng & Mason, 2021; Casey, 2010). Expert witnesses may interpret outputs, but the right to cross-examine must remain intact to preserve adversarial safeguards.

4. Constitutional & Procedural Safeguards

   AI evidence must not infringe the presumption of innocence under Article 7(16) of the *Constitution of the Kingdom of Bhutan, 2008*. Courts should consider the risks of automation bias, particularly in criminal cases, and clarify allocation of the burden of proof: whether the prosecution must establish AI reliability or whether reliability is presumed until challenged.

By integrating these steps, Bhutanese courts could channelize the intersection of AI and evidence law, maintain judicial oversight while responsibly utilize the capabilities of machine-generated outputs. (*Section 48, Evidence Act of Bhutan*, 2005)

X. CONCLUSION: HUMAN JUDGEMENT IN AN AUTOMATED AGE

History demonstrates that evidence law evolves in response to technological disruption. Courts adapted to photography, wire recordings, and DNA profiling by refining standards of authentication, reliability, and expert testimony (Mnookin, 2010). Artificial Intelligence, however, presents a qualitatively different challenge. Unlike prior technologies that merely captured or preserved facts, AI systems interpret data, generate probabilistic conclusions, and, in some cases, fabricate realities altogether (Seng & Mason, 2021). The evidentiary risk is no longer confined to distortion; it extends to synthetic creation.

In the courtroom of the future, algorithmic risk assessments, AI-generated investigative summaries, and automated authenticity verification tools may become routine (Reiling, 2020). Yet technological sophistication cannot displace foundational evidentiary principles. Transparency,

accountability, cross-examination, disclosure, and human responsibility remain non-negotiable safeguards. AI may inform judicial reasoning, but it cannot supplant the constitutional duty of judges to exercise independent judgment (Reiling, 2020; Seng & Mason, 2021).

Bhutanese courts, though presently confronted with doctrinal silence under the Evidence Act 2005, are not without tools. A structured four-step framework: authentication, reliability validation, transparency of methodology, and constitutional scrutiny, provides a principled pathway for integrating AI-generated material while preserving procedural fairness. Chain of custody, disclosure obligations, and meaningful opportunities for cross-examination must apply with equal, if not heightened, rigor.

Ultimately, evidence law exists to answer a singular question: how does the court distinguish truth from fabrication? Artificial Intelligence intensifies it. The woman watching her deepfake video in court is not a hypothetical abstraction; she embodies a legal system at a crossroads. The future of justice will not be determined by algorithms alone; it will be determined by how courts, legislators, and lawyers choose to regulate, scrutinize, and constrain them (Seng & Mason, 2021; Reiling, 2020). The admissibility of AI evidence is therefore not a matter of technological capacity. It is a matter of institutional design, constitutional fidelity, and the preservation of human judgment at the heart of adjudication.

REFERENCES

Article 7(16) The Constitution of the Kingdom of Bhutan. (2008).

Ashley, K. D. (2017). *Artificial Intelligence and Legal Analytics: New Tools for Law Practice in the Digital Age*. Cambridge University Press. https://doi.org/10.1017/9781316761380

Ayub, A. M., Syed, F. R., & Peng, H. (2025). Breaking Barriers: The admissibility of forensic evidence in US courts and the struggles with cutting- edge science. *Science & Justice*, *65*(6). https://doi.org/10.1016/j.scijus.2025.101355.

Burrell, J. (2016). How the Machine "Thinks": Understanding Opacity in Machine Learning Algorithms. *Big Data & Society*, 3, 1-12. https://doi.org/10.1177/2053951715622512

Casey, A. (2019). AI and the Law. *University of Chicago Law Review*, 1-59. https://www.law.uchicago.edu/news/ai-and-law

Casey, E. (Ed.). (2010). *Handbook of Digital Forensics and Investigation* (3rd ed.). Elsevier Science. https://rishikeshpansare.wordpress.com/wp-content/uploads/2016/02/digital-evidence-and-computer-crime-third-edition.pdf

Chesney, B., & Citron, D. (2019). Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security. *California Law Review*, *107*. https://doi.org/10.15779/Z38RV0D15J.

Damien, J. (2023). Expert Shopping- is the grass always greener? https://damian-james.com/expert-shopping-is-the-grass-always-greener/

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579. (1993). https://supreme.justia.com/cases/federal/us/509/579/

Doshi-Velez, F., & Kim, B. (2017). Towards A Rigorous Science of Interpretable Machine Learning. https://doi.org/10.48550/arXiv.1702.08608

Low, W. (2012). A Commentary on the Amendments to the Electronic Evidence Provisions in the Singapore Evidence Act. *Law Gazette*. https://v1.lawgazette.com.sg/2012-07/468.htm

Marcia, J. (2024). Ai And Evidence Law In 2025 The Admissibility Of Ai-Generated Evidence. https://attorney.aksi.co/ai-and-evidence-law-in-2025-the-admissibility-of-ai-generated-evidence

Mnookin, J. L. (2010). The Courts, the NAS, and the Future of Forensic Science. *Brooklyn Law Review*, *75*(4). https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1231&context=blr

Na, V. (2025). Modernising Evidence Law: The Bharatiya Sakshya Adhiniyam, 2023 (BSA) in the Digital Age. *Navvi.org*. https://www.naavi.org/wp/modernising-evidence-law-the-bharatiya-sakshya-adhiniyam-2023-bsa-in-the-digital-age/

Neel, A. (2024). Admissibility of Electronic Evidence under Bharatiya Sakshya Adhiniyam. *Legal Bite*. https://www.legalbites.in/bharatiya-Sakshya-adhiniyam//admissibility-of-electronic-evidence-under-bharatiya-sakshya-adhiniyam-1080257

The Opinion Rule and its exception. (2010). ALRC Report 102. Retrieved 2026, from https://www.alrc.gov.au/publication/uniform-evidence-law-alrc-report-102/9-the-opinion-rule-and-its-exceptions/introduction-165/

Parakh, S. (2011). PMC Etiology of Expert Witness. https://doi.org/10.4103/0019-5049.84839

Pasquale, F. (2015). The black box society: The secret algorithms that control money and information. *Harvard University Press.* http://www.jstor.org/stable/j.ctt13x0hch.

Raymond, N. (2025, May 2). US judicial panel advances proposal to regulate AI-generated evidence. *Reuters*. https://www.reuters.com/legal/government/us-judicial-panel-advances-proposal-regulate-ai-generated-evidence-2025-05-02/?utm

Reiling, A.D. (2020). Courts and Artificial Intelligence. *International Journal for Court Administration*. https://doi.org/10.36745/ijca.343

Rule 702. Testimony by Expert Witnesses | Federal Rules of Evidence | US Law. (n.d.). Law.Cornell.Edu. Retrieved February 12, 2026, from https://www.law.cornell.edu/rules/fre/rule_702

Russell, & Norvig. (n.d.). Artificial Intelligence: A Modern Approach. *Pearson*, (4th edition).

s.11, Evidence Act of Bhutan. (2005).

s. 3-4, Evidence Act of Bhutan. (2005).

s.43, Evidence Act of Bhutan. (2005).

s. 48, Evidence Act of Bhutan. (2005).

s. 4 (b), Evidence Act of Bhutan. (2005).

s.4 (d) Evidence Act of Bhutan. (2005).

s.6, Evidence Act of Bhutan. (2005).

s.7, Evidence Act of Bhutan. (2005).

s.8, Evidence Act of Bhutan. (2005).

Seng, D., & Mason, S. (2021). Artificial intelligence and evidence. *Singapore Academy of Law Journal*, 1-33. https://journalsonline.academypublishing.org.sg/Journals/Singapore-Academy-of-Law-Journal-Special-Issue/Current-Issue/ctl/eFirstSALPDFJournalView/mid/503/ArticleId/1602/Citation/JournalsOnlinePDF

Vaccari, C., & Chadwick, A. (2020). Deepfake and Disinformation: Exploring the impact of Synthetic political video on deception, Uncertainty and Trust in news. *Social Media & Society*, *6*. https://api.semanticscholar.org/CorpusID:214265502

ADMINISTRATIVE LAW AND THE FUNCTIONS OF TRIBUNALS IN DIFFERENT SYSTEMS OF GOVERNMENT

*Karma Dorji

ABSTRACT

Administrative law regulates the exercise of public authority and ensures accountability through principles such as legality, procedural fairness, and natural justice. Administrative tribunals have emerged globally as specialized adjudicatory institutions designed to resolve complex disputes efficiently while maintaining fairness and accessibility. This article examines the institutional design and functions of administrative tribunals across different systems of government, with a comparative analysis of India and Thailand. The study evaluates procedural structures, jurisdictional authority, and institutional safeguards within administrative adjudication. Drawing from comparative experiences, the article analyses the constitutional basis and practical necessity for establishing administrative tribunals in Bhutan. It argues that well-designed tribunals can enhance access to justice, reduce judicial backlog, and strengthen administrative accountability, provided that independence, procedural clarity, and judicial oversight are maintained. The article concludes with institutional design recommendations tailored to Bhutan's constitutional framework and administrative landscape.

Keywords: Tribunal, Access to Justice, and Administrative.

I. INTRODUCTION

Administrative law constitutes the legal framework governing the exercise of public power by administrative authorities. Its primary objectives include controlling discretionary authority, safeguarding individual rights, and ensuring fair administrative procedures. Central to administrative law is the doctrine of natural justice, encompassing the rule

*Court Registrar, Legal Aid Center.

against bias - *nemo judex in causa sua* and the right to a fair hearing - *Audi alteram partem*.

Modern governance has significantly expanded the state's functions, resulting in increasingly complex administrative decision-making processes. Traditional courts often face challenges in efficiently adjudicating highly technical disputes. In response, many jurisdictions have established administrative tribunals, specialized adjudicatory bodies exercising quasi-judicial authority within defined statutory mandates (Legal Service India, n.d.).

Tribunals operate alongside conventional courts but are typically designed to provide accessible, cost-effective, and expert dispute resolution. Their procedural flexibility allows efficient handling of technical or policy-sensitive matters. However, the proliferation of tribunals has also generated debates regarding independence, procedural consistency, and adherence to the rule of law.

This article provides a comparative examination of administrative adjudication in India and Thailand and evaluates the relevance of these models for Bhutan. It addresses the constitutional basis for administrative tribunals in Bhutan and proposes institutional reforms grounded in comparative administrative law.

II. CONCEPTUAL FRAMEWORK OF ADMINISTRATIVE TRIBUNALS

Administrative tribunals represent an evolution in administrative justice reflecting the increasing complexity of governance. Classical rule-of-law theory emphasized judicial supremacy and uniform legal procedures (Dicey, 1959). However, modern scholars recognize the necessity of specialized adjudication in administrative governance (Craig, 2016; Mashaw, 1983).

Administrative tribunals are statutory bodies empowered to resolve disputes involving administrative decisions or specialized regulatory matters. Unlike traditional courts, tribunals generally operate under flexible procedural rules while maintaining adherence to natural justice principles.

Tribunals typically possess the authority to:

- Conduct hearings and examine evidence;
- Summon witnesses and compel document production;
- Issue binding decisions within statutory jurisdiction.

The emergence of tribunals reflects the increasing complexity of administrative governance. Specialized adjudication allows technical expertise to inform decision-making while reducing delays associated with conventional litigation (GK Scientist, n.d.). While tribunals enhance efficiency, they also raise concerns regarding procedural uniformity, institutional independence, and executive influence. Effective tribunal systems, therefore, require transparent appointment processes, judicial oversight, and clear procedural standards.

III. COMPARATIVE ANALYSIS OF ADMINISTRATIVE ADJUDICATION

3.1 India: Constitutionalized Tribunal System

India maintains a comprehensive tribunal framework embedded within constitutional and statutory structures. The Supreme Court has interpreted the term "tribunal" broadly to include adjudicatory bodies exercising judicial or quasi-judicial functions (*Durga Shankar Mehta v. Raghuraj Singh,* 1954). Articles 136 and 227 of the *Constitution* provide mechanisms for appellate review and judicial supervision of tribunals, thereby preserving constitutional safeguards (Constitution of India, 1950). Articles 323-A and 323-B empower Parliament to establish specialized tribunals addressing administrative, tax, labour, and regulatory disputes. Indian tribunals operate with procedural flexibility but must adhere to natural justice. Their advantages include:

- Reduced litigation costs
- Specialised expertise
- Faster adjudication
- Accessibility for litigants

The expansion of tribunals in India reflects increasing administrative complexity and court backlog pressures (Legal Service India, n.d.).

However, scholarly criticism has highlighted concerns regarding tribunal independence, executive control over appointments, and inconsistency in procedural frameworks.

3.2 Thailand: Administrative Courts and Ombudsman Model

Thailand does not maintain administrative tribunals in the conventional sense. Instead, administrative disputes are adjudicated by specialized Administrative Courts with jurisdiction over disputes between individuals and state authorities (Siam Legal International, n.d.).

The Administrative Court may:

- Annul unlawful administrative acts;
- Order administrative agencies to perform statutory duties;
- Grant compensation for administrative harm.

Although formal mediation mechanisms are limited, investigative procedures often facilitate negotiated settlements (Administrative Court of Thailand, n.d.). Complementing the judicial system is the Office of the Ombudsman, which investigates administrative complaints and promotes administrative accountability (Office of the Ombudsman Thailand, n.d.; Leyland, n.d.).

Thailand's model demonstrates an alternative approach in which specialized courts, rather than tribunals, handle administrative disputes while maintaining oversight institutions to address maladministration.

4. Administrative Tribunals and Bhutan's Constitutional Framework

Article 26(6) of the *Constitution of Bhutan* provides for administrative tribunals to hear appeals against administrative decisions; however, these tribunals have not yet been operationalized (Constitution of Bhutan, 2008). Administrative disputes are currently addressed through conventional courts and oversight institutions such as the Anti-Corruption Commission.

Bhutan's evolving administrative landscape, including expanding regulatory agencies, public employment structures, and policy implementation mechanisms, creates increasing demand for specialized adjudication. Administrative tribunals could provide:

- Efficient resolution of civil service and administrative appeals;
- Reduced court congestion;
- Improved accessibility for litigants;
- Enhanced technical expertise in administrative decision-making.

However, institutional design must ensure independence, procedural fairness, and compatibility with Bhutan's constitutional principles.

5. Critical Analysis: Benefits and Risks of Administrative Tribunals

Administrative tribunals offer significant advantages, including procedural flexibility, specialized expertise, and efficient dispute resolution. They can reduce litigation costs and alleviate court backlog pressures.

Nonetheless, concerns arise where tribunals lack uniform procedures or operate under executive influence. Critics argue that excessive reliance on policy considerations may undermine legal certainty or the rule of law. Variations in tribunal structure and procedural standards can also lead to inconsistent decision-making. Comparative experience demonstrates that effective tribunal systems require:

- Transparent appointment and tenure protections;
- Clear statutory mandates;
- Procedural safeguards; and
- Availability of judicial review.

Balancing efficiency with fairness remains essential to maintaining public confidence in administrative adjudication.

IV. CONCLUSION AND RECOMMENDATIONS FOR BHUTAN

Administrative tribunals represent an important component of modern administrative justice systems. Comparative analysis indicates that specialized adjudication enhances efficiency and accessibility when supported by strong institutional safeguards.

For Bhutan, operationalizing administrative tribunals pursuant to constitutional provisions could significantly strengthen access to justice and administrative accountability. Institutional design should prioritize:

1. Statutory clarity regarding jurisdiction;
2. Independence from executive control;
3. Transparent and merit-based appointment processes;
4. Standardized procedural rules consistent with natural justice;
5. Training in public and administrative law for adjudicators;
6. Judicial review mechanisms to ensure legality and accountability.

A carefully structured tribunal system can complement Bhutan's judiciary while addressing the increasing complexity of administrative governance.

REFERENCES

Administrative Court of Thailand. (n.d.). Administrative dispute resolution practices. https://www.admincourt.go.th

Constitution of Bhutan. (2008). Royal Government of Bhutan.

Constitution of India. (1950). Government of India.

Craig, P. (2016). *Administrative law* (8th ed.). Sweet & Maxwell.

Dicey, A. V. (1959). *Introduction to the study of the law of the constitution* (10th ed.). Macmillan.

Durga Shankar Mehta v. Raghuraj Singh, AIR 1954 SC 520 (India).

GK Scientist. (n.d.). Factors giving rise to administrative tribunals. https://gkscientist.com

Gordon, D. M. (n.d.). Administrative tribunals. HeinOnline.

Jackson, J. (n.d.). Machinery of justice. Cambridge University Press.

Legal Service India. (n.d.). Administrative tribunals in India. https://www.legalserviceindia.com

Leyland, P. (n.d.). The ombudsman principle in Thailand. HeinOnline.

Mashaw, J. L. (1983). *Bureaucratic justice: Managing social security disability claims*. Yale University Press.

Office of the Ombudsman Thailand. (n.d.). https://webapp.ombudsman.go.th

Robson, W. A. (1928). Justice and administrative law: A study of the British constitution. HeinOnline.

Siam Legal International. (n.d.). Thai administrative law. https://library.siam-legal.com

Bhutan National Legal Institute is a premier national judicial training academy. It was established on 25 February 2011 by Her Royal Highness Princess Sonam Dechan Wangchuck under the *Judicial Service Act of Bhutan, 2007*. The Institute is mandated to provide legal education, trainings and research services in law for the development of legal system and promotion of *rule of law* in the country.

The Institute comprises of the Continuing Legal Education Section (CLES); Capacity Building Section (CBS); Research and Development Section (R&DS); ICT and Media Section (IMS); and Administration and Finance Section (AFS). Over the years, the Institute revived, strengthened and institutionalized the age-old informal and amicable mediation of disputes in the communities *(Nangkha Nangdrig)*. It also publishes the *Bhutan Law Review*, a bi-annual law journal and *National Mediation Reports* – a compilation of the number and nature of cases mediated by the Local Government Leaders nation-wide. The Institute also introduced the Court-Annexed Mediation (CAM) System in the Royal Courts of Justice. It has established academic linkages with several judicial academies and training institutions in India and Australia under the New Colombo Plan (NCP) of the Queensland University of Technology (QUT). The Institute organizes a series of continuing judicial education and capacity trainings and workshops for the judges and judicial personnel annually. It is also involved in the dissemination of laws to the public and students through the media; Institute also conducts *Judges Book Club* program, monitors the *School Law Club Programs* and arranges guest scholars lecture programs. The Institute also established and operate the Legal Aid Center (LAC) and the Regional Legal Aid Centers at Mongar and Phuentsholing.

Main Activities

Since education and information contribute to overall professional development of the members of the judicial and legal fraternity, the Institute is currently dedicating its resources and expertise in the following prioritized areas:

- Continuing judicial education, induction and orientation programs to the judges and other judicial personnel;
- Need-based specialized trainings for the judiciary and law-enforcement agencies such as police and prosecutors, NGOs, etc.;
- Dissemination and sensitization of the public on emerging legal issues through mass media;
- Publication of *Bhutan Law Review,* country's first law journal in biennial basis;
- Publication of *National Mediation Report* and other periodic reports;
- Organizing monthly *Judges' Book Club* to keep academic flame of the judges alive;
- Organizing ADR(Mediation) trainings to the Local Government officials and relevant stake holders;
- Manage *School Law Clubs* for keeping the youth informed on laws;
- Organizing meetings, conferences, lectures, workshops, symposia and seminars on topical issues;
- Review, analysis and publications of important court judgments;
- Study/conduct research on contemporary and emerging legal issues, Bills and legislations passed by the Parliament; and
- Liaising/linking with relevant national and international academic/training institutions for exchange of knowledge and experiences.

ISBN-978-99980-43-15-2
Printed at P.T. Printing Press, Hejo, Thimphu.