

Parliament: The Legislative Arm of the Bhutanese State

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Introduction

‘One of the most important responsibilities of a king is to enable the people to govern and look after the country through the establishment of a dynamic political system’.¹ This conviction had led their Majesties the Fourth and Fifth Kings to complete the change in political system by giving the people the Constitution wherein *We*, the people, pledge to ‘strengthen the sovereignty of Bhutan, to secure the blessings of liberty, to ensure justice and tranquility and to enhance the unity, happiness and wellbeing of the people for all time’.²

Until 2007, the legislative responsibility in Bhutan was borne by the erstwhile National Assembly (NA), established in January 1953,³ with a total strength of 150 members representing the people, the Central Monk Body and the executive. The current Parliament, constituted by the 47-member National Assembly and twenty five-member National Council (NC) under the guidance of His Majesty the Druk Gyalpo, is now the legislative arm of the State.

It may be mentioned that the legislators in the earlier NA were also elected directly by the people. In 1998 and 2003, members of the cabinet were also elected by the NA from the list of secretaries and deputy ministers nominated as candidates. This was to show an example of responsible voting to the people ahead of the introduction of democracy. A nationwide election of *Gups* (today they are chairpersons of *Gerwog Tshogde*—the county assembly) was based on universal adult franchise and secret ballot. An impressively high proportion of citizens voted to elect their representatives to the NC on 31st December 2007 and to the NA on 24th March 2008.⁴

¹His Majesty the Fourth King, quoted by Kuenlay Tshering, NC Reflections 2009, p.19

²Parliament of Bhutan (2008): The Constitution of the Kingdom of Bhutan, Royal Government of Bhutan.

³National Assembly of Bhutan, Resolution of the 81st Session, 2003 (p.159).

⁴Centre for Research Initiative (2009): *Drukyl Decides: In the Minds of Bhutan's First Voters*. Thimphu.

The Parliament

The Bhutanese Parliament consists of the Druk Gyalpo, the NC and the NA. Each of the 20 districts directly elects one member to the NC in a separate election held every five years while five members are appointed by the Druk Gyalpo for a term of five years and must be re-elected/re-appointed for the next term. Although the NC is viewed by some as being equivalent to the Upper House in other countries, it is an apolitical body and its members have no affiliation to any political party. In the NA, the party winning the majority of seats in the general election forms the government while the other party assumes the role of the Opposition.

This article presents an analysis of the legislative and support functions of Parliament based on the author's personal understanding.⁵ The discussion will be on substantive or positive laws rather than natural laws.

Legislation

The Bhutanese Parliament is vested with all the powers of enacting laws (Article 10.1). Legislation means considering the adoption of laws collectively. It is a very important decision which must be based on adequate knowledge and information as it affects the quality of life in the country. A popular adage in Bhutan goes thus: *Gyalpo lu che-pa bang, bang lu gop de-kyid, de-kyid kyi tsa-wa thrim* (the King has affection for his subjects, the subjects' needs are peace and wellbeing which in turn are rooted in the law). Parliament, therefore, has the utmost duty of promoting peace, happiness and wellbeing of the people through the enactment of good laws.

However, making a good law is not as simple as it appears. It actually passes rigorous scrutiny and has to cross a number of procedural hurdles before it is adopted by Parliament. As such, the legislative process needs to be exhaustive, leaving little or no room for errors. The Bhutanese law-making process has at least ten distinct steps, starting from the drafting of a bill to the time it becomes an Act of Parliament. Our readers may recall that the First Parliament initiated as many as 38 Acts, including several amendments, all of which were passed.

Qualified lawyers available in various agencies and/or at the Office of the Attorney General, are involved in either drafting or reviewing the draft bill. Then the cabinet decides whether a bill is worthy of parliamentary consideration or not. At these preliminary stages the constitutionality of a bill is studied and analysed.

⁵Jagar Dorji was a member of the National Council from 2008 to 2013.

Once in Parliament, there are no fewer than nine steps before a bill is finally enacted into law. Much has been said about the Tobacco Act, particularly branding it as a dictatorial law, especially when a young man was caught travelling with tobacco products. Although these steps were employed exhaustively and deliberations held at length, the Tobacco Act had to be tabled for amendment in the Second Parliament. While the amendment was completed, apparently bringing relief to those affected by its initial form, our parliamentarians may need—perhaps they have already done so—to reflect further on this matter. The focus of reflection should be the process rather than the contents of the amendment. It is understandable if an act is implemented for a number of years and then sought to be amended, to take into account changing situations.

Amendment of the Tobacco Act by the Second Parliament is indicative of improvement in the process of legislation. In this particular example, several factors may have played a role.

Weak Consultations: Despite the completion of all the steps required to scrutinise a bill before it becomes an act, wider public consultations may not have taken place. It is also possible that reaction to the law was triggered only when it started to affect the people. In both cases, it is quite evident that parliament needs to have a wider consultation with the people on matters that affect their lives.

The recent launch of the Strategic Development Plan and Virtual Zomdu aimed to ‘enhance frequency of citizens’ interactions with their representatives in the Parliament’⁶ opens a new platform for public consultations. This strategy also captures the popularity of social media, which often builds up pressure on the Parliament when a law does not serve the interest of the majority, as in the case of the Tobacco Act. Just how this facility will work to improve public participation remains an aspiration, particularly of the mass that has no access to the Internet.

Inadequate Work by Parliamentary Committees: Most of the work of Parliament is said to take place in the committees, which also facilitate public consultations. It is normally observed that when a committee makes proposals that are profound and well informed, the House makes better decisions. The debate on *thromde* in the summer session of 2015 was an example of the Parliament relying more on what was submitted by the local governments, without in-depth dialogue and consultations.

⁶The National Council (2015): NC strategic plan for virtual zomdu, launched on 16 September 2015.

Procedural Obstructions: Procedural obstructions in Parliament must not be used to prevent the enactment of a bill, but to allow more time for exhaustive discussions and explore all facets of the proposed law. However, in the case of the Tobacco Act, completing all the legislative procedural steps, though necessary, did not help make informed decisions. It may well be that the Bhutanese legislative process has lesser procedural hurdles in the way of passing laws or fewer eyes for scrutiny.

Unlike the Upper Houses of many parliaments, the NC rarely created any procedural delay in the legislative process, in the first five years. The House of Lords in the British Parliament does not obstruct a bill, but it delays the process, allowing more time to contemplate on diverse views and for scrutiny.⁷ This is in consonance with the Bhutanese maxim that every additional night slept over a matter has the merit of generating better ideas.

Lack of Experience: The Constitution and the Election Act do not lay down any pre-requisite based on professional experience for a candidate to parliament. As such, the lack of adequate legislative experience of some members of parliament (MPs) may have also played a role. However, in addition to the existing basic pre-qualification of a university degree, a number of our MPs have now gained adequate experience, which will help improve productive parliamentary consultations.

Cultural Factors: Again, with reference to the Tobacco Act, there was strong support on the ban of tobacco and related products in place for over four years prior to the enactment of the law. The legislators recognised and used the cultural factor as the basis for protecting the health of the people rather than the rights of others. Sometimes, the strength of lobbying from the proponent of a bill may also sway a lawmaker, especially at the time of voting. It is here that each parliamentarian applies his or her rational mind, whether to go by those who push the matter or by their own informed judgment.

Accountability: The word accountability is used here, as it is already one of the cornerstones of good governance in Bhutan. Democracy was introduced to the people of Bhutan with the conviction that the inherently good principles of consensus will not fall prey to mismanagement and corrupt practices of new politicians.⁸

Parliament, therefore, bears the sacred responsibility to build a strong foundation for a vibrant democracy and its members are expected to demonstrate a deep adherence

⁷The Hansard Society (2001): The Challenge for Parliament: Making Government Accountable. The report of the Hansard Society Commission on Parliamentary Scrutiny, London, UK.

⁸The National Assembly (2005): Resolutions of the 85th Session, 2005.

to the rule of law, judicious exercise of power to promote public benefit and trust, and to building a strong institution of governance. His Majesty the King had also reminded Parliament of the experience of nations where democracy has failed and to prevent ‘the conditions to develop such occurrence in Bhutan’.⁹

In a democratic system, the government is not a stand-alone entity that decides and acts on its own on policies and programmes affecting the population at large. An important task of Parliament in Bhutan, as anywhere else, is to make the government accountable for its activities on behalf of the people. The 85th session of the previous NA deliberated at length on the *reliability* of the new Parliament, following which it recognised the need for a bicameral system in the legislature. The NC was purposely designed to be an apolitical body in the Constitution.

It cannot be denied that we are culturally strong in maintaining the hierarchy of command in our organisations. Sometimes, loyalty to the party may get in the way of fulfilling responsibilities that are more important to the nation. A number of MPs in the First Parliament faced the dilemma in accepting the Constitutional Development Grant (CDG) but they stood by the party decision and allowed the grant to move ahead, although it was unconstitutional. In spite of its helpfulness to the local governments, which are always in need of additional funds, this move was faced with objections from the National Council,¹⁰ which only points to the fact that parliamentary decisions need to accommodate present needs as well as future implications.

The subject of accountability also includes Parliament itself. Sooner or later Parliament may have to be assessed in terms of its impact on society.

Parliamentary Devices

Parliamentary procedures have been put in place to hold the government accountable for its plans, policies and activities. Government ministers respond to questions on matters of public importance pertaining to their respective ministries. Members also draw attention of the government, individual ministries, and relevant agencies to issues that require urgent response.

⁹Dasho Karma Yezer Raydi (2009) ‘Reflections of the constitution’, in *NC Reflections – Biannual Magazine of the National Council of Bhutan*, Thimphu. April 2009 (pp.27-29). Dasho Karma Yoezer Raydi is an eminent member of the National Council since 2008.

¹⁰Tashi Wangmo & Karma Y. Raydi (2009): ‘Constitutional Development Grant’, in *NC Reflections – Biannual Magazine of the National Council of Bhutan*, Thimphu. April 2009 (pp. 46-51). Tashi Wangmo is an eminent member of the National Council since 2008.

To be more effective in its mission of ensuring good governance, Parliament must stay at the apex of accountability to guarantee that all its acts must be in accordance with the rule of law.¹¹ The benefit of a bicameral parliament is that the scrutiny of government activities is unbiased and appropriate. As members of the NA may often be caught up in dilemmas of partisan politics as mentioned earlier, the role of the apolitical NC becomes pertinent.

However, when in the future the NC forges a link with political parties and loses its apolitical nature, holding the government accountable may not remain an unbiased act. The Australian Senate at one time, for example, had fewer members from the ruling party than from the Opposition. That was the time the Senate was said to have functioned relatively more effectively. New Zealand had to do away with its Senate because it was not apolitical and was ineffective in its functions.¹²

Financial scrutiny is an important agenda in the business of Parliament. It is Parliament that approves money for the planned development activities from the consolidated funds. Parliament also reviews and deliberates over the audit report on public expenditure. Whether the parliamentary instruments are effective or not remains a matter of speculation best left to the public.

Parliamentary devices also ensure that democracy continues to promote the well-being of the people even if the wrong people happen to be in the ruling government, as implied in the speech of the Prime Minister of Bhutan at the opening of the Regional Conference in Paro in October 2009.¹³

Challenges and Limitations

- On the legislative front, the challenge for Parliament may generally be in making laws that do not need to be re-tabled in the succeeding Parliament. Consulting the largely illiterate public may pose a huge challenge for the MPs at present.
- Improving public participation in the legislative processes as well as educating the public on the benefits of respecting the rule of law, as the real basis of wellbeing of citizens, will continue to be a challenge.
- On holding the government accountable, the challenge lies in making the executive act upon the recommendation for improvement, especially when there are issues of mediocrity at all levels, characterised by poor infrastructure,

¹¹The Hansard Society, *ibid.*

¹²Jagar Dorji (2010), 'The House of Review: Beyond the Nuts and Bolts', in 'NC reflections – Biannual magazine of the National Council of Bhutan', Thimphu, February 2010 (pp. 1-5).

¹³The regional conference on deepening and sustaining democracy in Asia, 12-14 October, 2009, Zhiwaling, Paro.

poor quality work, habitual carelessness, and continued acts of corruption.

- The NC has a greater responsibility to warrant the checks and balances in the parliamentary and government decisions to complete its role as the House of Review.
- Apart from the media that publishes articles covering parliamentary debates and decisions, the lack of forums that critique Parliament itself may be a limitation in the system.

An Aspiration

Bhutanese Parliament needs to develop a culture of scrutiny that holds the government accountable while also ensuring that its recommendations are followed and actions taken. It also falls on Parliament to avoid situations such as street marches and rallies that may not be democratically incorrect, but are absolutely wasteful and destructive in their outcomes.

Democracy in Bhutan has been handed to the people from the Golden Throne with great dignity, trust and confidence. Parliament needs to maintain these three-pronged virtues at the current level of sanctity, always bearing in mind the genesis of democracy.