Dynamic intelligence, speculative minds, misery of pain and shared anguish prompted the search of humans for law and justice\(^1\). Law has been defined in different ways by various religious leaders and prolific philosophers\(^2\). His Majesty the Fifth Druk Gyalpo said that “law is not confined to the courts or the legislatures that draft them. Law is like the air that every person breathes at every moment. Its presence is unnoticed but its absence will be lethal”\(^3\). To me, the Bhutanese concept of drig thrim is the best definition of law. Drig means harmonious settlement. Thrim encompasses Ka Thrim Dru, Kadroe Chhenpo Dru and Ten thrim Nga\(^4\).

Law is an interpretative social practice\(^5\) that contains implicit moral principles and values. Law is related to justice, reason, human nature and ethics. It is also an instrument of

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\(^{1}\) Generally see the history of Law Givers such as the ancient Egyptian law of 3000 BC (Ma’at), the ancient Sumerian ruler Ur-Nammu’s first law code, King Hamurabi’s Codex Hammurabi, the Old Testament in 1280 BC, Gyalpo Melongdong in 1214 BC, the Buddhist laws, laws of the Greek city-state, ancient Athen’s divine law (thèmis), human decree (nomos) and custom (díkē), the Arthashastra around 100 AD, Codes, the Manusmriti (c. 100–300 AD), Zhelshay Chusum by Tsong Tsen Gambo, Jungwa Zhi Thrim by Guru Padma Sambhava, major codification under Theodosius II and Justinian Code, A.D. 533, Zhabdrung’s Kathrim in 1652, Mipham Wangpo and Sherub Wangchhuck’s Kathrim, the Napoleonic and German Codes, etc. See John Lewis, EARLY GREEK LAWGIVERS, Bristol Classical Press, 2007.

\(^{2}\) H.L.A Hart in his famous book The Concept of Law, divided law into primary (rules of conduct) and secondary ones (rules addressed to officials to administer primary rules). Secondary rules are further divided into rules of adjudication (to resolve legal disputes), rules of change (allowing laws to be varied) and the rule of recognition (allowing laws to be identified as valid). See H.L.A Hart, THE CONCEPT OF LAW, Oxford University Press, 1994. Ronald Dworkin attacked Hart and the positivists for their refusal to treat law as a moral issue. Dworkin argues that law is an “interpretive concept”, that requires judges to find the best fitting and most just solution to a legal dispute, given their constitutional traditions.” See Scott J. Shapiro, the “Hart-Dworkin” Debate: A Short Guide for the Perplexed (2007), University of Michigan Public Law Working Paper No.77, available at SSRN: http://ssrn.com/abstract=968657. According to Hobbes, Bentham and Austin, law is the product of the state. While Laski propounded the theory that law is superior and has come into existence before the state, Kelsen mentioned that the laws and state is the same thing viewed from different angles. See Lars Vinx, HANS KELSEN’S PURE THEORY OF LAW, Oxford, 2007.

\(^{3}\) His Majesty the Fifth Druk Gyalpo’s Address to the judges during the closing ceremony of the 19th National Judicial Conference held in Thimphu on 11th June, 2010.

\(^{4}\) Zhabdrung’s Ka-Thrim in 1952.

\(^{5}\) For example, Chanakya (350-275 BCE) who was a philosopher and founder of an independent political thought in India, laid down rules and guidelines for social, legal and political order in the society. See B.K Chaturvedi, CHANAKYA, Diamond Pocket Books, 2001.
According to Alexander Bickel “Law is the principal institution through which a society can assert its value”\(^7\).

OBJECTIVE

The objective of law is stability, peace and tranquillity of sentient beings. The Buddhist principle of sixteen virtuous acts of social piety (Michoe Tsangma Chudrung) exhorts that the past spiritual Monarchs’ laws were enacted to secure freedom\(^8\). Subsequently, Buddha propagated “The Law is that which leads to welfare and salvation. It forms conduct and character distinguished by the sense of equality among all beings… The Law is equal, equal for all beings… Impartial is the law”\(^9\).

His Majesty Jigme Singye Wangchuck advocated the concept of enlightened and rational laws, which is reflected in the preamble of the Penal Code of Bhutan\(^10\).

“In keeping with His Majesty’s vision for enlightened laws to protect the society, ‘perpetuate good and chaste actions, correct those who have gone wrong,’ guilty not to escape and innocent not to suffer and to secure justice to ourselves and our posterity, do hereby ordain and establish this Penal Code for the Kingdom of Bhutan”.

The same principles are reflected in the Civil and Criminal Procedure Code\(^11\), the Evidence Act, and many other laws. His Majesty’s instructions were clear that the penalties must be proportionate and be in consonance to the provisions of the Penal code.

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\(^6\) According to Roscoe Pound, legal order must be flexible as well as stable. Law must be overhauled continually, and refitted continually to the change in the social life which it is to govern. Roscoe Pound, AN INTRODUCTION TO THE PHILOSOPHY OF LAW, 1930 available at http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=2222&Itemid=27.


\(^8\) bDe ba encompasses freedom to secure happiness, welfare, safety, tranquility, prosperity and liberty.

\(^9\) Dharmasangiti Sutra.

\(^10\) This Code was one of the reforms initiated by His Majesty the Druk Gyalpo for criminal justice system in Bhutan.

\(^11\) This Code was the beginning of a legal framework for procedural reform. It took nine years for enactment and I, having been entrusted with the sacred responsibility of drafting the Code, had to defend twenty-nine times in the National Assembly. The safe passage of the Bill can be attributed to the then Speaker Dasho Ugyen Dorji. Without his help and timely interventions, the Code would have been mutilated and diluted. Winston Churchill said that one mark of a great man is the power of making lasting impressions upon people he meets; and another is to have handled matters that the course of after events is continually affected by what he did. Many important laws that form the basis of the Bhutanese legal system such as Civil and Criminal Procedure Code, Penal Code and Evidence Act were enacted while he was the Speaker of the National Assembly. Judiciary has institutional memories. Truth is appreciated and always remembered.
Laws may broadly be divided into natural\textsuperscript{12} and positive laws\textsuperscript{13}, criminal and civil laws, public international\textsuperscript{14} and private international laws, etc.

Reason and common sense are the basis of natural law. Natural law is truth and truth cannot change. It derives from absolute truth based on divine sources – birth, old age, sickness and death cannot be altered. His Majesty said that natural law is the intellectual capacity to differentiate between virtuous actions that benefit others and evil actions that would be detrimental to others\textsuperscript{15}. Positive laws are man-made laws which is further classified as primary (Acts passed by Parliament) and subordinate legislation (Rules framed under such Acts). Therefore, the Positive laws are the command of imperative sovereign authority which emanates from Parliament.

LAW AND JUSTICE

Laws can be made and unmade. Law must be just and fair. It is known as substantive due process doctrine. Samuel Johnson wrote that “The law is the last result of human wisdom acting upon human experience for the benefit of the public”.

Protection of wrong encourages breaking of law. One who breaks the law cannot get protection. Lord Denning explained that “They strike at the roots of society itself, and they bring down that which protects them.” We should save the society. Every good law encompass command, duty to respect, and sanction behind it. In Buddhism, Dhammanuvatti enjoins living in conformity with righteous laws and principles, both in personal life and in work.

Some of the earliest thinking about justice is found in Aristotle’s work. It was he who distinguished between corrective justice and distributive justice\textsuperscript{16}. Justice has been approached differently by different philosophers. Therefore, there are different types of justice

\textsuperscript{12} Natural law and social contract theories were rejected by David Hume which is contrary to empirical truth. Rousseau objected the doctrine of natural law in favour of inalienable sovereignty vested in the ‘general will’ as opposed to any individual ruler or oligarchy. Natural Law Theory is supported by Grotius, Blackstone, Locke, Pufendorf, Montesquieu, Voltaire and Rousseau. Natural law is divided into prescriptive and descriptive natural law. The origin of it can be traced to the belief in a law of nature as a system of justice common to all human beings of the Stoics.

\textsuperscript{13} Lord Buddha differentiated laws as Rangzhin and Chaypai Thrim. Aristotle said that positive laws must be obeyed and ‘it is not perfect and it may give rise to inequalities, but we should aim at reforming the law, not breaking it.

\textsuperscript{14} Jus gentium (the law of nations) and jus naturale (natural law) by Grotius.

\textsuperscript{15} Supra, note 3.

\textsuperscript{16} See J. Waldron, LEGAL THEORY, 2003, p. 269.
such as: (a) Commutative justice or corrective or rectificatory justice advocated by Aristotle. (b) Compensatory justice, providing for right to compensation. (c) Social justice that confirms to a moral principle such as all people are equal. (d) Distributive justice, concerning the right way of allocating benefits and burden\(^{17}\). (e) Institutive justice raises issues of legitimacy, procedure, codification and interpretation. (f) Justice as entitlement or “entitlement theory”\(^{18}\).

Under Buddhist principles, justice encompasses the principles of equality, distributive and corrective notions.

According to accepted principles of “institia est constans et perpetua voluntas ius suum cuique tribunes – justice is the constant and perpetual purpose of rendering each man his due” and “iuris praecepta sunt hae: honest vivere, alterum not laedere, suum cuique tribuere”- the precept of the law are: to live honestly, not to injure your neighbour, and to render each man his due. However, law and justice have had their critics. Solon in 6th century BC moaned that “Laws are like a spiders webs, if some poor weak creature comes up against them, it is caught; but a bigger one can break through and get away” and Oliver Goldsmith wrote that “Law grinds the poor, and rich men rule the law”.

Justice is social virtue and an inherent human necessity. Delivery of justice requires institutional building, legal framework, infrastructural development, technology and human resource development. “Good laws are the guardian and protector of the World. Hearing that it punishes the guilty would appease the good people but frighten the bad ones” were the profound words of Mipham Rimpochhe. According to Rawls, “justice is the first virtue of social institutions.” Hence, Justice promotes virtues and vitiates vices. Justice is defined in Bhutan as Drang thrim\(^{19}\), which means fair law.

\(^{17}\) One of the most interesting attempts to defend principles of justice is found in John Rawl’s A Theory of Justice and Political Liberalism. According to him, the conception of justice demands three things: (a) maximization of liberty; (b) equality for all; (c) “fair equality of opportunity” and elimination of all inequalities of opportunity. See John Rawls, A THEORY OF JUSTICE, Oxford University Press, 1991 and John Rawls, POLITICAL LIBERALISM, Columbia University Press, 2005.

\(^{18}\) Robert Nozick developed a conception of justice which he calls “entitlement theory”, according to which economic goods arise already encumbered with rightful claims to their ownership. Nozick extols the virtues of individualism and capitalism and argues that philosophies which espouse distributivism and redistributivism are misconceived. See Robert Nozick, ANARCHY, STATE AND UTOPIA, Basic Books, 1974.

\(^{19}\) I take the liberty of referring to John Rawl’s argument that self-respect is “perhaps the most important primary good” on which a theory of justice as fairness has to concentrate. Amartya Sen, DEVELOPMENT AS FREEDOM, Oxford University Press, 1999, p.136.
RULE OF LAW

Bhutan has always expounded the rule of law. It was enshrined in the Thrimzung Chhenmo and the Constitution upholds and perpetuates it. Dicey had divided rule of law into the material rule of law and the formal rule under the principle of legitimacy. Rule of law espoused provides for a limited Constitution to save democracy in Bhutan from the tyranny of majoritarian rule.

Rule of law is the recognition of the supremacy of law, elimination of discrimination, due process law, and judicial review of administrative action. It conforms to the Buddhist philosophy of “Upekkha, impartiality, fairness, and understanding that all beings experience good and evil in accordance with the karma they have created; steadfastness in maintaining laws that are righteous”.

LAW MAKING

Laws are made either through executive orders or through legislation. It is commonly accepted that Parliament exists to make law. This perception derives from the very name ‘legislature’: the carrier or proposer of law. Parliament represents the wisdom of the grassroots, a collective wisdom, which by and large is our national conscience. This collective national conscience should flow in continuity with our glorious history. Parliament is a tympanum of the nation, persistent vision of its action and the perennial source of its tributaries of laws through distillation and deliberation.

The role of the Legislature should be the fulfilment of the desires of the maximum number of human beings, for the welfare of the society which is aptly described by Roscoe Pound as social engineering. This role and purpose of the legislature was further accentuated by the profound instructions of His Majesty Jigme Singye Wangchuck at the time of the drafting of the Penal Code of Bhutan.

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20 Refer Article 9(3) and 21(1) of the Constitution.
21 Dicey differentiated between the legal sovereignty of law making by the legislature and electoral sovereignty of the people as the political sovereignty.
NATIONAL INTEREST

The laws should be for the national interests above all other interests. No democracy can survive without law and order. Public interest requires promotion of law and order, not its denegation and destruction.

SOVEREIGNTY OF LAW MAKING

Bhutan is a sovereign country and the people of Bhutan must make its own laws according to their aspirations. The sovereign power belongs to the people and the laws are an expression of the will of the people. The Constitution enjoins the Government to safeguard the interests of the nation and to fulfil the aspirations of the people. Hence, Bhutan has followed a dualist and not a monist approach. The consequence of an unsuccessful cultural transplant and slavish transportation of ideas might be catastrophic. Bhutan espoused the ascendancy doctrine, wherein:

“The Constitution is the Supreme Law of the State” and “all International Conventions, Covenants, Treaties, Protocols and Agreements duly acceded to by the Government hereafter, shall be deemed to be the law of the Kingdom only upon ratification by Parliament unless it is inconsistent with this Constitution.”

The international instruments only once ratified by Parliament are deemed as laws.

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23 It was the greatest dictum of His Majesty the Fourth Druk Gyalpo. Similarly, Roscoe Pound’s Public interests are (a) Interest of the state, which are the integrity, freedom of action and honour of the state’s personality and claims of the politically organized society as a corporation to property acquired and held for corporate purposes. (b) Interest of the state as guardian of social interests. (c) Social interests in the general security relating to general safety, general health, peace and order, security of acquisitions and security of transactions. (d) Social interest in general morals cover a variety of laws for those dealing with prostitutions, drunkenness and gambling. (e) Social interest in conservation of social resources that covers conservation of natural resources and protection and training of defectives i.e., conservation of human resources. (f) Social interest in economic progress covers economic progress- freedom of use and sale of property, free trade, free industry, Encouragement invention by the grant of patent. (g) Political progress covers free speech and free association. (h) Cultural progress covers free arts, free letters, free science and Promotion of education and learning and aesthetics. (i) Social interest in individual life: self-assertion, opportunity and conditions of life.


25 Section 2, Article 10 of the Constitution.

26 His Majesty continually emphasized, which is reflected in Section 10 of Article 1 and Section 25 of Article 10 under the Constitution. Under the dualist system, the classic position is that domestic law is supreme. James Harrington “the happiness of living under laws of our own making”.
CONSULTATION WITH STAKEHOLDERS

Democracy in Bhutan may be embarking into a new concept of consulting stake holders. It is an exclusive democracy but there is a lurking danger. It may divest legislative sovereignty of law making from Parliament. Parliament is a deliberative democracy according to Edmund Burke but consultation with stake holders may tantamount to enclave deliberation, which is understood as deliberation within small groups of like-minded people. It may lead to social influences in identifiable directions, often as a result of “cascade” effects, involving either the spread of information (whether true or false) or growing peer pressure. National interest needs balance. Fuelling mass hysteria, as Palkhivala warned that “the voice of a small minority is today mistaken to be the voice of the majority, simply because it is loud and vociferous, while the still, small voice of reason is not heard. So long as thinking men will not take the trouble to give public expression to their views, they should be reconciled to the thought of living under an administration of which the distinguishing feature is that it places the lives of wise men at the mercy of fools”.

Moreover, consulting stake holders have sovereign, security and legal implications. Bhutan followed constitutional convention under public consultation during the Constitution drafting. There was a representative from every household.

RATIONALLY OF LAW

Rationale of laws should be with “right reason, harmonious with nature, diffused among all, constant, eternal; a law which calls to duty by its commands and restrains from evil by its prohibitions” Locke held that ‘reason must be our last judge and guide in everything’ which were echoed by Hegel and Schiller. The classical theory presumed that reason is common to all human beings and it is immutable. However, reason categorized as public reasoning, which leads to ‘government by discussion’ was advanced by John Stuart Mill.

Amartya Sen’s the argumentative Indian, at page 14 states that “In the history of public reasoning in India, considerable credit must be given to the Indian Buddhist, who had great commitment to discussion as a means of social progress… The so-called ‘Buddhist councils’,

which aimed at settling disputes between the different points of view… these councils were primarily concerned with resolving differences in religious principles and practices, but they evidently also addressed the demands of social and civic duties…” Utilitarian reasoning has three distinct axioms: consequentialism, welfare and sum-ranking. It concentrates on individual happiness or pleasure pioneered by Jeremy Bentham. Cartesianism was advanced by Descartes. The Bhutanese laws were based on public reasoning, which is central to participatory governance.

VALUES

Laws must be in accord with moral and ethical values, cardinal and spiritual values (Cardinal values of Plato include justice, wisdom, courage and self-control), cultural values, ethical values (normative, positive, descriptive and meta-ethics) legal values, moral values, normative values and Peterson and Seligman’s anthropological views are the major virtues, which include wisdom/ knowledge, courage, humanity, justice, temperance and transcendence. These values are reinforced by Lord Buddha in “Silasamannata – harmonious moral conduct: maintaining a level of conduct that meets community standards; adhering to community rules, not making oneself an object of distrust in the eyes of the community; refraining from conduct which would be detrimental to the community; contributing to an homogenous and equal respect for the community laws and compliance therein”.

Bhutan considered many of them in addition to democratic values, tradition, culture and Constitutional values (core, supporting and structural values) while drafting the Constitution.

JUST AND ENDURING LAWS

Laws should be as far as possible just and enduring for its normative, procedural and institutional values including institutional responsibility and accountability. No law lasts forever. It is in consonance with the Buddhist philosophy of impermanence. However, the laws must endure over fluctuating fortunes. Therefore, Mipham Rimpochhe cautioned that “If the laws are amended repeatedly, respect and obedience will diminish”.

29 William Blackstone “Law is the embodiment of the moral sentiment of the people”.
30 The erstwhile National Assembly omitted certain progressive provision from the Penal Code.
PROPORTIONALITY OF LAW

Punishment must be proportionate to the crime. Legislations must recognize the principle of proportional justice whereby, the punishment of a certain crime should be in proportion to the severity of the crime itself. It must be fair. It is congruous to the Bhutanese saying, do not overload and burden the horse.

Public has a keen sense of fairness. Our legal system must not make life too easy for criminals or too difficult for law-abiding citizens\(^\text{31}\). Unintended results and consequence mitigate and dilute the original will of the law makers.

Sentencing attracts more interest than any other aspect of the criminal justice system. When a person has broken the law and has caused harm or distress to others, the community expects that the sentencing process will punish that person appropriately. Crime, and the manner in which it is dispensed with, can affect the psychological well-being of people and indeed influence their everyday lives. Therefore, the sentencing process is at the very core of the criminal justice system and the society must strive to develop a justice system that is logical, rational, sensible and effective. Sentencing reflects our sense of right and wrong and the kind of society we want to live in. In a democracy, people decide what policies to vote for, and by letting politicians know their aspirations the people must help shape the laws.

CLARITY

Statute must be direct, unambiguous, concise and definite. If laws are vague, the Courts will be constitutive and abrogative. Verbosity and incredulities must be avoided. It must be convincing and credible; factual by affirming the strength and not include conjectures by misrepresenting the weakness. For instance, the law must avoid the obvious, not use words that cannot be substantiated, is demeaning or is an expression of anger.

As stated by Justice Krishna Iyer “…the rule of law and parliamentary democracy itself are imperilled if laws are incomprensible. It is of fundamental importance in a free society that the law should be readily ascertainable and reasonably clear and that otherwise it is oppressive and deprives the citizen of one of his basic rights.” To blame the courts for misinterpretation and plead for liberal interpretation are like begging for alms after giving it

\(^{31}\) John Locke’s a “state of nature” people were free to act as they wished.
away and discarding Bentham’s caution, “The power of the lawyer is in the uncertainty of the law”.

LAW; TRADITION AND CULTURE

His Majesty Jigme Singye Wangchuck commanded RCSC on 22nd December 1986 that threat is a binding force for many countries. It should be so for Bhutan. The country cannot be economically assimilated, politically complacent and culturally influenced. Prosperity, modernization, and development will not bring satisfaction, if we lose tradition, culture and religion. Socially our system will break. Therefore, our laws must be Bhutanese in essence. We are reminded of the ringing words of Pavan K. Varma, the Indian Ambassador to Bhutan who succinctly opined that “transplanting … was not about the enlightened elitism associated with the assimilative cultural history”32.

During the drafting of laws, it is imperative to consider the accepted Bhutanese values33, traditions and culture for more and better compliance in spirit than mere legal compliance. Laws must be homeostatic to maintain stability in changing conditions. We cannot afford complacency in our legal system. We must strive to gain the confidence of the people. Progress does not signal the renunciation of tradition. Traditional methods deserve respect, and we must draw inspiration from the wisdom of the past. At the same time, we must be able to meet new challenges of the changing times.

PRACTICALITY AND ENFORCEABILITY

Law should be practical and enforceable without undermining transparency, accountability, efficiency and professionalism. It should be same to others and to oneself. It should be just and one should be subjected to it34. It should be abided by interlocking principles for mutual support, maintain consistency and avoid incoherence. It should be free from passion and ulterior motives. Laws that are bias and legislated in anger will be subjected to the wrath of time.

33 It was the consistent instruction of His Majesty the Fourth Druk Gyalpo.
34 “The insurance theory of constitutional regime – serves as insurance against loosing office” by Prof Tushnet.
UTILITARIANISM AND FUNCTIONALISM

Law should have utilitarian and functionalist purposes. It must encourage virtue, and prevent vice and immorality. The legal principles must be divided under three divisions, the enunciation of legal values without subordinate sections, elaborate legal remedies and punishment for violation and non-compliance. Every law must be cautionary to avoid disproportionate punishment and abuse of power.

PUBLIC POLICY

Justice is central in identifying the aims and objectives of public policies and laws reflect behaviour and psychology of individuals, society and ethics. Consequently, public policies entail choice. It may be a rational choice, public choice, social choice or involve economic considerations. Nonetheless, Rawl’s rejection of “the notion of radical choice finds no place in justice as fairness.” Simultaneously, laws must be cautious of incompatible aims of arbitrary choice or preferential choice.

HARMONY

Descartes said that a multitude of laws often hampers justice. Therefore, the laws should be drafted in such a way that it is harmonious with other laws to eliminate contradictions and disparities. Ambiguity and disparity breed controversies. The courts must also read ambiguous statues as a whole with a view to harmonize the ambiguous and inconsistent provisions. When there are two provisions in an enactment which cannot be reconciled with each other, the principle of harmonious construction requires that they should be so interpreted as to give effect to both.

35 His Majesty the Fourth Druk Gyalpo’s command was that law should serve national interest. Normative ethics is rational inquiry into or theory of the standards of right and wrong, good and bad in respect of character and conduct, which ought to be accepted by a class of individuals. Hugo Grotius argued that law arises from both a social impulse. Hayek – “only the existence of common rules makes the peaceful existence of individuals in society possible… the “rationalist” or “constructivist” understanding of the origins of law”.
ONE LAW

Uniform law (Equal justice under one law) may not be a panacea for all the problems in the system, but it will at least fulfill the primary premise of “equal justice under law”. It should be just to the victim and fair to the offender. With that pure motive, legislature and authorities must make just laws. Law loses its legitimacy, when law breakers masquerade as law makers. It is further aggravated, when the laws punish the law makers, when they are out of power. Thus, laws should be just and fair.

USAGE OF WORDS

As far as practicable, the legislations should avoid using same words for different purposes for legal words must have allegorical meanings that indicate history, philosophy, social setting, sources, values and an inspiration of heritage. As pointed out by Ambassador Pavan K. Varma, it is true that language is the symbol of people’s identity. It is a popular rhetoric in Bhutan which in principle cannot be disagreed, that the laws should be in simple Dzongkha. However, the pious and patriotic expressions must be realistic and practical at the same time. The terminologies must be better, if not equally good. Words should have historical connotation, expression of values and must be mindful of future implication. Words must be expressive of the meanings. The importance of words is clearly stated in Sumtag, “From writing come names. From the names come words. Words express all the meanings.” Moreover, Thomas Szasz said that “The battle for the word is the battle of definitions.”

INSTITUTIONAL BALANCE AND COUNTERVAILING POWER

Institutional balance and countervailing power are important for society as mentioned by Galbraith. An effort must be made to balance the administrative convenience of the Government with that of the rights of the people. At the same time, all freedom is not free and all the rights are not absolute.

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36 Social decisions satisfy minimum conditions of reasonableness by Kenneth Arrow.
37 Supra, n.36, p.83.
According to Kant – In law man is guilty when he violates the rights of others. Therefore, there should be a reasonable restriction as provided under the Constitution. The check and balance is a requisite method to avoid tyranny of law and to provide for a controlled Constitution, whereby, the principles of checks and balances have an important role to play.

LEGISLATIVE MORALITY

The Constitution of Bhutan mentions “ethical standards” in section 16 of Article 15 and “ethics” under section 4 of Article 26. Ethics is also known as moral philosophy, which addresses questions about morality. The word ‘ethics’ is “commonly used interchangeably with ‘morality”. The types of ethics are realism and anti-realism under Meta-ethics (universal prescription, divine command theory and ideal observer theory), tribal and territorial morality.

Human morality\textsuperscript{38} evolved to restrict excessive individualism that could undermine a group’s cohesion and thereby reduce the individuals’ fitness. It is for ‘reciprocity’. Morality is not absolute, but relative. There are descriptive and normative moralities, political morality, legislative morality, public morality, morality and wealth, morality and politics, moral codes\textsuperscript{39}, neutral values, etc. Moral codes are ultimately founded on emotional instincts and leaders must provide moral leadership. Political morality was propounded by a Greek philosopher, Sophocles, who wrote “Nobody has a more sacred obligation to obey the law than those who make the Law” and John Ray, who said “They that make laws must not break them.” Further, the ringing oxymoron on moral code by Palkhivala remains eternally relevant:

“Commerce without ethics;
Pleasure without conscience;
Politics without principle;
Knowledge without character;
Science without humanity;
Wealth without work;
Worship without sacrifice.”

\textsuperscript{38} Morality in the Latin is moralitas, which means “manner, character and proper behavior”.
\textsuperscript{39} One of moral codes is the golden Rule which is “One should treat others as one would like others to treat oneself” or “ethic of reciprocity”. The Five Precepts and the Noble Eightfold Path of Buddhism; the ancient Egyptian code of Ma’at; the Ten Commandments of Judaism and Christianity the Quran of Islam; Judaism’s Noahide Law; and the yanas and niyama of the Hindu scriptures.
CONCLUSION

The pious expression of the Constitution by conferring legislative sovereignty to Parliament and bestowing political sovereignty to the people of Bhutan imposes an imperative duty on the educated Parliamentarians to provide the nation with enlightened laws. Parliament is the citadel of justice and embodiment of crystallized wisdom and leadership. With esteemed affection, the following immortal words of His Majesty the Druk Gyalpo to the first Parliament session rekindles expectations of hope and action:

“The highest achievement of one hundred years of Monarchy has been the constant nurturing of Democracy. This has culminated today with the first sitting of Parliament and the start of democracy, whereby my father the Fourth Druk Gyalpo and I, hereby return to our People the powers that had been vested in our kings by our forefathers one hundred years ago. We do so with absolute faith and confidence, offer our complete support and our prayers for the success of democracy… from this day forth, we place in your hands our unique nation, our greatest treasure in this world”.

(NB: I have quoted many scholars and philosophers to benefit from their wisdom and to place it on record that we did not do things blindly and stumble in darkness. It is not my argument that we have done something that has not been done in our nation’s history, but to remind ourselves and our posterity that we strived hard and never failed to try our best. Moreover, I consider it as my social responsibility to share the scintillating wisdom and inspiring principles that was bestowed to me by the great Monarch, His Majesty Jigme Singye Wangchuck. My efforts will never conform to His Majesty’s intellectual standards and may fail to record His profound words in its entirety. Nevertheless, I am reminded of Sir Winston Churchill, who said “The nation had the lion’s heart. I had the luck to give the roar.” Similarly, our generation is blessed to give the roar of the mighty Lion, His Majesty Jigme Singye Wangchuck.)

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40 Edmund Burke explained in 1774, “Parliament is a deliberative assembly of one nation, with one interest, that of the whole, where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole”.