



# INNOVATIONS FOR SUCCESSFUL SOCIETIES

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MUKHERJEE: It is the 20<sup>th</sup> of November. I am with Lyonpo Sonam Tobgye, who is the Honorable Chief Justice of Bhutan. Sir, could I start by asking you to provide a brief background of yourself and your involvement in Bhutan's judiciary?

TOBGYE: *I am the chief justice of Bhutan. I have been in this post for the last 18-1/2 years. During the Fourth King's reign, there were many reforms, and I had the pleasure of being involved in most of these reforms. The first reform was on procedural reforms of the judiciary that resulted in the amendment of civil and criminal court procedure. There were penal reforms that culminated in the enactment of the Penal Code of Bhutan. The third one was the Evidence Act that was enacted by the Parliament. As a corollary to justice, the Advocate Act is very important. We were able to enact the Advocate Act, or the Jabmi Act. Then I was the chairperson who was involved in the drafting of the Civil Society Act and some other processes.*

*So I had the honor of being involved in some of the major judicial reforms. The results of judicial reforms were first, to have or to enhance access to justice, second, to facilitate efficient judicial proceedings and trials third, to empower people or the litigants. The fourth one was, to a certain extent, sharing of judicial information whereby the judiciary was involved in dissemination of law.*

*So it was multi-pronged. One was the legislation; number two was the institutional improvement; third was the empowerment of the people; and fourth was making the people aware of the law so that they are informed about the law, or they could be prevented from breaking the law at the initial stage. It was a philosophy of the Fourth King, who said that if you can prevent adjudication, it would be good. The judicial philosophy of the Fourth King can be summarized under four headings. First, access to justice should be as expeditious as possible. Second, the processes must be inexpensive. Third, litigants should be able to settle the issues as much as possible, and amicably. And the fourth is to a great extent through the hearing process—there should be satisfaction. So I was involved in these processes. Consequently, there is no undue delay in delivering justice in Bhutan. We have only about 53 cases which have been pending for more than one year. This was the aim and objective and we were able to fulfill that.*

*And of course, my major role was in the drafting of the constitution, whereby I was appointed as the chairperson of that august body, the drafting committee. The members of the drafting committee were broad-based. It had two monks representing His Holiness and the ecclesiastical society in Bhutan, because the religious society had played a vital historical role in the past, and they are very important now also. We had 20 members directly elected by the people, whose sole responsibility was drafting the constitution. There were six members from the former Royal Advisory Council; they were also elected, but they were not directly elected for that. Then we had the speaker of the National Assembly, who was also elected, and then there were 13 representatives of the government, and then there were three members from the judiciary.*

MUKHERJEE: You mentioned a number of procedural reforms that took place. Could you talk a little bit about the timeline along which these took place? Did you start your tenure in 1991?

TOBGYE: Yes, I started in 1991.

MUKHERJEE: Chronologically, what was the list of priorities?

TOBGYE: *The most important documentation was in 1985. His Majesty the Fourth King of Bhutan wanted a clean government, and he initiated a drive against corruption that resulted in updating general auditing and accounting rules and regulations. The bill was passed in 1989. That was very important for fighting corruption. Simultaneously, His Majesty started civil service reform. At that time I was auditor general—holding dual posts, auditor general and civil service secretary. We drafted and passed major civil service policy reforms for Bhutan, in the form of the Civil Service Rules and Regulations in 1990. They were administrative reforms.*

*The third one, civil and criminal court procedure, was finally enacted in 2001. This was basically for institutional and procedural reforms. The corollary to Justice is the Advocate Act, which was enacted in 2003. Then His Majesty launched penal reform, reformative and deterrent in its objectives and humanizing the sentencing part of it, that culminated as the Penal Code of Bhutan in 2004. Again, for justice, evidence is very important, and the Evidence Act was passed in 2005. All these laws are very modern in certain applications, based on the golden past of Bhutanese tradition, culture and values.*

*To have a judiciary with all these acts was not enough. Consequently, we drafted and enacted the Judicial Service Act of Bhutan in 2007, and this is a very forward-looking and modern judicial service act that grants personal independence to the judiciary.*

*In democracy, civil society plays an important role. To enhance their participation, to induce accountability, and to enhance the public confidence, we had a general guideline for civil society organization, which was called the Civil Society Organization Act of 2007. Bhutan, being a religious country, where religion has a very pervasive and enduring influence—we have a Religious Act so that we will not drift into fundamentalism or, in a negative way, religion may not have protection. So we had the Religious Organization Act of Bhutan in 2007. These are some of the major legislative judicial reforms.*

MUKHERJEE: Thank you. So it seems that there were a variety of areas in which reforms were carried out in legal and judicial reform. Now I'd like to ask you what was the original impetus for the reforms. What was the challenge that His Majesty was addressing through these various reforms?

TOBGYE: *The challenge, per se, was not there. But there is a saying in Bhutanese that the wise person should be able to see into the future and not react to the situation. In short, being proactive is better than reactive.*

MUKHERJEE: Sir, what was your role in all these regulations and acts coming out? Did you play a leadership role from the court side?

TOBGYE: Yes, I did play a leadership role in this.

MUKHERJEE: In framing these various acts, did you find there was a problem of finding the right kind of people to help you in drafting the legislation? Were you able to find the experts required for a certain area?

TOBGYE: *Not really that much. There were problems, obviously. To say that there aren't problems is wrong. If there is no solution to the problem, then we are the problem ourselves. So therefore we must address ourselves. While we were drafting these acts, we had to give adequate and legitimate recognition or cognizance to the past, because we are the product of that past, its values and traditions. The applicability of the laws to an emerging society, the delivery system of these laws, was very important. If they were impractical, then they were not good laws. We also had to look into the emerging situation in a world context; therefore, we had a lot of scholars working on these subjects, and we took cognizance of them. So we benefited tremendously from the past, present, and the global situation. Another objective the law must fulfill is to provide justice, the first promise to humanity. It must solve problems. It must respond to the aspirations of the people, and it must promote harmony in a society. These were the objectives based on the foundation of the golden past, and we have drafted them. Yes, we had some problems. Obviously, at the initial stage, the Internet was not very widely used; therefore, access to information was basically through documentation. Documents were a bit of a problem. Also, consultations with the people who had hands-on experience was another problem. But it progressed with the changing times, and especially when the Internet became more accessible. We were able to use it extensively, and I like to think that we have good acts that will govern, safeguard the freedom, rights and liberties of our people.*

MUKHERJEE: The Internet only came into Bhutan in a big way in 1999. Before that, how did you go about sourcing information?

TOBGYE: *As I said, it was basically documentation. We had to read numerous books. We had to get numerous reform papers. Also, the high court has a small research division. We looked into our past literature.*

MUKHERJEE: In framing these acts, did you consider the laws and legal systems of other countries as models or as examples that you could learn from?

TOBGYE: *Yes. If we did not learn from the wisdom and experience of others, it would be a dangerous arrogance that would undermine the future and would be a betrayal of trust in our responsibility to future generations. We as Buddhists, are a humble people. Humility is necessary, so we looked into the wisdom and knowledge of others. Applied knowledge is better than starting new research in a completely new area. So we looked into quite a number of documents; however, to say "model" reforms of other countries would be wrong.*

*I think this is one aspect that any reformer should think about. The transport and transfer of any concept into a society is quite an*

*irresponsible act. The reason being, the local culture doesn't necessarily accept the laws. When we make the laws or draft the laws, we have to say that these laws must be practicable, and above all, it must be able to touch the heart of that person so that he or she will not err again and regret or be remorseful of the past. That is our culture. That is our religious value. That is our tradition. We have to reflect on them.*

*In short, laws should not be broken because nobody sees it or nobody knows about it. We must follow laws, not in the legal parlance, but in spirit. For that spirit, transportation is not correct; however, we want to harmonize with the common pursuit of humanity throughout the world. Every person in the world, east, north, west or south suffers from pain, is happy when things go well, is united by the very fabric of humanity.*

MUKHERJEE: If you could consider the overall picture of judicial reform and legal reform that has taken place, how do you see it fitting into the larger picture of democratic reforms in Bhutan? Was it a key part of the overall reform agenda of His Majesty?

TOBGYE: *I must admit, frankly, we did not really realize that at that juncture. We took it fairly compartmentally, but in retrospect we realize that His Majesty was making different parts fit into a bigger picture of democratic reforms. Judiciary is an important part of democracy. It is an indispensable component of humanity. So it fitted in.*

MUKHERJEE: Moving on to the constitution drafting process that was a very important period in the democratic reforms that took place: Could you talk a little bit about how the process began, and go into as much detail as you'd like regarding your appointment and the formation of this committee?

TOBGYE: *It was on the 4<sup>th</sup> of September, 2001, an historical date. His Majesty summoned all the cabinet ministers, the speaker of the National Assembly, the chairman of the Royal Advisory Council and the chief justice of Bhutan. On that day, he said, "Bhutan now must have a written constitution." That was when the birth of the constitution was made known to us. His Majesty's command was made known to the public around November, by then Prime Minister, [...] sent the orders to all the organizations for the formation of drafting committee.*

*First, he wrote a submission to His Holiness to nominate two learned lamas to be members. He wrote to the chief justice to nominate three members from the judiciary with legal background. He wrote to 20 districts to elect one member from every district, solely and completely and wholly for drafting the constitution. Then he nominated 13 from other diverse organizations. That was the beginning of the committee.*

*In December, we had a religious ceremony presided over by His Majesty in the throne room for all who were assembled there, and then His Majesty formally constituted the committee. The first committee meeting lasted for a week. The first three days were unstructured discussions, unrestrained discussions. Everybody spoke of his or her visions, or her frustrations and expectations. Every word was recorded orally on the tape, and then we had them transcribed. We have almost a hundred tapes. So that was the first meeting.*

*Concerning the chairman, I think it was the governor of the cabinet who submitted my name to His Majesty for his royal consent. I do not know the true origin of the appointment of the chief justice as the chairperson. The chief justice as the chairman, conducted seven meetings. Let me first say that the first meeting was the inauguration. After that came the discussions about the aspirations of the people. The discussions that transpired from the first meeting were very important because they were the basis of the structure of the constitution.*

*From that discussion, we prepared the headings of the draft constitution. I presented that to the committee. During the second meeting, the committee started giving flesh to the skeleton that we had discussed at the first meeting. At the third meeting, there was more elaboration, and the subtle details of the constitution started to form. The fourth meeting referenced all the laws of Bhutan, all the royal decrees, all the literature, all the conventions about human rights, and we started to work on constitutional reforms by reading about a hundred constitutions. His Majesty was specific in saying that while we must respect our own traditions and culture, we must not undermine the experiences of other countries, so that's why we looked into about a hundred constitutions. In the first three meetings, we didn't refer to any other documents, the reason being we didn't want the people during the public discussions to say that we had just copied a section from here and there that did not reflect the Bhutanese culture, traditions and belief. We didn't want to do that. In short, we wanted to give legitimacy to the people of Bhutan. And then we read other documents. After cursorily looking at a hundred constitutions, we scaled them down to fifty constitutions. From fifty constitutions, we looked in detail at the constitutions of twenty countries. So we had great benefit from looking at the different constitutions in the last four meetings.*

MUKHERJEE: What was the criteria that you used to cut down from 100 to 50 to 20?

TOBGYE: *First and foremost, we looked into the different provisions of the country. Second was commonality. We saw the differences and saw the commonalities in other countries. Commonality had profound impact on us, because the commonalities united us. We looked at the differences in order not to miss out on some of the experiences and wisdom of other countries related to our own experiences. Then we either accepted or rejected.*

MUKHERJEE: And in the final twenty-two, were there any countries that stood out as being particularly influential in your decision?

TOBGYE: *Yes, obviously India, our close geographic neighbor. We have historical and cultural ties. We have very good friendship. And, above all, India is a vast country where there were so many constitutional crises and litigations; we had the benefit of those experiences. So India was one.*

*Number two, the USA, a country that has stood for almost 250 years. We felt that if certain documents served for a number of years, and that promoted certain growth and the results were good, there was something in the constitution that propelled them to their present condition or*

*situation. So we looked into America. Then we looked into some of our neighboring countries.*

*We looked into the Danish constitution because they also have a king, a monarchy. We felt there are some commonalities that we can learn from them. We looked into the Dutch Constitution, the reason being the Dutch and the Danish constitutions are short and precise. They have constitutional monarchies. So we looked into them. Then we looked into the Thai government. At that time they still had a constitutional monarchy, and also they went through a series of constitutional amendments. We tried to find out which things were amended, which things did not get amended. Something that Socrates said, I can't remember: "The laws that last have obedience, the laws that change don't have obedience". Or perhaps intrinsically there were some problems. We tried to look at those. So we looked into 22 constitutions.*

MUKHERJEE: In doing all this, did you have a team of researchers or experts assisting you with the background?

TOBGYE: *Yes, we had lawyers from the judiciary only. We had other researchers too, because we needed them while we were drafting in our language, because we had terminologies that were not commonly used, that had sound legal significance or cultural relevance, and it should have spiritual obeisance. So we had to look—we had researchers, yes.*

MUKHERJEE: Did you have any trouble finding the right number or the right quality of people to help you, or were they already there in the system?

TOBGYE: *In retrospect, I don't think we had that problem. I don't want to magnify our problems and gloss over small mistakes. My personal opinion was that you must look to seize the problem. As [John F.] Kennedy said, "You're not here to curse the darkness, but to light the candle that will dispel the darkness." So we looked into our own resources.*

MUKHERJEE: And then the committee itself that you led was an incredibly diverse group of people. Did you have any trouble building consensus or taking every point of view into account?

TOBGYE: *Yes. Diversity itself was a great blessing to us, because we were able to find a common thread to fit into that bigger tapestry of diversity. The process was painful sometimes. There were disagreements. But disagreements were very good, because we were able to find solutions. If it were "yes" all the time, then we wouldn't have looked into the inherent problems. So we had, we had a lot—but fortunately my diary says, "At the end of the meetings we always ended with smiling faces." There were a lot of arguments, but we never quarreled.*

MUKHERJEE: In trying to represent the different views and the different backgrounds and traditions of the various people on the committee, did you find that you had to sometimes compromise on the effectiveness or the speed with which you did things? Was there a tradeoff between being representative and being effective in the formulation of the constitution?

TOBGYE: *Yes. I think it would be totally wrong and/or inaccurate on my part to say there were no compromises. Yes, there were compromises. Only time*

*can say who is right. I wouldn't like to say that I was right all the time. There were compromises here and there, but fortunately, as Shakespeare said, "Time is nurse and breeder of all good." We had six years to go through it, and particularly His Majesty, their Majesties, played a very important role in harmonizing the differences and coming out with an acceptable document that will ring through the passage of time.*

MUKHERJEE: Was His Majesty at the time involved in these meetings?

TOBGYE: *No, totally independent. Where he got involved was when, after ten months, we submitted the first draft. His Majesty hadn't seen the draft; nobody knew the draft. There was no transparency at that stage, because we did not want external pressures. Having presented our first draft, then we got some comments from the government. His Majesty did not read the document at that time. He did not know the content of the document. He passed that to the cabinet.*

*We received their preliminary comments. Then we submitted our second draft, after one or two months, to His Majesty. The second draft was sent to the government of India, and it was forwarded to a very learned and eminent jurist, Mr. K.K. Venugopal [...] He advised us and then he worked on this document for a year. We worked for almost a year, and then we submitted the document to His Majesty. The Fourth King, word by word, looked into it. He worked on it. The drafts came back to the chairman of the drafting committee with his observations. We had to do a lot of research on various areas, and he worked on it more than two years. Then the draft was distributed to the public, to every member of every household throughout Bhutan so it could truly reflect the minds of the people. Simultaneously it was posted on the Internet.*

*When we received the preliminary comments of the people, there was some unhappiness over the words, so we made another draft, submitted it to His Majesty, distributed it to the people, and posted it on the Internet. More than 300 individuals who commented on our draft were not Bhutanese. Within Bhutan, we received more than 300 comments. All and every word is recorded.*

*Then His Majesty took the document to the people, to every district. The seven districts were presided over by the Fourth King, and 13 districts were presided over by the present monarch. So it was widely discussed. Every member of a family was represented in the consultative meeting. It was a long process, but every person had comments on that document, which means that our constitution starts with "We the people." Truly it reflected the will of the people.*

MUKHERJEE: Were you involved in the process of taking it to the people? Did you attend some of these meetings?

TOBGYE: *I attended every meeting. It was a specific wish of their majesties that I be there. I was there to ensure that the views of the people were reflected and accurately recorded. All these documents will one day be within the public domain.*



MUKHERJEE: Could you talk a little bit about the kinds of concerns that people raised in these meetings at the district level?

TOBGYE: *The first and foremost is that they did not want a constitution. This was on unfamiliar ground. They were apprehensive of the unknown. However, His Majesty, with the process of time, was able to convince them by saying, "Do not trust one man. It is better to trust the people of the country." Reluctantly they accepted, since so far His Majesty was always for the people, and this time also could not be otherwise.*

*The second concern was making the country have a constitutional monarchy. They wanted to reserve some powers for the king. The king of Bhutan was very specific on this subject. The most controversial topic was under Article III, the spiritual heritage of Bhutan. That evoked tremendous emotional and other discourses. So there were problems in this. That was the third issue. The fourth issue was basically on the local government because they knew more about it. The fifth issue, the discussions were more on the residual power, because at that time there were a few countries whose governments fell within a week. Many parties were springing up, and there were countries that had about two or three governments in a week. These things had a devastating impact on the public. They wanted stability. Consequently, they also wanted certain residual power to revert to His Majesty, but His Majesty said no.*

MUKHERJEE: They wanted residual power to reside in His Majesty?

TOBGYE: *Yes, what they said is that His Majesty should be able to take back the power. His Majesty said, the power that is given will never be taken back. He said something like this: "It is a distrust of my intention and is disrespect to future generations."*

MUKHERJEE: You mentioned Article III. What exactly was controversial?

TOBGYE: *It is religion. We don't have a state religion, so we didn't say state religion, but we said, "spiritual heritage." Spiritual heritage could be class data with the passage of time, and the heritage comes under different definitions, and there are different sects within Buddhism too. So these things surfaced strongly during the discussions. This was both an emotional and a very sensitive issue, but fortunately we were able to compromise and have a solution. Compromise is best, and it is possible in human nature with understanding.*

MUKHERJEE: This touches upon a very important thing, which is the importance of staying in line with international standards of constitution-making while also paying obeisance to the past and acknowledging the role of the past in Bhutan's present. Could you give any specific instances within the constitution where such a compromise had been made between the past and the present requirements of democracy?

TOBGYE: *I don't think there was a compromise in that area. When I said compromise, it is within the committee. Internationally, no. It is the understanding that divides us and says, there are the differences. The constitution of Bhutan, particularly under Article VII, like the Indian constitution, includes provisions for fundamental rights. In America it is the Bill of Rights. The fundamental human rights provision in the Bhutan*

*constitution incorporates more than in most of the constitutions in the world. So I don't think there was a big quarrel over that. We had to compromise. It was not a conflict. It was a way of putting things in our own language; that was very important.*

*Again we took the advantage of many of the countries. I can think of one country that had incorporated the fundamental duties too. It is not only rights but the fundamental duties, through the implied interpretation of the Supreme Court or the justices that said that rights incorporate duties, too. It is there even in the French charter. So we had that.*

MUKHERJEE: Again, going back to the chronology, after the countrywide meetings held by their majesties, what was the next step that you had to take?

TOBGYE: *Whenever it was acceptable, it was incorporated into the draft constitution. Discussed or not, we tried to incorporate comments from the countrywide meetings. Having incorporated some of their comments, we made our final draft, and it was submitted to the first Parliament, the first democratically-elected Parliament. We did discuss it, provision by provision. So it was a serpentine process in Parliament. I can't remember exactly the number of days it took. There were motions for amendments. There were motions for incorporations. I had to defend or had to explain most of the provisions of the articles. After the debate and general consensus, we made a final draft. Last year, on the 18<sup>th</sup> of July, the document was adopted and signed by His Majesty and by the first Parliament.*

MUKHERJEE: Were there any major changes that you made after the countrywide consultations or after the parliamentary debate?

TOBGYE: *Not major changes. There were some errors we had to correct. A few areas needed elucidation. To change a major provision would be a legal problem because, in American terminology, it would have to be approved by the people in a constitutional convention. Basically, since the constitution had been approved by the people, it would have been a problem to have a major change. In principles, no—but in errors, we corrected them. In explanation or clarifying, we clarified. Improvements we made, because improvement is a human responsibility. You must always improve.*

MUKHERJEE: Were the public consultations a conscious strategy to build support among the people for this new document? What was the main objective behind that?

TOBGYE: *It was not a conspiracy to get their consensus, certainly not. We took the document in good faith to them: "Here is a document we made ourselves to the best of our ability for the future of the country, and it is now in the public domain. You may comment whatsoever, and if they are good corrections, we are ready to correct, because if we do not correct them, we will miss an historical opportunity." So we did that.*

*There was concerted opposition in certain areas. They did not want the provision where the king has to abdicate. We have quite a number of unique or pioneering provisions in the constitution. One is the commonly accepted dictum that the king never dies, but here in Bhutan the king*

*abdicates at the age of 65. That is a unique provision. There were a few, call it a conspiracy, who wanted to do away with that provision. There were a few others.*

MUKHERJEE: How did you overcome these resistances or objections?

TOBGYE: *Rationality, particularly when His Majesty explained that it was very necessary. While we respect the aged, it is also important that he must be physically fit and mentally alert for the service of the nation. This was raised in every public meeting. His Majesty was able to convince people. It was His force of reasoning and nobility of intention that eliminated the opposition.*

MUKHERJEE: Enacting a new constitution, obviously, a lot of new rules are coming into place. The civil service in every country plays an important role in the everyday business of government and also in directly upholding the constitution through their actions. So did you or did your committee take any specific steps to prepare the civil service to change their attitudes from the old system to the new one under the constitution? Did you hold any consultations with them as a body?

TOBGYE: *Not as a body. We were advised by some of our friends in neighboring countries. When I told them that we are drafting a constitution, they said that before adopting a constitution certain basic acts must be ready. To leave it entirely up to the politicians after the adoption would be a mistake. It's a mistake that they had made, and would like Bhutan to learn from their mistake. So we had some of the acts passed before the adoption of the constitution.*

*Civil service had a rough passage, but I think it is good generally. Like the Election Act, it was drafted before the adoption of the constitution. The Judicial Service Act was enacted before the adoption of the constitution. So there were some basic laws enacted before the adoption of the constitution.*

MUKHERJEE: And the objective there was to not leave it to—

TOBGYE: *Not to distrust the politician, but we felt that it was a necessary precaution. It is better than becoming the unexpected victim of a changing situation.*

MUKHERJEE: Throughout the entire process, from start to finish, were there any unforeseen obstacles that you encountered along the way—anything that comes to mind—and how you actually addressed that obstacle when it came up.

TOBGYE: *While drafting, no, because we had at least ten months and we had a number of years, we had about six years. Basically, what we did was through transparency, persuasion, reasoning, and we had time to wait for the emotion to subside. Time is an important factor. Close consultation with the committee members was very necessary so that they could draw away from the manifested position that they had taken. They are also answerable to some organizations, their friends and organizations. If they took an official stand on that, with the passage of time and with persuasion, we were able to build a consensus. And fortunately, we did*

*not have an unfortunate confrontation. We were able to build consensus. In the Parliament we had a bit of debate because televisions were on and they all had their constituency. They had friends. At the same time, I was able to use the same public glare for higher rationality. We had to play with this.*

MUKHERJEE: In defending the various clauses or articles of the constitution in Parliament, did you find yourself more often than not successfully defending them or conceding some ground to parliamentarians?

TOBGYE: *Yes, we conceded some. There were a few errors that we made, and we happily accepted that. Anything for the promotion or betterment of the document. Our personal prejudices, personal arrogance, must bow down to the greater interest. To a great extent I was answerable to the public. So we conceded quite a number of provisions, but for others, we had the force of reasoning.*

*I didn't really have too much problem in this, the reason being: all they want you to read in the making of the constitution—you'll see the whole argument, the research background, words and phrases from religious Buddhists, Hindu concept, philosophical basis—the philosophical basis of religion, political philosophy, the legal doctrine; we just explained what they had said. It is all there. So we didn't really have a problem. If there were religious people, if they asked me from a religious point of view, I was able to cite the support from our scriptures. If some honorable members raised an objection from the political side, I was able to quote directly from the classical Greek to others.*

*If some people were defensive of the Bhutanese beliefs, traditions, and culture, we were able to answer them from the various sayings that we have. These are certain things which need no explanation, as they are self-evident in the sayings. [...]*

MUKHERJEE: In bringing this process to fruition, successfully drafting Bhutan's first constitution, as the chairman of the committee, what do you think it was about your own background and your own personal management style that helped you guide and lead a group of 39 diverse individuals to come to agreement and develop a document?

TOBGYE: *Firstly humility. I think that was very important. Any leader must be humble enough to know and to believe that there are people that are better, and he is their servant, and they are not his servant. I think humility was very necessary. Secondly, accommodation, wherever that is necessary. After all, the society is based on harmonizing and accommodation. These are the ancient values. These values must not be professed in empty words, but must be practiced in action. I think we did this.*

*Third, when someone has a problem, we should be able to listen to that patiently, and also refer him to various sources. As Lord Buddha said, if there are good disciples, there are always good teachers. There are always opportunities for them. I think these were three. And the fourth one was, you must never go with intention and with your own agenda. The moment people know that you don't have a personal agenda, they*

*know it is in their natural interest. As the Fourth King always said, national interest succeeds, personal interests fail.*

MUKHERJEE: It is vision like that, that many people say is very important for a reform process. Did you think that vision, in particular, was useful and helpful in the constitutional drafting process? The ideals of His Majesty and also you as chairman?

TOBGYE: *Yes. Here also I have to say that the first thing is the wish of the people. The second is practicality and quality of the delivery system. The third is sustainability. You need—I may be arrogant and powerful enough to insert one word here, but if this is amended, in another two or three years time, that's disrespect and also failure of your national responsibility. The fourth is how it can be consistently applied.*

*So we said, "OK, this is the idea for our country; what was our past?" Precedence is always necessary. Wisdom of the past must be there. Then we said, "Will this solve the situation? This is the situation, this is the problem. Will this idea solve the problem?" Because why we have laws and constitution is to solve a problem. The third is, "Will this be sustained in the future?" Now that is from our own perspective.*

*We all have human frailties. Did other countries face a similar situation in the past? After the adoption of the American constitution, the Supreme Court of the United States had a number of cases to find out the intention of the founding fathers. The Indian Supreme Court had that, and many of the Supreme Courts had that. Here we had a galaxy of intellectuals who contributed. We have enormous documents to read. Then we tested those ideas in the regional and international context. Goodness and virtue survive. Anything bad, anything that is not good, gets stopped along the way. We had to test most of these provisions under this.*

*It was a cumbersome process. One idea that stirred up a lot of debate was Article I of the constitution, Section I of the Articles of the constitution. It is a democratic constitutional monarchy. That comes under popular democracy. Who, which political philosopher has said that? How has it evolved? How it is accepted in the world; how will this be accepted in Bhutan? In short, will it serve the purpose for future generations? These things are very, very important. We are human beings. This was taxing for us. We tried to say, OK, we want this, is this personal prejudice? Is this a personal interest? Will this survive the test of time? Will other people share the same vision? This was more difficult than any others.*

*How to do that? As Shakespeare said, "If you can look into the seeds of time and say which grain will grow and which will not, speak." We can't do that, but we can do this. Just see the Internet, what were the cases decided on this article.*

MUKHERJEE: It has only been a little over a year since the constitution was enacted. Have there been any attempts to amend it yet?

TOBGYE: *I must say, I have had a few sleepless nights. There were some disagreements here and there in the Parliament. The moment there were some disagreements or a deadlock in the Parliament, I then said, "The*

*mistake is mine,” or since wisdom is the collective, “The committee made the mistake on that.” We sometimes—I had that aberration, I had those doubts. Yes, there were controversies between the two houses. First and foremost, election results were totally different from what we had envisaged. We talked about a two-party political system. There was a sweeping majority in the government. Now, was this idea wrong? That was a point of contention we had to think and worry about. Number two was a deadlock between the two houses. Another one was the passage of bills. When these things happened, we started reflecting on our documents, on the minutes of our meetings, on the background papers. Perhaps we hadn’t really looked into this? A few MPs would mention an amendment, and again we would have to buy time to think back. So far, I believe that we didn’t make a mistake. If there are some problems, I think that is the birth of democracy, where differences will be contested in a proper manner and consensus reached in the public interest.*

MUKHERJEE: Thank you very much, Sir. In closing, as I mentioned, these interviews are meant to be a resource for leaders in other parts of the world who are engaging in similar activities. If you feel there is anything I missed out in asking you or anything you’d like to add at this stage, please feel free.

TOBGYE: *No. Thank you very much for this wonderful opportunity of recounting some of the events that have taken place in Bhutan. I have nothing to add, we have only to learn.*

MUKHERJEE: Thank you very much.