

# Global Perspectives and Emerging Issues in Comparative Law

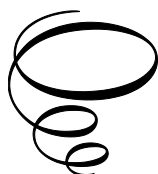


# Global Perspectives and Emerging Issues in Comparative Law

Edited by

Joshua Aston, Aditya Tomer  
and Rupendra Singh

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This book is dedicated to all scholars, practitioners, and students of law who seek to bridge legal traditions and foster a deeper understanding of comparative law. Their relentless pursuit of knowledge and justice inspires the exploration of diverse legal systems and their impact on society.

*"Laws, like the societies they govern, are in a constant state of evolution. To compare them is not merely an academic exercise, but a journey toward deeper understanding, justice, and progress."*

— Inspired by Montesquieu and the ever-changing legal landscape

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## PREFACE

In an age characterized by rapid transformation, law and policy continue to serve as foundational pillars shaping the structure of societies worldwide. As globalization accelerates, international collaboration deepens, and democratic ideals evolve, the necessity of understanding legal systems through a comparative lens has never been more pressing. Comparative law, an ever-expanding discipline, invites us to examine legal principles within diverse cultural and geopolitical contexts, offering invaluable insights into how societies navigate justice, governance, and regulation. This comparative approach not only enhances our understanding of different legal traditions but also provides a unique opportunity to develop more adaptive and resilient legal frameworks that contribute to societal progress.

This book is the result of a collective effort to analyse the intricacies, challenges, and solutions embedded within the world's legal systems. It takes an innovative approach, highlighting both the convergences and divergences among various legal traditions. By exploring these intersections, the book offers a comprehensive perspective on legal structures across nations, providing comparative insights into their foundational principles, methodologies, and practical applications. In today's interconnected world, legal professionals—including lawyers, academics, legislators, and experts in political and economic spheres—recognize the growing importance of comparative legal studies in shaping, interpreting, and implementing laws across civil, criminal, political, economic, and social domains.

The aim of this work is to delve into the complexities of comparative legal methodologies, shedding light on the opportunities and challenges that arise from the interplay of different legal and policy paradigms. Drawing on the expertise of distinguished scholars and practitioners from across the globe, the book covers a wide array of legal fields, including constitutional law, criminal law, corporate law, and intellectual property law. It also extends its scope to emerging legal domains such as technology law, with a particular focus on the regulation of artificial intelligence and over-the-top (OTT) platforms. Each chapter presents a comparative analysis, exploring the key

drivers that shape legal frameworks and their broader implications for society.

Ultimately, this book aspires to foster a deeper and more nuanced appreciation of the dynamic and multifaceted nature of law and policy in a globalized world. By providing a rich tapestry of comparative legal perspectives, we hope to offer an essential resource for students, researchers, policymakers, and legal practitioners alike. Through this endeavour, we aim to contribute to the ongoing discourse on the evolution of legal systems, encouraging a more informed and holistic approach to legal scholarship and practice.

Joshua Aston  
Aditya Tomer  
Rupendra Singh

## ACKNOWLEDGEMENTS

The completion of this book would not have been possible without the invaluable contributions of many individuals and institutions.

First and foremost, we extend our deepest gratitude to the esteemed scholars and practitioners who contributed their expertise to this volume. Their insightful analyses and diverse perspectives have enriched the discourse on comparative law and its evolving global dimensions. Their dedication to research and scholarship is truly commendable.

We are immensely grateful to *Cambridge Scholars Publishing* for recognizing the significance of this work and for their unwavering support throughout the publication process. Their editorial team's professionalism and meticulous attention to detail have been instrumental in bringing this book to fruition.

Finally, this book is dedicated to all scholars, practitioners, and students who seek to understand the complexities of law beyond borders.

## LIST OF ABBREVIATIONS

ADGM	Abu Dhabi Global Market
AI	Artificial Intelligence
AIVA	Artificial Intelligence Virtual Artis
AML	Anti Money Laundering
AMT	Advancement in Management and Technology
APC	Association for Progressive Communications
AR	Augmented Reality
ARTA	Assisted Reproductive Technology Act
AUD	Australian Dollar
BCCSAP	Bangladesh Climate Change Strategy and Action Plan
BCCTF	Bangladesh Climate Change Trust Fund
BDP	Bangladesh Delta Plan
BELA	Bangladesh Environmental Lawyers Association
BEPS	base Erosion and Profit Shifting
BIT	Bilateral Investment Treaties
CCPA	California Consumer Privacy Act
CDIA	Climate-Development Integration Approach
CDPA	Copyright, Designs, and Patents Act
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CFF	Climate Fiscal Framework
CIA	Central Intelligence Agency
CJEU	Court of Justice of the European Union
COP	Conference of Parties
CRC	Convention on the Rights of the Child
CS	Counter Strike
CSGO	Counter Strike Global Offensive
CSR	Corporate Social Responsibility
DL	Deep Learning
DPDP	Digital Personal Data Protection
DSA	Digital Services Act
DST	Digital Service Tax
ECA	Environmental Conservation Act
ECC	Environment and Climate Change
ECHR	European Convention on Human Rights
ECHR	European Court of Human Rights

EPA	Environmental Protection Agency
EU	European Union
FATF	Financial Action Task Force
FBI	Federal Bureau of Investigation
FCA	Financial Conduct Authority
FISA	Foreign Intelligence Surveillance Act
FISC	Foreign Intelligence Surveillance Court
FOIA	Freedom of Information Act
GBFF	Global Biodiversity Framework Fund
GCF	Green Climate Fund
GCRI	Global Climate Risk Index
GDPR	General Data Protection Regulation
GED	General Economics Division
GEF	Global Environment Facility
GFC	Green Climate Fund
GHG	Green House Gas
GMC	Gelephu Mindfulness City
GNH	Gross National Happiness
GO	Global Offensive
GPU	Graphics Processing Unit
GST	Goods and Services Tax
HAMA	Hindu Adoption and Maintenance Act
HIPSCI	House Permanent Select Committee for Intelligence
IC	Intelligence Community
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICD	International Classification of Diseases
ICJ	International Court of Justice
ICMR	Indian Council of Medical Research
ICSID	International Centre for Settlement of Investment Disputes
IDF	Israeli Defence Forces
IFAC	International Federation of Accountants
IIR	Income Inclusion Rule
ILO	International Labour Organisation
IMF	International Monetary Fund
IMO	International Maritime Organisation
INA	Immigration and Nationality Act
INDC	Intended Nationally Determined Contributions
IPA	Investigatory Powers Act
IPCC	Intergovernmental Panel on Climate change

IPCO	Investigatory Powers Commissioner's Office
IPR	Intellectual Property Rights
IRPA	Immigration and Refugee Protection Act
IRTL	Independent Reviewer of Terrorism Legislation
ISA	International Surrogacy Arrangements
ISIS	Islamic State of Iraq and Syria
ISOC	Internet Society
IT	Information Technology
ITU	International Telecommunication Union
MCPPP	Mujib Climate Prosperity Plan
ML	Machine Learning
MNE	Multinational Enterprise
MoCC	Ministry of Climate Change
MoEFCC	Ministry of Environment, Forest and Climate Change
MRV	Measurement Reporting and Verification
NABARD	National Bank for Agriculture and Rural Development
NAP	National Adaptation Plan
NAPCC	National Action Plan on Climate Change
NATO	North Atlantic Treaty Organization
NBA	National Basketball Association
NCACC	National Conventional Arms Control Committee
NDA	National Designated Authority
NDRMF	National Disaster Risk Management Fund
NDRR	National Disaster Risk Reduction
NFT	Non-Fungible Tokens
NLP	Natural Language Processing
NSC	National Security Council
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OPT	Occupied Palestinian Territory
PCA	Permanent Court of Arbitration
PEA	Poverty Environment Action
PIPL	Personal Information Protection Law
PPE	Personal Protective Equipment
PRC	Peoples Republic of China
RIPA	Regulation of Investigatory Powers Act
SAPCC	State Action Plans on Climate Change
SAPECC	Sector Action Plan for Environment and Climate Change
SAR	Special Administrative Region
SCC	Stockholm Chamber of Commerce

SCCF	Special Climate Change Fund
SDG	Sustainable Development Goal
SGrBs	Sovereign Green Bonds
SHA	Secure Hash Algorithm
SME	Small and Medium-sized Enterprises
SSCI	Senate Select Committee for Intelligence
TRAI	Telecom Regulatory Authority of India
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	United Nations High Commissioner for Refugees
US	United States
USA	United States of America
USCO	United States Copyright Office
USD	United States Dollar
UTPR	Undertaxed Payment Rule
VAT	Value-Added Tax
WIPO	World Intellectual Property Organization
WTO	World Trade Organisation



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## About the Editors

Associate Professor (Dr) Joshua Aston is the Associate Dean of Law and member of the Executive in the School of Business and Law, Edith Cowan University since 2020. Throughout his academic pursuits, he has maintained a steadfast focus on the issue of human rights violations, a subject of great relevance in contemporary civil society. This passion has driven him to extensively research and publish on the pressing matter of Modern Slavery, offering profound insights. He is a Justice of the Peace in the state of Western Australia.

Professor (Dr) Aditya Tomer currently serves as the Dean of Law, Galgotias University, India. With over 60 publications, including books, monographs, research papers, and articles in both academic and popular publications, he is recognized as a prolific writer. Professor Tomer is deeply committed to research and has supervised numerous Ph.D. and LLM candidates in their studies. His research endeavours primarily focus on empirical and multidisciplinary approaches, particularly within the realms of Right to Information, Arbitration and Mediation, Human Rights, and Business Law.

Mr. Rupendra Singh is a dedicated legal professional and academic with a wealth of experience in Corporate Law, Comparative Technology Law, and Intellectual Property Law. Driven by a passion for legal education, Mr. Singh strives to bridge the gap between theory and practice, ensuring students gain both conceptual understanding and practical skills in the ever-evolving field of law. His work reflects a humble dedication to empowering the next generation of legal professionals.

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## FOREWORD

The study of comparative law has long been instrumental in understanding the diverse legal traditions that govern societies across the world. In an age marked by globalization, digital transformation, and shifting geopolitical landscapes, the relevance of comparative legal analysis has expanded far beyond its traditional academic confines. Today, comparative law plays a pivotal role in shaping legal frameworks, informing policy decisions, and fostering cross-jurisdictional collaborations. The book, *Comparative Law: Global Perspectives and Emerging Issues*, is a testament to the evolving nature of legal studies, bringing together an array of scholarly perspectives that examine contemporary legal challenges across various domains.

This volume embarks on an ambitious journey to explore the legal landscapes of different nations, focusing on themes that resonate globally. The chapters compiled within this book provide a compelling narrative that bridges legal history, present realities, and future possibilities. From constitutional law and judicial independence to artificial intelligence, digital transactions, and environmental constitutionalism, the book highlights the dynamic interplay between law, society, and technological advancement.

Comparative law has always served as a crucial analytical tool, allowing scholars and practitioners to assess legal systems through a broader lens. Legal traditions have developed uniquely across the world, influenced by historical, cultural, and socio-political factors. However, in our interconnected world, legal challenges are increasingly global in nature. Issues such as data privacy, climate change regulation, digital taxation, and human rights transcend national borders, necessitating a comparative approach to legal problem-solving.

By examining legal principles across multiple jurisdictions, scholars can uncover best practices, identify shortcomings, and propose reforms that align with global standards while respecting local contexts. Comparative legal research does not merely highlight differences; it also fosters legal harmonization where possible and enables a more nuanced understanding of areas that may require tailored legal solutions.

The breadth of topics covered in this book reflects the wide-ranging scope of contemporary comparative law. The opening chapter on Bhutan's transition from traditional justice to mindfulness jurisprudence provides a fascinating look into how a nation's legal philosophy evolves while staying rooted in its cultural values. Similarly, the discussion on democratic intelligence and candor offers insight into the delicate balance between transparency and national security in democratic societies.

Migration and asylum laws, one of the most pressing global issues today, receive in-depth treatment in a chapter that examines the policies of various jurisdictions. With millions displaced due to conflicts, economic hardships, and environmental crises, comparative analysis in this area is vital for shaping equitable and humane policies.

The volume also delves into the intricate relationship between constitutional law and judicial independence, particularly the tension between international standards and local legal realities. The independence of the judiciary is a cornerstone of democratic governance and understanding how different systems uphold or challenge this principle is essential for fostering rule of law worldwide.

The rapid advancement of technology poses unique legal challenges, many of which are addressed in this book. The rise of digital currencies, virtual assets, and exchange providers has disrupted traditional financial and regulatory systems. One of the chapters critically examines these disruptions through the lens of regulatory compliance, exploring how legal systems are adapting to the proliferation of decentralized finance.

Artificial intelligence (AI) is another transformative force in the legal domain. The book provides a comparative perspective on AI-generated works and copyright law, analyzing how jurisdictions such as the United States, United Kingdom, and India are grappling with issues of authorship and intellectual property rights in an era of machine-generated content. Open-access policies and AI's impact on copyright enforcement further add layers of complexity to this debate.

Digital transactions and their taxation present yet another global challenge. As e-commerce and online businesses flourish, taxation laws must evolve to capture digital revenue streams effectively. The chapter on comparative taxation of digital transactions highlights the challenges governments face in ensuring fair taxation while fostering innovation and investment.

Comparative law plays a significant role in advocating for labor rights and safer working conditions. The book addresses the implementation challenges of the International Labour Organisation's shipbreaking safety guidelines in Bangladesh and India. These industries, often associated with hazardous working conditions, underscore the urgent need for legal frameworks that prioritize worker safety and environmental sustainability.

Climate change law and environmental constitutionalism are also key themes in this volume. One chapter presents a comparative study of national development policies with a focus on climate-development integration, while another examines international climate finance frameworks in South Asia. These analyses emphasize the importance of legal cooperation in addressing environmental challenges that no single nation can tackle alone.

Human rights, a fundamental pillar of legal discourse, receive thoughtful examination in several chapters. Hate speech regulation in India, China, and the United States illustrates the tension between freedom of expression and the need to curb harmful speech. The book also scrutinizes forced disappearances in Bangladesh, offering a comparative study of domestic and international laws addressing this grave issue. Similarly, the admissibility of cases before the International Criminal Court (ICC) is explored, shedding light on state jurisdiction and the principle of complementarity.

Investment dispute settlement mechanisms have long been a contentious area of international law. The book's comparative analysis of ICSID and other arbitration forums provides valuable insights into the effectiveness of various dispute resolution mechanisms. The increasing complexity of international investments necessitates a thorough understanding of arbitration forums to ensure fair and impartial adjudication.

Another compelling discussion revolves around dual-citizenship and international law, particularly in light of the International Court of Justice's advisory opinion on Israel's policies in the occupied Palestinian territories.

This comparative study of ten states sheds light on the legal and political ramifications of citizenship laws and state sovereignty.

The book concludes with explorations into cutting-edge legal frontiers, such as the regulation of virtual identity and social interaction in the metaverse. As digital realities blur the lines between physical and virtual existence,

legal frameworks must adapt to address issues of identity, rights, and responsibilities in cyberspace.

Similarly, the study of democracy and disinformation through the lens of fundamental rights reflects contemporary concerns about the role of misinformation in shaping public opinion and governance. As societies become increasingly digitalized, the legal mechanisms to combat disinformation will be critical in upholding democratic principles.

Finally, the comparative legal framework for surrogacy in Bangladesh and India underscores the ethical, legal, and social complexities surrounding reproductive rights. As medical advancements enable new possibilities in reproductive technologies, legal systems must balance the rights of all stakeholders involved.

*Comparative Law: Global Perspectives and Emerging Issues* is a crucial contribution to the field of comparative legal studies. It brings together a diverse set of perspectives, highlighting both the challenges and opportunities in contemporary legal discourse. The insights presented in this volume will serve as a valuable resource for legal scholars, practitioners, policymakers, and students seeking to navigate the ever-evolving landscape of global law.

As legal systems continue to intersect and influence one another, the role of comparative law will only become more significant. This book stands as an invitation to engage with legal traditions beyond one's own jurisdiction, fostering a deeper understanding of the shared and divergent legal experiences that shape our world.

I commend the editors and authors for their meticulous research and thought-provoking analyses. This volume is not just an academic endeavour—it is a call to action for continuous legal inquiry, adaptation, and collaboration. I am confident that readers will find it both enlightening and inspiring as they explore the fascinating realm of comparative law.

**Justice Arjan K. Sikri**

Former Judge, Supreme Court of India  
Presently IJ, Singapore International Commercial Court

Date: 14 May 2025





## CHAPTER ONE

# METAMORPHOSIS OF BHUTAN'S JOURNEY FROM TRADITIONAL JUSTICE TO MINDFULNESS JURISPRUDENCE

SONAM TSHERING<sup>1</sup>

### **Abstract**

This chapter analyses the metamorphosis of Bhutan's legal system from its origins in Buddhist natural law and layperson adjudication to its current hybrid structure, shaped through modernisation and globalisation. It chronicles key historical milestones, including the establishment of courts in the 1960s, judicial reforms under monarchical guidance, and the 2008 Constitution, which formalised a democratic constitutional monarchy. The analysis examines the tension between preserving Gross National Happiness (GNH) principles—which emphasise community harmony and cultural preservation—and incorporating Western legal frameworks to meet contemporary demands.

Central to this analysis is the Gelephu Mindfulness City (GMC), a Special Administrative Region implementing Singaporean and Abu Dhabi laws to attract global investment. This unprecedented legal transplant, coupled with the recruitment of foreign judges, represents a radical shift towards common law traditions, raising concerns about the erosion of Bhutan's unique legal identity. This chapter critically examines the implications of such reforms, questioning whether they enhance judicial efficiency at the expense of cultural integrity.

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<sup>1</sup> Associate Professor *and* Associate Dean, Jigme Singye Wangchuck School of Law, Bhutan.

Drawing upon interviews with former judges, local leaders, and archival research, this chapter underscores the monarchy's pivotal role in shaping legal reform whilst identifying gaps in scholarly engagement with Bhutan's evolving system. It advocates rigorous research into how Bhutan negotiates its dual identity—honouring tradition whilst embracing globalisation—and evaluates the sustainability of its hybrid legal model in an era of rapid change.

**Keywords:** *Legal Metamorphosis, Gross National Happiness (GNH), Buddhist Natural Law, Thrimzhung Chhenmo, Judicial Reform, Legal Transplants, Gelephu Mindfulness City (GMC), Traditional Dispute Resolution, Constitutional Monarchy, Legal Hybridity, Customary Law, Modernization, Cultural Preservation, Local Mediation, Legal Professionalization*

## Introduction

Bhutan is a small nation, often described as situated between two of the world's largest nations, China and India. Bhutan remained in self-imposed isolation until the 1970s, under the absolute monarchy, and became a Democratic Constitutional Monarchy in 2008. The country comprises a population of fewer than a million people, with an area of 38,000 square kilometres, and its main source of revenue is hydroelectricity and tourism.

Now, Bhutan has a clear separation of power amongst the three branches of the government (Constitution of Kingdom of Bhutan 2008, art. 1, § 13). The Legislature functions as a parliamentary democracy, similar to the Westminster model. The parliament comprises the National Council, known as the House of Review (composed of 20 directly elected members representing 20 districts and 5 members nominated by His Majesty as eminent members, all apolitical in nature), the National Assembly (consisting of 47 members elected indirectly by the people representing 47 constituencies from political parties) and His Majesty the King. Parliament is vested with exclusive power to make laws (Constitution of Kingdom of Bhutan 2008, art. 10, § 1). The Executive comprises Cabinet Ministers, headed by the Prime Minister (Constitution of Kingdom of Bhutan 2008, art. 20, § 2). The Judiciary (Constitution of Kingdom of Bhutan 2008, art. 21, § 2) comprises the Royal Court of Justice, which consists of “the Supreme Court, the High Court, the District Court and the Sub-district Court”. However, all branches of the government are required to work in tandem with the single national guiding principle called Gross National

Happiness (GNH). This is one of the most unique developmental models, which is slowly gaining global attention. This philosophy was first introduced by His Majesty the Fourth King of Bhutan in the early 1970s (United Nations 2012). It is unique because, unlike most development models around the world, GNH is a more holistic approach to development, based on balanced socio-economic development, sustainability, good governance, preservation of culture and tradition, and conservation of environment as part of development.

According to this principle, justice forms a critical component of good governance, where the rule of law plays a vital role in strengthening democracy in the country. The justice sector contributes towards four major components of GNH: psychological well-being, time use, good governance, and community vitality (Justice Sector Strategic Plan of Bhutan 2018-2023).

These components of the justice and legal system in Bhutan appear to have existed since the establishment of their court system. This chapter presents a pioneering exploration of Bhutan's legal metamorphosis, chronicling its shift from a traditional, layperson-driven dispute resolution system rooted in age-old customs to a modern framework steered by professionally trained lawyers and guided by Gross National Happiness (GNH). As Bhutan integrates global influences—such as the Gelephu Mindfulness City and foreign expertise from jurisdictions like Abu Dhabi and Singapore—the author highlights the system's rapid evolution into a complex structure within mere decades. However, this accelerated transformation sparks concerns about the potential erosion of GNH principles, a cornerstone of Bhutanese identity, amid the convergence of localized values and global legal paradigms. This chapter is based on numerous interviews with former judges, local leaders, and villagers who could recount experiences of legal metamorphosis in Bhutan during their lifetime. The studies showed the sheer influence and role of local leaders in resolving a majority of disputes via mediation, including criminal offences at the village level. This indicates that the way in which Bhutan's first modern legal system was designed protects collective rights aimed at maintaining peace and harmony in the community, and prioritises community interest and rights over those of individuals. However, a close examination of the practice during those times also reveals its own limitations and challenges. For example, the courts were not seen as an avenue for resolving conflicts, but as means for investigation and punishment of those who commit crimes, by both judge and jury.

## The Legal System from the 1960s to 1990s

The Bhutanese legal system was fundamentally established based on long tradition and culture, which was derived from Buddhist natural law (Royal Court of Justice 2011, 2), and was based on the ten Buddhist values called the “*ten virtuous pious*” (known as Lha Choe Gyewa Chu, first codified by Zhabdrung Ngawang Namgyel, a Tibetan Saint who fled to Bhutan in 1616 due to an internal turmoil in Tibet and who is regarded as Founding Father of Bhutan for his establishment of dual system of government—the spiritual and temporal). The Bhutanese term for Court was initially “Thrimkhang”, which, when translated directly into English, means “place of punishment”. The first courts were established in 1960 in the districts (Royal Court of Justice 2011, 13), followed by the High Court in 1967 with four judges (Dubgyur 2017). Lower courts or sub-district courts, called “Dunkhag Thrimkhang” (the lowest courts in the country, generally presided over by a sub-judge), were established in 1978 (Royal Court of Justice 2011, 14). His Majesty, particularly the Fourth King of Bhutan, issued numerous decrees to guide and strengthen the independence of the judiciary and gradually ensure that it was a separate cadre in 1990 (Judicial Reform by His Majesty Jigme Singye Wangchuck). Now, let me describe unique features of Bhutan’s earlier court system.

### 1. Court Officials

When the courts were established in Bhutan, there was not a single person trained in law. The administrative officers were appointed as judges despite having no legal background. These administrative officers were predominantly educated until secondary school (grade tenth standard) and mostly only knew how to read and write in Dzongkha—the national language of Bhutan. Thus, the judges possessed no English literacy nor legal qualifications; rather, they were appointed by His Majesty based on their expertise in traditional knowledge, adjudicative abilities, and experience in public affairs. They were assisted by court clerks with similar educational backgrounds. Thus, there were no court officials who actually knew the law or legal principles, yet they presided and adjudicated hundreds of thousands of disputes over the decades. The High Court comprised a Chief Justice, four judges (Nyekelm), and two people’s representatives—one each from the south and east. Appeal proceedings were presided over by the most senior member, and there were no separate benches in the High Court. Some judges were of exceptional character and obtained respect and admiration from members of the community. For example, a 67-year-old

man, Nado, recalls that the first judge in his district of Punakha was known as App Boto Karp:

“He was very intelligent and constantly guided by the king, so that people developed confidence in the legal system and more citizens would approach the courts to settle their disputes. Today we have come so far that few people realize how hard our successive kings have worked in all areas and especially in the justice sector. They have been the foremost leaders in creating a dynamic and highly professionalised judiciary in the country”.

## **2. The Law – Thrimzhung Chhenmo**

It is also interesting to note that there was merely one law known as Thrimzhung Chhenmo, or, the Supreme Law of Bhutan. This law, enacted in 1957, comprised the entirety of Bhutan’s substantive laws—both civil and criminal laws as well procedural laws. Different laws were categorised into chapters. For example, Chapter 2 known as “Kha” detailed marital affairs, and Chapter 4 known as “Nga” provided laws on property and inheritable rights in properties. The courts had to rely on this law for everything. As a result, the judges and court officials possessed enormous discretionary powers and individual judgments in their decisions, which created room for abuse and corruption. To curb such vulnerabilities, His Majesty the King issued numerous Royal Decrees to ensure that the conduct of judges and court officials observed ethical behaviours. This law, as stipulated in the preamble, provided the king with authority to issue decrees to amend any part of the law.

## **3. Registration of Cases**

The registration of a case involved a petition signed and affixed with a legal stamp (a tradition that continues today). The petition was filed in the court either with the judge directly or with a senior clerk. The clerk verified the petition, and in some instances, litigants were required to pay a court fee (Nado 2023). Though disputes were categorised and registered as land, marital, inheritance, loan and criminal matters, there did not exist a registrar’s office, and hence, cases were directly registered by the bench clerk and thus, in some instances, heard on the same day and decided on the spot.

## **4. Daily Attendance**

There are no written documents or records available to substantiate why daily attendance by litigants was required, nor did the Thrimzhung

Chhenmo require it. However, it was widely practised by all courts in the country (Adap Chhado, pers. comm.). All litigants were required to report to their respective courts every morning between 9:00 am and 9:30 am for attendance once the case was filed before that court. If any party failed to attend, the courts imposed monetary fines. However, litigants could take leave of absence with the permission of the court. Thrimzhung Chhenmo required that:

“Once the hearing of a case has begun, the litigants and all other persons summoned by the Thrimkhang shall be available at all times and not take leave of absence without the permission of the Thrimkhang” (Thrimzhung Chhenmo 1957, § DA-2-8).

As Judge Adap Chhado explained:

“The daily attendance was instituted because we did not have a hearing calendar during those times, and we as judges used to decide each day which case to hear depending on the urgency of the matter. Most often, we heard cases based on seriatim according to their daily attendance, and the attendance was there to ensure that all parties came to the court, as it was difficult to inform parties if they were absent. Therefore, the logic of attendance was instituted in good faith, but I know it cause inconvenience to those parties whose case cannot be heard on any particular day”.

Furthermore, judges could decide on any number of hearings in a day depending on availability of time, and thus, having all parties near the court enabled those who were present to have their case heard if any party was absent (Gurung, 2018). One of the major drawbacks of daily attendance was that it was hugely burdensome and discouraged litigants from approaching courts. Many could not afford to come to court every day, especially those with less family support or who lived far away from the court premises, since there were very few communities connected with motorable roads. Only a few could afford to travel by car which was rare as only some places were connected with motorable roads in the 1960s. The longer the duration of litigation, the more inconvenience it caused to the parties. Conversely, parties with large family members could manage daily attendance easily. This led to misuse of daily attendance by some litigants, dragging their neighbours to the court in bad faith, only to harass and to waste their rivals’ time in their communities. The courts did put in measures to prevent such misuse, but they were not completely effective because these unscrupulous parties had ways of bypassing the preventive measures (Gurung, 2018).