

The Constitution – the King’s Gift: Difiling and Sanctifying a Sacred Gift

SONAM KINGA

To Question Or Not To Question, That Was The Question

When Bhutan’s first elected Parliament convened its session on 8 May 2008, the first debate centered on the question of either endorsing the draft Constitution intact or discussing the contents before promulgating it.

Many parliamentarians argued that the Constitution is a gift or *solera*¹ from the Fourth King of Bhutan, and hence, the question of questioning a gift by discussing its provisions is unthinkable.

There was however, another group of parliamentarians, who argued that discussing the Constitution would not undermine their faith in the King or Constitution. It would be better, they argued, to seek clarifications from the Chairman of the Drafting Committee on important provisions and take this opportunity to make improvements so that the Constitution need not be amended frequently in future. In order to suggest that the draft Constitution should be promulgated intact without making any amendment, the copies circulated to the parliamentarians that day were printed in gold. It was symbolic of the fact that a gift precious as gold should not be smeared by debates and amendments.

1 The word ‘gift’ may be a misnomer. There are different concepts of ‘gifts’ that connote different levels of relationship between those who give and those who receive gifts. Hence, choem (in Dzongkha, the national language) is a category of gift given to another person, friend or relative, who normally share the same social status. Chag jel (pronounced chan je) is a gift offered to person of a higher social status like an officer or a lama that one calls upon for various reasons. Phuelcha or buelwa is a gift offered to a person of very high social standing such as a king, minister or great Buddhist masters. Lastly, soelra is a gift granted by a high-ranking person to those inferior to him/her.

No one contested the idea of the Constitution as *soelra* from the King. What was contested however was the overwhelming argument that any change, amendment or improvement to the draft Constitution was already done with feedback received from the people of Bhutan through various means. First, all the households of twenty *dzongkhags* (districts) in the country were provided with a copy each of the Constitution. Second, the King and Crown Prince met the people of Bhutan during the public consultations on draft Constitution. Their responses, comments and feedback had been noted. Third, the draft Constitution was loaded on a website since 26 March 2005. Feedback and comments from readers have already been considered. Fourth, the Constitution was drafted by drawing upon constitutions of many countries. While 100 constitutions were studied, the drafting committee focused on 50 which were scaled down to 22 for deeper analysis.² Finally, members of the drafting committee were representatives of various social groups.

Those parliamentarians who wanted discussions and debates to take place with the possibility of some amendments considered that the best way to contest the above arguments was to argue for the need to seek clarifications from the Chief Justice, the chairman of the drafting committee, on important provisions of the Constitution which may later result in conflicting interpretations. Moreover, the parliamentary session was to be broadcast live.³ Therefore, the people who watched the proceedings would also benefit by understanding those provisions on which members seek clarification. As debates began, I said that there were important lessons learnt from the experiences of the last elections

2 Kuensel, 24 July 2008.

3 The National Assembly decided to ban the live broadcast of its proceedings from the third session of Parliament which began on 26 June 2009. However, the National Council decided to continue its live broadcast in the interest of transparency and accountability. There were resentments expressed against the ban. Only selected sessions like the Prime Minister's report on the annual performance of the government, presentations of the Public Accounts Committee, the budget presentation and any issue in a joint sitting would be broadcast live. Discussions on other bills and issues were to be reported by the media but not be broadcast live.

that needed to be considered. For example, I said that the Constitution provided for two rounds of elections to the National Assembly (NA). In the primary round, many registered political parties would contest. In the general round, the two parties winning the maximum number of votes in the primary round would contest for seats in the NA. However, there were only two registered political parties for the last election. So the primary round was not held. But the Constitution did not specify if the primary round should be foregone if there were only two political parties. It certainly states that two rounds of elections should be conducted. There was thus a need to rethink these issues. Initially, the Chairman of the drafting committee who presented the draft Constitution to the Parliament intended a two-three day discussions. It was mainly to provide clarifications and details on certain articles and clauses. Discussions nevertheless continued for three weeks as every article of the draft Constitution was tabled for discussion. Before we discuss if any amendment were made or not, we need to further investigate the idea of Constitution as a gift.

Source of legitimacy: king or people

The purpose of arguing that the Constitution is a gift from the throne was to locate and acknowledge the throne, particularly King Jigme Singye Wangchuck – the Fourth King of Bhutan - as the source of legitimacy of Bhutan's historic political reforms. On the contrary, the King had said that the Constitution should not be considered as a gift from the throne. "The Constitution should not be considered as a gift from the King to the people: it is my duty to initiate the constitutional process so that our people can become fully involved in shaping and looking after the future destiny of our country."⁴ Hence, from the very beginning, the King conveyed the idea that while he would initiate the constitutional process, it is the people and their representatives who would draft the Constitution. The King intended to locate the legitimacy of the Constitution in the people.

There was thus dialectic thinking in assigning the source of legitimacy for Bhutan's first written Constitution. The King located it in the people, and the people in the King. Let us analyze the process by which the

4 Kuensel, 30 November 2001.

King worked to embed the legitimacy for the Constitution in the people, and the people came to conceptualize the Constitution as the king's gift. The King had commanded the drafting of the Constitution on 4 September 2001 by issuing a royal decree or *kasho* to the government.

While His Majesty gave a broad directive, enunciating the basic and progressive democratic principles, Lyonpo Sonam Tobgye⁵ said that His Majesty was cognizant of the fact that the members of the drafting committee must be broad-based and that they must be elected so that there will be a voice of the people. "Consequently His Majesty commanded the Prime Minister to issue a directive to the 20 dzongkhags to elect one member each from every dzongkhag primarily or wholly for the purpose of drafting the constitution⁶ (italics mine).

When the drafting of the Constitution was inaugurated on 20 November 2001 in Tashichho Dzong, the seat of the Bhutanese state, there were thirty nine members. Among them, there were thirteen representatives from the government, three from the judiciary, two from the monastic community and twenty seven from the people. Among these twenty seven representatives of the people, each of the twenty Dzongkhag Yargye Tshogdu (DYT) in the country had elected a member. In addition, there were six councilors, who were elected members of the Royal Advisory Council (RAC). Each councilor represented a group of dzongkhags. Members of RAC were also members of the erstwhile NA.

The composition of the drafting committee was therefore, intended to constitute a popular body. With representations from the government and the monastic community, it became a broad-based committee. Such representations have been the hallmark of popular institutions like the RAC and the NA. However, it is important to note that the drafting committee was not a legislative body, and therefore, had no authority to promulgate the Constitution. But its broad-based representation

5 The Chief Justice of Bhutan. He was re-appointed as the Chief Justice of the Supreme Court.

6 Kuensel, 24 July 2008.

suggested that the Constitution was drafted by the representatives of the people.

The second important element in reinforcing the idea of the people as the source of legitimacy for the Constitution was the distribution of its copies on 26 March 2005 to members of Gewog Yargye Tshogchung (GYT) and DYT, civil servants, members of the judiciary, educational institutions, municipal corporations and the business community. Basically, every household in the country was provided a copy each. This was to set the stage for kingdom-wide public consultations. King Jigme Singye Wangchuck started it in Thimphu on 29 October 2005.

Later, the Crown Prince (the present King) continued the consultations. They ended on 4 May 2006 in Trongsa. In every public consultation, the people expressed their concern at the introduction of parliamentary democracy. In his national day address on 17 December 2005, the Fourth King said, "During my consultations on the Constitution in the different *dzongkhags* (districts), the main concern of the people is that it is too early to introduce parliamentary democracy in Bhutan."⁷ The King and Crown Prince conveyed to the people during these consultations that it was not early to introduce parliamentary democracy. Rather, the time was right to venture on historic political reforms. People expressed deep concerns on the political transition that was being initiated. However, as discussions on the draft Constitution started during these public consultations, people made suggestions or raised objections on different clauses of the draft Constitution.

The other important means of legitimizing the Constitution through popular participation was the idea of holding a national referendum.

His Majesty pointed out that the draft Constitution was not submitted to the National Assembly first because the people might not accept the decision of the Assembly as there would be only 100 *chimis* representing the *dzongkhags*. The Constitution of Bhutan would, therefore, be adopted by referendum, as has been the practice in Bhutan for all important issues, and then enacted in the National Assembly⁸ (italics mine).

7 Kuensel, 21 December 2005.

8 Kuensel, 23 March 2005.

The referendum however, was never held. Nor was the Constitution enacted in the NA. Rather, the public consultations came to be regarded later as a kind of national referendum. The concern was that the people would not endorse the Constitution and hence, parliamentary democracy. Similarly, it was felt that the NA would not approve the Constitution. Both these would be a major setback for the King's initiative to democratize Bhutan.

The idea that the Constitution has popular legitimacy was reasserted when it was finally signed and promulgated on 18 July 2008. The King said that the Constitution was placed before the people of the twenty dzongkhags. "Each word has earned its place with the blessings of every citizen in our nation. This is the People's Constitution."

The politico-official view nevertheless continues to project the Constitution and parliamentary democracy as *soelra* from the King. When the draft Constitution was first released for public distribution on 26 March 2005, representatives of various institutions and organizations received copies of the draft Constitution from the chairman of the drafting committee. Wrapped in colourful materials, the ceremony of distributing it was like that of granting a *soelra*.

The chairman said that the Constitution was a gift from the Golden Throne.

This constitution was given by the head of the state, the King of Bhutan, who enjoyed the absolute confidence of the people. This is truly unique in the sense of the Buddhist principle of detachment...The people of Bhutan did not want the Constitution, but His Majesty in his wisdom felt that it was necessary to have one for the benefit of our posterity.⁹

Lyonpo Kinzang Dorji, the Prime Minister of the caretaker government¹⁰ had also said that democracy was a gift from the golden

9 Kuensel, 24 July 2008.

10 A caretaker government consisting of three ministers was formed when other cabinet members resigned to form political parties in preparation for the parliamentary elections.

throne to the people.¹¹ Similarly, the Opposition Leader had always maintained that the Constitution should not be discussed but promulgated intact. "Like most Bhutanese I see the Constitution as a precious gift from a monarch to his people, unparalleled and unprecedented in the world."¹² The idea of Constitution and democracy as gift was also articulated by the present Prime Minister, when he was on his familiarization tours¹³ in different constituencies before formal campaigning for the last election began.

Beware of those that come to buy your vote. Your vote is a 'Norbu Rinpoche', a precious gem, a **once in a lifetime gift. His Majesty the fourth King has given you each a precious gift**, with the hope that you will use it wisely¹⁴ (emphasis mine).

The discourse on Constitution and democracy as gift of the King did not take birth within the immediate context of introducing parliamentary democracy. Parliamentary elections of 2008 were preceded by 54 years of democratization process, of which 34 years were largely characterized by decentralization. Hence the people's idea of Constitution as their King's gift is in fact, an extension of similar discourse surrounding political reforms he initiated during his reign.

Changing with times - the rationale for democratization

When the King first commanded the drafting of the Constitution, many people were taken by surprise. The general response that continued to echo over the last few years was initially captured in a *Kuensel* story.

11 Kuensel, 1 August 2007.

12 Bhutan Observer, 18 July 2008.

13 As a part of the political process, the Election Commission of Bhutan allowed candidates for parliamentary seats and political parties to undertake visits to their constituencies long before actual campaigns and elections. They were allowed to introduce themselves and their parties but prohibited from campaigning.

14 Kuensel, 29 September 2007.

Beyond the Ballot Box

We have this unique system which works. Why do we need to change it?...Today we enjoy peace and harmony, stability and prosperity. Are you going to change it for better or worse?¹⁵

The King literally persuaded the people to accept democracy. It is important to identify the basic arguments he gave time and again for introducing democracy. The first and perhaps the most important argument is that the Kingdom must change with time.

It is important for all of us today to look into the future and to take the necessary steps to shape the destiny of our country...Bhutan must move with times to ensure that the nation not only overcomes all internal and external threats, but continues to prosper in an atmosphere of peace and stability.¹⁶

Obviously, the question was why change. The king argued that the inherent weakness of monarchy is its dependence on one person. The intentions of kings may be good but they could change. The need therefore, for institutions and political system that rest on the wisdom of all people rather than one person.¹⁷ That political system was to be parliamentary democracy expressed in a written Constitution. He argued that democracy was a viable political institution that could fulfil the aspirations of Bhutanese people. If democracy had not worked elsewhere, it was not because of its inherent weaknesses but due to abuses of it by those in power. Changing with time meant democratizing the political system.

The principles and goals of democracy are inherently good, and a democratic system is desirable for Bhutan. If the lessons of some democracies are not encouraging, it is not because the concept of democracy is flawed: it is because of mismanagement or susceptibility to corruption by those who participate in the democratic political systems in some of the countries.¹⁸

15 Kuensel, 12 April 2002.

16 Kuensel, 31 December 2001.

17 Kuensel, 1-7 December 2001.

18 Kuensel, 30 November 2001.

The essential argument was therefore, that Bhutan should not be deterred by the fact that democracy did not work in some countries. A key theme in the King's repeated public declarations was that the future of the country lay in the hands of the people. The people must shoulder the responsibility of shaping the country's destiny. Moreover, those in power must trust the people to undertake this responsibility. Thus, democracy was presented as means of enabling people to take responsibility for their collective future.

The other question was why introduce change now when people were apparently not ready for democracy. He reasoned that democracy is best introduced at a time when people enjoyed peace and happiness, when the kingdom's security was ensured and when the economic opportunities were growing. According to him, this was a time when people in all sections of society enjoyed a high level of trust. The security of the country was ensured and people enjoyed peace and stability. We must note here that security threats posed to Bhutan by 'anti-national' elements in the early 1990s and militant groups from India later were removed with the King personally leading the army to battle in December 2003. Bhutan also enjoyed close relation with development partners. Its relationship with India in particular had reached a new height. Bhutan's economy was growing and investments in hydro power projects would bring in major economic benefits. Thus, democracy was being introduced in an environment of trust, political stability, social harmony, economic opportunities and good relationship with other countries. The Constitution was being drafted neither under compulsion nor in a hostile environment of conflict among different groups.

A significant aspect of the introduction of democracy was the King's assertion that it was a culmination of decades of political reforms he initiated during his reign. Thus, democracy cannot be looked in isolation from his earlier reforms. His first address to the drafting committee provides significant insight.

It is my duty as King to strengthen the nation so that the people can develop in security and peace, and the nation becomes more prosperous and secure than before. During the past years of my reign, I have made constant efforts to empower the people by delegating authority, resources and responsibility to them. Reforms

on decentralization and delegation of powers have been a continuous process with the establishment of District Development Committees and Block Development Committees, and the devolution of executive power to an elected Council of Ministers.¹⁹

Desanctifying the gift; debates on the Constitution

Was the Constitution then passed intact in Parliament without amendment? No. The debates began with the proposal to change the title itself. The draft title read, 'The Constitution of the Kingdom of Bhutan.' In Dzongkha however, it read '*brug gi rtsa khirms chhen mo*' or 'The Great Constitution of Bhutan.' Led by a Member of National Council (MNC), a few argued that it should be titled *dpal ldan 'brug pai rtsa khirms chhen mo'* or 'The Great Constitution of Palden Drukpa.' Although Palden Drukpa is used as a synonym for Bhutan, it is also the other honorific name for Zhabdrung Ngawang Namgyal, who unified Bhutan as a political community between 1616 and 1651. The unspoken but implied objection from others was that this would not reflect the secular nature of the Bhutanese state that the Constitution claims to be. Incidentally, this was the title of the second draft of the Constitution circulated to the people. A Minister suggested that a subtitle should be considered to aptly acknowledge that the Constitution was a gift of the Fourth King. The title was however, not changed.

Like the debate on the title, many debates were held on different articles or sections of the Constitution. However, debates largely served to clarify doubts or reinforce understanding of these articles through the Chief Justice of Bhutan as an intermediary, who provided clarifications and reconfirmed certain interpretations. More than often, the debates did not result in amending any article or section. Take for example the debate on the required minimum foreign currency reserve.

According to Article 14 Section 7 of the Draft Constitution, a minimum foreign currency reserve that is adequate to meet the cost of not less than one year's import must be maintained.

Addressing the house, Finance Minister Lyonpo Wangdi Norbu, said it was advisable to reduce the reserve period from one year to six months. One-year reserve period would slow down the developmental activities. "The money would remain unused affecting the economic development of the country."

He said the country had to borrow money from international financial institutions paying higher interest when there were huge imports to be made. Supporting the finance minister, the national assembly member from Kengkhar-Weringla Sonam Penjor said the one-year period was too long. He cited the example of India where the hard currency reserve period was as short as one month.

The works and human settlement minister said six months was reasonable. "Even the International Monetary Fund agrees to six months," he said.

But the opposition leader, Tshering Tobgay, was of the opinion that the one year reserve period was necessary for emergency situations and natural calamities. He said Bhutan largely depended on import and during emergency situations if there is money reserve the country does not have to depend on external aid.

The National Council member Kinley Tshering seconded the opposition leader. He said if there was enough money in the country there would be no problems.

Addressing the house, Chief Justice Sonam Tobgye, the Chairman of the Drafting Committee, said the one year period was reflected to safeguard the country's independence and resolve emergency situations. He also said it was to check the government from spending money for political gains. It is also to assure that the country need not go with a begging bowl, he said.

Since the house could not reach a consensus, it was decided that the Chief Justice would address the issue again on 28 May.²⁰

Later, the original article was retained that required a minimum foreign currency reserve to meet the cost of one year of import.

An interesting debate took place over the designation of the Chief Justice of the Supreme Court. Section 4 of article 21 states, 'The Chief Justice of Bhutan shall be appointed from among the Drangpons of the

20 Bhutan Observer, 23 May 2008.

Supreme Court...' Many members of National Assembly (MNA) argued that the designation of the Chief Justice in Dzongkha which read as '*brug gi khrims spyi blon po*' or The Minister Chief Justice of Bhutan is incorrect. The contention centred on the word *blon po* or minister. The usage of the word minister for the Chief Justice derived from two facts. One, the Chief Justice was equated to the rank of a minister in order to suggest that the judiciary is equal to the executive in status. Two, this suggestion was symbolically reinforced by the orange scarf worn by the Chief Justice just as a cabinet minister does. The scarves are awarded by the King. The members argued that in the context of separation of powers among three organs of the state, the designation of the Chief Justice should not have any reference to a minister. Instead of '*brug gi khrims spyi blon po*', he should be called '*bgrug gi khrims spyi*' - The Chief Justice of Bhutan. There was overwhelming support for this amendment among members of the ruling party. That day it was agreed that the designation would be changed. But the following day, the same MNA who strongly argued in favour of the change suddenly started to call for the reinstatement of the original title. The title was reinstated.

The other noteworthy amendment in the Constitution was the change in gender specific terms. In legal terms generally, the reference to the masculine would also mean the feminine. But the women parliamentarians argued that Bhutan's Constitution should specifically mention both *he* and *she* or *his* and *her* instead of just *he* and *his*. In fact, one of the most protracted debates took place on this issue. They prevailed and the final Constitution as well as other laws passed by both houses of Parliament ensure that both masculine and feminine terms are included in them.

There were other sections where significant amendments were made. The most notable among them was the inclusion of an entirely new article under Fundamental Rights. It concerned the banning of capital punishment which was not reflected in the draft Constitution although the ban was already in force through a royal decree issued by the Fourth King. The new article proposed by the Foreign Minister was endorsed. As a new section, i.e. Section 18 of Article 7, it now reads, "A person shall not be subjected to capital punishment."

Article 5 discusses the Environment. Section 1 states;

Every Bhutanese is a trustee of the Kingdom's natural resources and environment for the benefit of the present and future generations and it is the fundamental duty of every citizen to contribute to the protection of the natural environment, conservation of the rich biodiversity of Bhutan and prevention of all forms of ecological degradation including noise, visual and physical pollution through the adoption and support of environment friendly practices and policies.

I suggested that the clause beginning with '...it is the fundamental duty of every citizen to contribute...' should be deleted from this section and included as a new section under Article 8, which stipulates fundamental duties for Bhutanese citizens. The Chairman of the Drafting Committee agreed to look at this proposal. Later, it was retained despite support from some members. But the word environment was added to section 2 of Article 8 as follows. "A Bhutanese citizen shall have the duty to preserve, protect and respect **the environment**, culture and heritage of the nation." This section did not contain the word 'environment' earlier. The argument for this amendment was that this section makes preservation and protection of both culture and environment a fundamental duty for a Bhutanese citizen although both of them are specifically discussed under Articles 4 and 5 respectively.

Section 5 of Article 15 stated; "Representation to the NA shall be by two political parties established through a primary round of election in which all registered political parties may participate." I argued that this makes it mandatory for two political parties to be represented in the NA. Considering the results of the last election in which the ruling party won a lop-sided victory of 45 from a total 47 seats, it is not impossible for a political party in future to win all the seats. If the people votes overwhelmingly giving 100% of the seats to one political party, that electoral choice has to be respected. However, this section would make it look as if winning 100% of the seats is unconstitutional. The section required two political parties in the Constitution. Therefore, we need to re-examine this section so that even if a political party won 100% of the seats, it would still be a legitimate win.

In the end, the word ‘Representation’ in this section was changed to ‘Election.’ This ensured that after the primary round of election, in which all registered political parties may contest, two political parties would contest for the general round. Even if one party won all the seats, there would be legitimate basis for representation. Otherwise, the losing party in the general round may call for a re-election if this section made it mandatory for two parties to be in the NA.

By the end of the deliberations on the Constitution, debates have taken place on nearly fifty different articles and sections. Most discussions were intended to seek clarifications from the Chairman of the Drafting Committee who participated in the entire deliberation. As I indicated, there were however, some significant amendments made.

Through these amendments, the argument that it is inappropriate to question and amend the draft Constitution has been contested. It is important to note that amendments were proposed as much by some ministers as by other parliamentarians. Even if there were no amendment, the fact that the draft Constitution was discussed in Parliament made it appear as if the royal gift has been defiled. Among those who contested the idea of the Constitution as a gift by participating in the debate and even proposing amendments were also those who initially objected to the idea of proposing amendments. If the weeks of deliberation have defiled the Constitution, then the project of re-sanctifying it took place amidst sacred rituals and prayer ceremonies.

The gift is re-sanctified; signing of the Constitution

Soon after the deliberations on the Constitution were over, the Prime Minister made a statement in the Parliament to request the King to declare June 2 as the day for adopting and promulgating the Constitution. June 2 had been celebrated thus far as the Coronation Day of the Fourth King and also as social forestry day. It used to be celebrated as a national holiday. Many parliamentarians made impassioned submission to declare June 2 as Constitution Day and as a token of tribute to the Fourth King, the architect of the Constitution.

On May 30, the Chairman of the Constitution drafting committee conveyed the royal views to the joint sitting of parliament which stated that the country will celebrate Constitution Day dedicating it to the

Fourth King. The date would be proposed by the Prime Minister, the Chief Justice, and the Speaker of the NA, and approved by the King.

His Majesty the King said that he was touched by the desire of the nation's highest legislative body to dedicate the Constitution to the fourth Druk Gyalpo, the Father of the Constitution. But the signing ceremony need not be hurried. The Constitution, which was adopted for the present generation and for posterity, would be signed only once in the country's history. Therefore, the *gatoen* and *tendryil*²¹ must be well organized and all the people of Bhutan must share the spirit of occasion.²²

Since the Parliament would be in session for another month, the King advised that the Constitution signing ceremony be held toward the end of the session. There would be enough time to organize the historic event. He also advised the Prime Minister, the Chief Justice, and the Speaker to discuss the issue and propose a suitable date - either June 2 or November 11 - as Constitution Day or Democracy Day in honour of the His Majesty the Fourth Druk Gyalpo. Obviously the suggestion for June 2 was that of the following year, not the following week as the parliamentarians intended. The signing ceremony however, took place on 18 July 2008.

The King signed 'The Constitution of the Kingdom of Bhutan' at 10.06 a.m. on 18 July 2008 in the *kuenra* (assembly hall of the state monk body) of Tashichho Dzong. There were three copies of the Constitution, one of which was done in gold. The King signed in all of them. Following him, the Prime Minister led the seventy two members of Parliament in signing the Constitution. The Chief Justice signed last.

The day before the Constitution was signed, prayer ceremonies were organized in monastic institutions all over the country to solemnize the occasion. Before dusk, copies of the Constitution were taken inside the *goenkhang* of Tashichho Dzong and kept on its altar. This *goenkhang*, like others in all *dzongs* around the country, is a temple of Bhutan's guardian deities. In the early hours of the following day, two *thongdrels* or huge appliqués of Guru Rinpoche and one of *neten chudrug* or the

21 Celebrations and prayer ceremonies.

22 Kuensel, 31 May 2008.

sixteen arhats²³ were unfurled from the walls of monasteries in the courtyard of Tashichho Dzong. Since the day was declared a public holiday, thousands of people had already started to flock inside the courtyard to receive blessings from the *thongdrels* and witness the historic moment. Later, copies of the Constitution were taken to the *kuenra* from the *goenkhang* escorted by Dorji Lopen, who is considered to be the second highest abbot of the state monastic community. They were placed on the *chhoethri* located in front of the altar of the huge image of Buddha Shakya Muni. Sacred national treasures and symbols such as Kutshab Ternga and Zhabdrung Khamsum Zilnon²⁴ were also installed in front of Buddha Shakya Muni image for the occasion.

Before signing the Constitution, the King addressed the congregation paying homage to his father, the architect of Bhutan's democracy. He said, "In our own country, many generations into the future, the

23 The sixteen arhats are bodhisattvas, who have fully mastered the Buddhist teachings and attained nirvana. During the first Buddhist Council in Rajgir – held three months after Buddha's parinirvana - they are said to have vowed to renounce nirvana in order to devote themselves to the liberation of other sentient beings.

24 The image of Zhabdrung Khamsum Zilnon is a very important and sacred relic of the state monastic community. Zhabdrung Rinpoche had instructed the artisan Trulku Zing to make this image from a mixture of many precious materials and medicinal items. A smaller image of himself which he had made and is said to have spoken was installed inside it. Its face was gilded with gold that was offered by the mermaid of Mo Chu river in Punakha. Zhabdrung Rinpoche consecrated and blessed the image. At the end of the consecration, he is said to have asked if it could serve as his representative when he was no longer alive. The image is said to have nodded. Therefore, the chin of this image is lowered towards the chest. Zhabdrung Rinpoche had told that the blessings of this image were equal to his own. It would be his representative after he was gone. Replicas of this image were later made and kept as sacred relics in different dzongs. After Zhabdrung Rinpoche had entered retreat, the tradition of taking this image during the biannual migration of the monastic community between Thimphu and Punakha, and of keeping it at the top of rows of monks seated for zhugdrel ceremony began. This image is retained inside a golden encasement and not opened for public viewing. But it was opened on the occasion of signing of the Constitution.

Constitution will continue to inspire our people as it stands testimony to a selfless and extraordinary leadership." The Constitution, which was discussed with the people, would thereafter be the root and foundation of all laws in the country.

After the King, Prime Minister, parliamentarians and the Chief Justice signed, a *zhugdrel* ceremony was held following which everyone recited a short prayer called *deshe tenpa*. The Constitution was then opened for public viewing. Thousands of people walked by, saying prayers and offering *nyendars*. The offering of *nyendar* or cash as token of worship was an interesting event. Generally, people offer *nyendar* to a lama after receiving his blessings or to sacred books like tantras and sutras and to sacred statues and images. Thus, the fact that the offering of *nyendar* to the Constitution was made possible indicates the reification of the Constitution as a highly sacred document. In the afternoon, the Chief Justice took the Constitution to the NA hall, located opposite to Tashichho Dzong, across the Wangchu river. The Speaker received the Constitution and placed it on the throne in the hall. Parliamentarians again recited *deshe tenpa* prayer led by some monks. This ended the historic signing of the Constitution. The Constitution has been sanctified.

Sanctity is tested

The signing ceremony has elevated the Constitution as a highly sanctified document. How this sanctified 'mother of all laws' guide the conduct of the new government became a hotly contested issue soon after. In his first state of the nation address to Parliament, the Prime Minister engaged the NC for having invoked the Constitution in assessing government actions and therefore, questioned its sanctity. The Prime Minister accused it of de-sanctifying a sacred document. He implied that NC would be implicated for failures of the government for repeatedly invoking the Constitution to assess government actions, and hence de-sanctifying it.

For democracy to succeed and to be irreversibly sustained, our polity must be guided and inspired by the Constitution **which was gifted by our Kings and sanctified by the collective wisdom of our people...** My government is committed to the further sanctification

of the Constitution. But this is likely to be thwarted if we liken it to a detailed manual containing prescriptions for every government action...There is danger in imposing upon ourselves rigid interpretation of the Constitution as is often the route taken by politicians elsewhere bringing about crises and destabilization. When we insist on questioning government actions on the basis of narrow interpretation or the absence of specific provisions in the Constitution, we are in danger of constraining government from acting; of not using the Constitution as a facilitator of good and responsible governance but for casting doubts and suspicions to make government weak and fearful...When the Constitution is unnecessarily invoked and tested, politics will, inevitably, shift from business of governance and legislation to that of wasteful semantics, confrontational debates and divisive ideological posturing. In the end, **we will trample the hallowed grounds that gave rise to the Constitution** and question the adequacy of the very document that is the paradigm for the conduct of our society...Tamper with the constitution once and we will have loosened the very foundation of our society and deprived it of its ultimate anchor and guiding light. We will be left with an ordinary document the validity of which will always be a suspect...If this were to happen then, we would have to share the moral guilt and regret of having caused the people to lose their faith in democracy and the Constitution itself²⁵ (emphasis mine).

Although the Prime Minister does not refer to the NC directly in this published document, he made references to the present NC during his oral presentation to the Parliament on 26 June 2008. Besides, there was no doubt to both the parliamentarians as well as to the people viewing and hearing his speech live on TV and radio that the NC was being implicated. He would later tell the MNC in a closed door meeting that he was appealing rather than chiding the councillors.²⁶

Nearly a year after the promulgation of the Constitution, the NC has raised serious concerns on some government decisions citing the constitutionality of these decisions. Besides legislation, the NC has the

25Royal Government of Bhutan. 2009. The First Annual Report of the Hon'ble Prime Minister to the Third Session of the First Parliament on The State of the National (including legislative plans) (26th June 2009). pp. 81-82.

26 Personal notes titled The Reality of Perception.

important mandate of conducting public review of policies and issues and scrutinizing state function.²⁷ It was in the exercise of this review mandate that the NC expressed its reservations on certain government decisions that would have far reaching consequences.

The first issue arose in the very first session of the NC. After the joint sitting of the Parliament concluded deliberation on the Constitution, the two houses convened separately to discuss other bills. One among them was the Budget and Appropriation Bill (BAB). It must be mentioned here that money and financial bills must always originate in the NA but the NC considers that it has the authority to pass them like any other bills. When this Bill was presented to the NC on 1st July 2008, the members realized that there was a huge budget without a 'line item' earmarked for the Ministry of Finance. Of course everyone suspected that the money was kept to fund the government's decision of granting Nu.15 million each annually to the ruling and opposition parties for a period of three years. That would amount to Nu.90 million. The other project of this hidden budget was to provide Nu.2 million annually to each of the 47 MNA as Constituency Development Grant (CDG). The money would be used by MNA to fund development activities in their constituencies that are not covered within 'normal budgetary framework.'

Once the Finance Minister acknowledged that the money was intended for these two purposes, the MNC objected on the ground that both projects would be unconstitutional. First, the Constitution clearly states that state funding of political parties was permissible only during election time when candidates are provided equal amount of state fund to ensure free and fair election and avoid undue influence of money power. Second, the sources of revenue for political parties were registration fees of members, annual membership renewal fee, and an annual voluntary contribution within the ceiling of Nu.100,000.²⁸ The

27 National Council of Bhutan. 2008. The National Council Act of the Kingdom of Bhutan 2008. p. 3.

28 According to section 64 of the Election Act of Bhutan, "No political party shall accept financial contributions or in kind contributions, other than those voluntarily offered to it by any of its registered members, of an amount or value exceeding Ngultrum 100,000/- per member in an election to National

Constitution, Election Act and the Public Election Fund Act do not mention anywhere that state funding of political parties after their election is permissible.

The NC objected to CDG by arguing that the job of parliamentarians is to make laws and review government actions, not involve in development activities. It is the responsibility of the central and local governments to involve in development activities. Besides, all funds should be channeled through the normal budgetary framework, not outside it. The CDG would bring undue advantage to sitting MNA in future election. This would defeat the very idea of free and fair election. CDG is unconstitutional since it becomes the medium for legislators to intervene in the executive's responsibility whereas the Constitution calls for separation of powers between the judiciary, executive and the legislator. Besides, the Constitution also requires local governments to be apolitical. CDG opens the way for MNA to intrude into the domain of local governments. The NC conveyed a message that it supports the entire government budget except for funds for these two projects.

Since the BAB was not approved by the NC, a joint sitting was convened under the command of the King. This is a parliamentary procedure required by the Constitution. In the King's *kasho*, four bills were to be deliberated in the joint sitting. They were the Election Bill, National Council Bill, Parliamentary Entitlement Bills and the National Budget and Appropriation Bill. Two *kasho* were issued separately for these bills.²⁹ Except for the BAB, all other bills were deliberated upon, voted, passed and later granted assent by the King. For example, the Parliamentary Entitlement Bill was passed "with 94% of the members endorsing the Bill by raising of hands..."³⁰ The National Council Bill

Assembly." Section 65 states, "The Election Commission shall review and revise value and amount stipulated in section 64 from time to time as it may deem appropriate." However, the Commission raised the ceiling retrospectively to Nu.500,000 recently.

29 See Appendix 'C' and Appendix 'D', Resolutions of the 1st Session of the First Parliament of Bhutan, pp.287-288.

30 Resolutions of the 1st Session of the First Parliament of Bhutan, p. 261.

was passed 'with the concurrence of all the members of Parliament...'³¹ The Election Bill was passed with 47 members voting in favour and 21 against the bill.³² However, the BAB was not presented. By then a new argument has developed among the members of the ruling party. They argued that according to Article 14.9 of the Constitution, it is only the NA that has the authority to approve the budget. The NC has no role in its approval. The NC argued that although the NA would originate and approve the budget, the Parliament (which includes both the houses and the King) must authorize the withdrawal of money from the Consolidated Fund as provided for in article 14.3 of the Constitution. Withdrawal must take place through the BAB. A budget is a financial plan of spending and expenditure as defined in the Public Finance Act whereas to appropriate is to authorize expenditure. Thus, the government needs an annual Budget and Appropriation Act passed by parliament to receive authorization of expenditure they have identified in the budget. In other words, budget and appropriation do not mean the same thing.

Before the debate on these two matters convened, the government has withdrawn the idea of state-funding for political parties. But they tabled the CDG as a separate issue on the agenda. This was not according to parliamentary procedure since the *kasho* did not and would not mention CDG specifically outside the BAB. The NC objected to this and insisted that the BAB must be discussed instead. As the debate protracted late into the night, many MNA supported the CDG while those of the NC continued to object. At one point, three members of NC said that even the procedure of using the CDG was unclear. The Speaker said that the procedure of utilizing CDG would be made available to parliamentarians in the second session of Parliament and ended the session by implying that the Parliament endorsed the proposal. Only the procedures had to be made clear now. The procedures were made available not in the formal session of the Parliament in its second sitting. Rather it was distributed and assumed to be accepted. The NC passed a resolution about the

31 Ibid, 251.

32 Ibid, 248.

unconstitutionality of CDG and submitted its views to the King as is provided under Article 11.2 of the Constitution.

Meanwhile, the government had appointed four political party workers as officials in the cabinet secretariat. The NC again objected stating that arbitrary appointment of party workers in a prestigious and high public office was against the principle of recruitment in civil service based on merit, open competition and fair selection process. Besides, the Constitution states that the civil service has to be apolitical. These appointments were seen as government patronage to their supporters. The NC debated on this and unanimously agreed that this also needs to be brought to the attention of the King. Later, a review report was submitted.

The Supreme Court had been established only recently. Article 21.8 of the Constitution states that 'Where a question of law or fact is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court, the Druk Gyalpo may refer the question to the Supreme Court of its consideration, which shall hear the reference and submit its opinion to him.' Although both issues are with the King, it is clear that it is his prerogative whether to refer to the Supreme Court or not for its opinion. Meanwhile, the four party workers continue to work in the cabinet secretariat. The government has also decided to implement the CDG despite widespread public opposition to it.

Between October-December 2008, many elected heads GYT and DYT had ended their three-year tenure. There are 205 GYT and 20 DYT in the country. Under the Constitution, the DYTs and GYT would be dissolved and a local government called Gewog Tshogde (GT) and Dzongkhag Tshogdu (DT) would be elected in their place. The government however, issued an order in November 2008 instructing that elections be held to DYTs and GYT based on their Acts passed by the former National Assembly in 2002. The instruction stated however, clarified that those who were elected would serve only for a few months since new elections would be called as soon as the Local Government Act was reviewed in line with the Constitution.

The National Council felt that if this election were held, this would not only violate the Constitution but confuse the people in the villages

thoroughly. It prepared a report and submitted to the King, the Prime Minister and Speaker of Parliament.

The main arguments of this report, which expressed serious concern over the constitutionality of the elections, were as follows. First, the two Acts on which this election would have been based were repealed in 2007 by the Local Government Act. Therefore, elections would be based on laws that no longer existed. Second, these Acts allowed only voters aged 21 years and above to vote whereas voters aged 18 and above voted in the parliamentary elections just a few months earlier. Third, these Acts would allow monks and religious personalities to vote whereas they were barred from voting in the parliamentary elections. Fourth, members of political parties would contest as candidates, which is not permissible under the Election Act unless they formally resign from their parties and complete a year.

The King issued a *kasho* ten days later to the ECB suggesting that the incumbent heads be allowed to continue till relevant laws are reviewed to harmonize them with the Constitution.

The recently announced Gup elections to be held as per Acts that have been repealed and which in fundamental ways are contrary to the provisions of the Constitution, will not draw any legitimacy even as in interim measure. Moreover, the cost of conducting new elections again after a period of a few months will cause significant financial burden to the exchequer and enormous inconvenience to the general public and the bureaucracy.

Thus, as a special case, it may be best to extend the terms of incumbent gups until the Election Commission of Bhutan completes the delimitation process by end-March 2009 and until relevant acts under which the elections are to be held, have been revised in accordance with the Constitution. At such time, the ECB may call and hold elections in keeping with the Constitution and all relevant laws under it. In so doing, we will have taken into account the immediate needs of local governance as well as the long-term interests of our People and Nation, and of Democracy.³³

33 Kasho (Royal Decree). Issued to the Chief Election Commissioner of Bhutan on 9 December 2008.

The Prime Minister had also submitted his concurrence to the King that this was an unconstitutional move.

It is these instances of the NC's position that the Prime Minister was referring to in his state of the nation address. Obviously he considered issues such as CDG and appointment of party workers in his office as constitutional. In his view, the NC had narrowly interpreted the Constitution and de-sanctified it. Rather than revere its sanctity, the NC had likened it to a daily manual to assess government action. The Prime Minister did not mention anything about NC's support to the government, which was extended by way of passing government bills, ratifying international conventions and protocols it has signed, and support to the Tenth Five-Year Plan. Hence, the charge of de-sanctifying the Constitution by reviewing government action based on its provision was repudiated by the NC.

His state of the nation address was delivered for two and half hours on Friday 26 June. There was no time for debate. Over the weekend, the Prime Minister left for a state visit to India. However, the NC agreed on a special session to discuss the Prime Minister's report on the very first day of its sitting, which took place on 1st July 2009. In that sitting, many MNC expressed their appreciation for the achievements of the government in its first year but challenged and condemned the Prime Minister's chastising of the NC. Each of his arguments was dissected and rebutted. The principle argument was that the Constitution has not been de-sanctified. Rather its sanctity has been reinforced by invoking its provisions to ensure that public policies are not conducted in violation of prevailing laws. Rather than lock up the Constitution as a sacred document, the NC argued that it is far better to use it as a manual in the conduct of our public life and policies. In the resolution passed that day, the NC rejected the Prime Minister's views and statements.

Conclusion

An important aspect of discourse on democracy in Bhutan hinges on the concept of it being a gift from King Jigme Singye Wangchuck as embodied by the Constitution. The central issue that concerned the parliamentarians before endorsing the draft Constitution was to either

pass it intact or debate on its provisions. This dilemma was posed by the moral issue of questioning a royal gift. The prevailing perception of the Constitution as a sacred gift that would be defiled by discussions and debates in the Parliament let alone by possible amendments was very strong. Nevertheless, debates and discussions did take place. Amendments were also made. The political space within which deliberations and amendments became possible by avoiding a moral question was provided by some important factors. First, the idea that the Constitution and therefore democracy was the embodiment of the will of King Jigme Singye Wangchuck was unquestioned. It was honoured. Second, the parliamentarians cast the debate within the perspective of seeking clarifications on important provisions and articles from the Chairman of the Drafting Committee. Third, the argument that once the Constitution was promulgated, it must not be amended for many decades made amenable the idea that this was the right time and opportunity to thrash out issues and propose possible amendments.

More than a year with the experience of parliamentary democracy, the Constitution as a gift of the King and a sanctified document became the context within which debates in the Parliament took place. Differences however, persist as to how that sanctity is to be preserved and honoured. But differences, parliamentarians agree, are crucial to activating democracy as much as resolving them within the framework of rule of law is a necessary component of consolidating democracy.