

**The Ideological Influence of Gross National Happiness on the
Administration of Criminal Justice in Bhutan
L'influence idéologique du Bonheur National Brut dans
l'Administration de la Justice Pénale au Bhoutan**

Summary

This article seeks to explore the ideological influence of Gross National Happiness (GNH) on the administration of the criminal justice system in Bhutan, with a special focus on self-representation by criminal defendants (SRLs). The article will use the development philosophy of GNH to examine the ensuing role and duty of the courts to ensure a fair trial for SRLs as well as to create enabling conditions for happiness for SRLs and other stakeholders of the criminal justice system, including the judicial officials. It is argued that the judiciary must also manage litigants, including SRLs to ensure a fair trial as a part of its role of dispassionately adjudicating cases, and they should facilitate and contribute towards the attainment of Bhutan's national aspiration of authentic collective happiness.

Résumé

Cet article cherche à explorer l'influence idéologique du Bonheur National Brut (BNB) dans l'administration de la justice pénale au Bhoutan, avec une attention spéciale aux accusés n'ayant pas recours à l'assistance d'un avocat. Cet article va utiliser la philosophie du développement du BNB pour examiner le rôle et la fonction des tribunaux pour assurer un procès équitable pour ces plaideurs sans avocat, ainsi que pour créer des conditions favorables au bonheur de ces personnes et des autres personnes concernées par le système de justice pénale, y compris le personnel judiciaire. Il est avancé que la système judiciaire doit aussi prendre en compte les plaideurs, y compris les plaideurs sans avocats, pour assurer un procès équitable dans le cadre de son rôle de jugement impartial des affaires et ils doivent faciliter et contribuer à atteindre l'objectif qu'est l'aspiration nationale du Bhoutan au bonheur collectif authentique.

Keywords :

Gross National Happiness, Judiciary, Royal Government of Bhutan, Administration of justice, Self-Representation, Fair Trial

Mots-clés :

Bonheur National Brut, Pouvoir judiciaire, Gouvernement Royal du Bhoutan, Justice, Auto-représentation, Procès équitable

Contact Details

Karma Tshering,
A confirmed candidate for Ph.D. in Law,
TC Beirne School of Law,
The University of Queensland,
Australia.
Email: k.tshering@uq.net.au
Contact No: +610432835658

Every criminal defendant has an interest in exercising their autonomy to decide whether to proceed to a trial with or without counsel depending on the defendant's determination of his or her best interests. However, no right or freedom is absolute. There may be circumstances under which cases should not proceed if the accused is not represented, for example in instances, where defendants have a mental illness or cognitive disabilities. More generally, self-representing criminal defendants (SRLs) do not have skills like trained lawyers to handle their defence before the court. The Court may need to take steps to ensure SRLs have a fair trial. At the same time, judicial scrutiny over the exercise of autonomy can be questioned. There may be a thin line between personal freedom and the need for reasonable judicial interference. Managing trials involving SRLs may raise significant issues for judicial officers.

The paper analyses the ideological influence of Gross National Happiness (GNH) on the administration of criminal justice in Bhutan, with a special focus on SRLs. It examines the definition of GNH and its application and relevance to the law and the administration of criminal justice. It is argued that this development vision of Bhutan has not only operated to guide its economic and social progress but it could also influence, guide and direct its legal development to ensure a fair trial, justice, and happiness. In addition to its conventional role of adjudicating and disposing of the cases, the Bhutanese judiciary must also manage litigants, including SRLs to ensure a fair trial and contribute towards the attainment of the national aspiration for authentic collective happiness – GNH.

1. DEFINING GNH

Since the 1970s, Bhutan has advocated GNH as the guiding principle of development to assess its success in contrast to the economic measure of gross domestic product (GDP) that is widely used across the rest of the world. Critique of the origin of GNH¹ accepts that GNH was a vision of His Majesty the Fourth King of Bhutan Jigme Singye Wangchuck. His Majesty propounded that Bhutan's development policies must aim to create GNH rather than GDP – only then would the people of Bhutan achieve economic self-reliance, prosperity, and happiness.² Under this visionary development framework, Bhutan redefined its progress in terms of economic growth as well as in terms of good governance, environmental conservation, and preservation of culture and communities.³

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¹ Lauchlan T. Munro, 'Where did Bhutan's Gross National Happiness come from? The origins of an Invented Tradition' (2016) 47 (1) *Asian Affairs*, 71-92.

² His Majesty the Fourth King cited in Centre for Bhutan Studies and GNH Research, *A Compass towards a Just and Harmonious Society, 2015 GNH Survey Report* (First Published 2016), 29.

³ Stephan Peter Sonnenberg and Dema Lham, 'But Seriously Now ... Lawyers as Agents of Happiness? The Role of Law, Lawmakers, and Lawyers in the Realization of Bhutan's Gross National Happiness' (2017) *Forum for Development Studies*, 1.

GNH was initially formulated to offer a more humane approach to development with a number of defining rationales.⁴ First, it stood for the holistic needs of the human individual, comprising both physical and mental needs. It postulates that material development, though it may improve physical wellbeing, does not condition the state of mind. Second, it endeavoured to encourage a conscious inner search for happiness, yet in harmonious balance with the needs of the body, interests of others and nature. Third, it viewed happiness as a social good and not as a competitive good. It suggested that an individual can enjoy a sustained happiness if he or she achieves happiness within the greater good of society. If individuals were to compete irresponsibly for happiness, society as a whole could not obtain happiness. The state must facilitate the achievement of happiness by its citizens. Fourth, it also viewed happiness as a common desire, transcending ideological or contentious values, and therefore, a conscious realisation that public policies based on GNH unlike those on standard economic tools are less arbitrary and the key to the authentic individual as well as collective happiness.

Verma and Ura acknowledge that GNH is ‘many things at once,’ but posit that it does manifest the following seven basic tenets.⁵ First, it is a (secular) moral concept but inherently influenced by the Buddhist principles or the middle-path approach of evading extremes and maintaining a balanced view. GNH balances economic needs with those of spiritual and emotional needs, seeks to maximize wellbeing and minimize suffering and distinguishes outer from inner happiness and material from non-material wellbeing. Second, it is a set of guiding principles for holistic development. GNH driven development seeks to bring about prosperity and happiness to the people. Third, GNH is a conceptual framework for development, based on its non-mutually exclusive four pillars (details of which are considered later in this paper). Fourth, GNH is an index of measurement (details of which are also discussed later in this paper) and GNH can measure happiness and wellbeing of people. Fifth, GNH as the policy and project screening tool, provides strategic direction for Bhutan’s long-term development and determines whether policies and projects are aligned with GNH. Sixth, GNH is also a space for individual practice. Wellbeing and happiness are not only the responsibility of the state but also of individuals. While the state must facilitate the generation of wellbeing and happiness by ensuring and creating enabling conditions, individuals must also actively participate in the process. Individuals must understand the tenets of GNH and practice it in their everyday life - the behaviours, attitudes, and practices that are crucial in achieving happiness and wellbeing at both individual and collective level. Finally and seventh, GNH seeks to not only guide Bhutan to a better and sustainable social development but also seeks to influence the development paradigms throughout the world by offering it as the viable alternative to mainstream development practices.

⁴ Jigme Y. Thinley, the Honorable Prime Minister of Bhutan, Keynote Speech - What Does Gross National Happiness (GNH) Mean?, *The Second International Conference on Gross National Happiness, Rethinking Development, Local Pathways to Global Wellbeing*, St. Francis Xavier University, Canada, June 20-June 24, 2005.

⁵ Ritu Verma and Karma Ura, Gender Difference in Gross National Happiness in Bhutan: Analysis of GNH Surveys, *Paper presented for the International Conference on Gross National Happiness*, Paro, Bhutan, 4-5 November 2015, 4.

The GNH conception of happiness differs from the Western conception for two reasons.⁶ First, GNH is multidimensional. The pursuit of happiness is collective and does not focus on the narrow concept of individual happiness. It is not subject to and limited by any one single factor, for example, age, language or region.⁷ The screening tool, applied at two phases, namely the policy and project level, assesses, screens and determines goals and raises national awareness about what kind of plans and development projects will favour the creation and enhancement of people's happiness and wellbeing.⁸ Second, it internalizes other-regarding motivations. It concerns not only the self but also others. GNH, as such, is neither monistic nor purely subjective.⁹

McDonald observes that the relationship between happiness and economic growth described in western literature further sheds light on how GNH happiness differs from the western conception of happiness.¹⁰ His extensive western empirical literature review revealed that the concepts of happiness and economic development in the West were increasingly becoming dissociated. McDonald found the increasing level of consumption by individuals and nations did not correspondingly increase felt happiness. Consumer societies emphasized only feeling good and did not concern being good. By that, the notion of happiness was separated from the notions of inclusion, justice, compassion, and responsibility. This resulted in the evolution of an individualistic culture of freedom and choice as both legitimate and right, free of normative evaluation as well as exclusion of the concerns for qualitative human development. In these societies, the individual choice became a 'sacrosanct space,' free of institutional guidance and control. Individual happiness became the important focus of interest, allowing the emergence of the conception of happiness within competitive and individualistic frameworks. There was no room for better but only for more happiness.

In contrast to the western conception of happiness, McDonald found that the GNH conception of happiness was broad.¹¹ It emanated from Buddhist sensibility that a full and true happiness results from a harmonious application of wisdom, compassion, and self-restraint. Happiness represented an aspiration to develop more skillful means to secure and invoke the multifaceted capacities of a human for deep improvement and more accomplished happiness. Only a skillful pursuit of considerate and inclusive happiness could bring about real happiness. GNH, he observed, was the realization that the more others' interests are included, the more one gained in terms of relationship, security in communities, the liveliness of environment, and

⁶ Karma Ura, Sabina Alkire, Tshoki Zangmo, and Karma Wangdi, *A Short Guide to Gross National Happiness Index* (Centre for Bhutan Studies, 2012), 8-11, 4.

⁷ Centre for Bhutan Studies and GNH Research, *A Compass towards a Just and Harmonious Society, 2015 GNH Survey Report* (CBS and GNH Research, 1st ed, 2016) 6.

⁸ GNH Centre Bhutan, *GNH Screening Tool*, (19 November 2017) GNH Centre Bhutan <<http://www.gnhcentrebhutan.org/what-is-gnh/gnh-screening-tool/>>.

⁹ Thaddeus Metz, 'Gross National Happiness: A Philosophical Appraisal' (2014) 8:3 *Ethics and Social Welfare*, 218-232, 220. See Jigme Y. Thinley, the Honorable Prime Minister of Bhutan, Opening Address, *Educating for Gross National Happiness Conference*, Thimphu, Bhutan, 7 December 2009. See also Dasho Tshering Tobgay, the Honorable Prime Minister of Bhutan, Keynote Address, *International Conference on Gross National Happiness*, Thimphu, Bhutan, 1st October 2013.

¹⁰ Ross McDonald, 'The Future of Happiness as a National Pursuit' in Dasho Karma Ura and Dorji Penjore (eds), *Gross National Happiness: Practice and Measurement – Proceedings of the Fourth International Conference on Gross National Happiness* (Centre for Bhutan Studies, 2009) 602, 602-619.

¹¹ *Ibid.*

depth of happiness. McDonald found the GNH conception of happiness has many facets, including but not limited to, right wisdom and insights, loving-kindness towards others, freeing from constant grasping and greed through self-restraint. Altogether, he saw that GNH avoided the problems of self-centeredness and the tendencies it generates towards exclusion from others and disregard of their interests. McDonald found that a focus on GNH prevents pursuit of biased and personal happiness to the exclusion of others' interests which can lead to systematic injustice and unsustainability. He describes that only through harmonization of one's interests with other nations, species, and generations, can the wellbeing be spread, deepened and sustained. Hence, as Metz argues, GNH, in contrast to the western conception of utility, focuses on happiness that embodies what may be 'an intrinsically desirable life.'¹²

The essence of GNH can also be understood by comparing it with the traditional development paradigm and the United Nations Millennium Development Goals. The following table (Table 3.1) presents the comparison of GNH with other traditional development paradigms.

	GNH	UN Millennium Development Goals	Traditional Development
Seeks to maximize	Individual and national happiness	Social welfare	Strong economies (as measured by gross national product and gross domestic product)
Needs to be met	Material, spiritual, and emotional	Peace and security, human rights, and sustainable development, primarily through provision of education, health, and equality	Material, through international economic cooperation
Seeks to transform	Individual, within society	Society, global North-South relations	Economies
Success defined as	High level of happiness nationwide	Elimination of poverty, universal primary education, improvement of health indicators	Strong, stable economies, leading to high levels of material well-being
Based in	Buddhism	Humanitarianism	Economics
Societal sectors of concern	Human development, culture and heritage, balanced and equitable development, governance, and environmental conservation	Poverty and hunger, universal primary education, gender equality, health care, children, relation of rich and poor nations	Economy, trade, infrastructure, poverty eradication, employment, official development assistance, debt, global politics
Key institutions	Government of Bhutan, SAARC* nations	United Nations Development Programme and UN member states	World Bank, IMF,** WTO,*** individual national governments
Paradigm propounded	Since 1972	Since 2000	Since 1944

Table 3.1 Comparison of GNH and Traditional Development Paradigms¹³

¹² Metz, above n 9.

¹³ The Berkshire Encyclopedia of Sustainability: Measurements, Indicators, and Research Methods for Sustainability, 2012, Berkshire Publishing Group, 182. (Note also *SAARC refers to South Asian Association for Regional Cooperation; **IMF refers to International Monetary Fund; and ***WTO refers to World Trade organization).

Officially, there is no definition of GNH.¹⁴ It is described as the holistic development approach that considers (the broad conception of) happiness as one of the important indicators and signs of progressive development (for the Bhutanese people) in addition to the economic dimension of development.¹⁵ While it considers the importance of economic progress, it also considers the importance of furthering the flourishing of human society in harmony with nature and the other human development considerations.¹⁶ It postulates that real human development will take place only if both material and spiritual development coexist in harmony with the natural environment. The development plans and projects associated with GNH would have to be proactive and supported with necessary resources.¹⁷ The institutional arrangements would have to be attuned to reflect this value and suitable governance designed to achieve collective happiness.¹⁸ Only then, it is claimed, can developmental activities facilitate the transformation of a society into a more peaceful, harmonious and equitable place to live in. For these reasons, GNH is called a ‘multi-dimensional development approach’ that endeavours to attain a harmonious balance between ‘material wellbeing and the spiritual, emotional and cultural needs of society.’¹⁹ Therefore, as a framework, GNH inspires long-term development goals through a holistic development and leadership philosophy, informs public policy through regular wellbeing surveys and other indicators, and serves as the tool to screen public policies and decision-making process for GNH development goals with the support of regular survey results.²⁰

2. GNH AND ITS DETERMINANT

Since its introduction, three major GNH surveys have been conducted, most recently in 2010 and 2015. Today, GNH is more than a development philosophy, the initial ‘intuitive guiding principle.’²¹ It has transitioned from the GNH index to the most important policy formulation tool of Bhutan, including the recent formulation of the business certification tool.²² But in essence, it comprises an extensive range of policies, aspirations, and rights²³ that aim to balance material values with non-material and priorities to enhance the happiness and wellbeing of all sentient beings.

¹⁴ Ura, Alkire, Zangmo and Wangdi, above n 6, 6.

¹⁵ GNH Centre Bhutan, *History of GNH*, (19 November 2017) GNH Centre Bhutan <<http://www.gnhcentrebhutan.org/what-is-gnh/history-of-gnh/>>.

¹⁶ Ibid.

¹⁷ Thinley, above n 4, 3.

¹⁸ Ibid.

¹⁹ Metz, above n 9.

²⁰ Laszlo Zsolnai and Zoltan Valcsicsak, ‘Business for the Greater Good: GNH Rating for Enterprise’ in Dasho Karma Ura and Sangay Chopel (eds) *GNH of Business* (Centre for Bhutan Studies & GNH, 2018) 56, 63.

²¹ Isabel C. Sebastian, ‘GNH in Business: A Business Approach that Goes Beyond Corporate Social Responsibility’ in Dasho Karma Ura and Sangay Chopel (eds) *GNH of Business* (Centre for Bhutan Studies & GNH, 2018) 259, 273.

²² Dasho Karma Ura and Sangay Chopel (eds) *GNH of Business* (Centre for Bhutan Studies & GNH, 2018).

²³ Sonam Tobgye, *The Constitution of Bhutan: Principles and Philosophies* (Supreme Court of Bhutan, 2015), 186.

GNH stands on four principles, referred to as pillars, namely, good governance, preservation and promotion of culture, environment conservation, and sustainable and equitable socio-economic development, as shown in the diagram below:

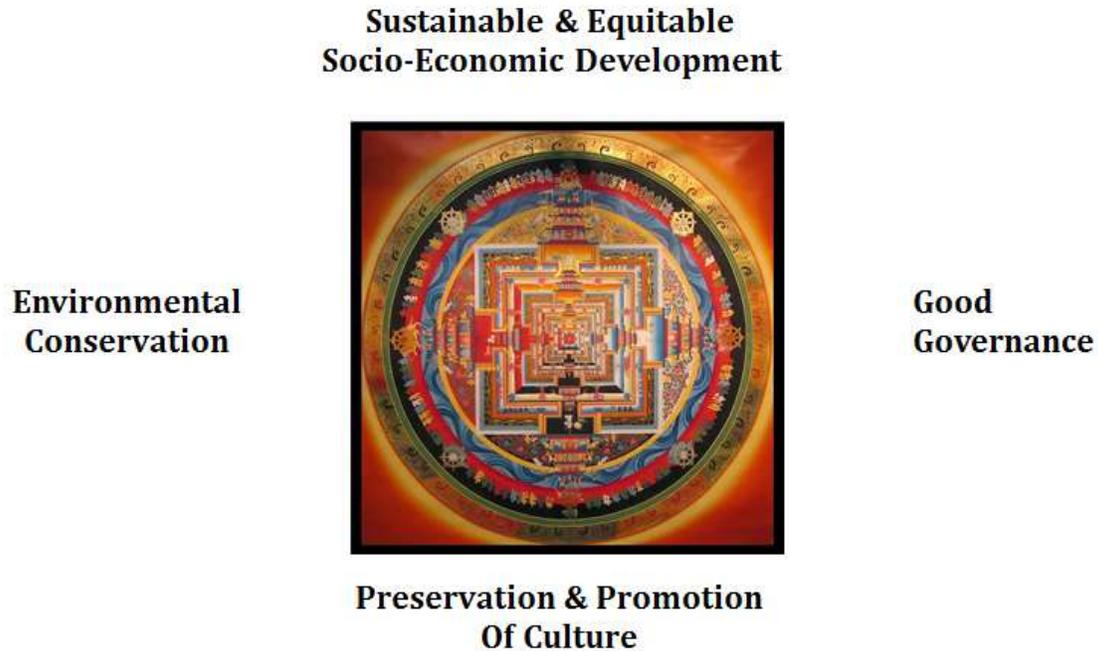


Diagram 3.1 The Four Pillars of Gross National Happiness.²⁴

These pillars have been incorporated into the nine domains of GNH: psychological wellbeing, health, time use, education, cultural diversity, good governance, community vitality, ecological diversity and resilience, and living standards.²⁵ These domains are made up of numerous indicators. These indicators are then further divided into variables. Altogether, it constitutes the GNH index, a critical evaluation tool that aims to ensure result-oriented planning and development that supports and facilitates the attainment of GNH.²⁶ It serves as the roadmap towards creating an enabling environment for GNH and orients people and the nation towards happiness.²⁷ This governance model measures overall happiness by first exploring how happy each person is. In doing so, the GNH index explores each person's life in nine domains.²⁸ A person is happier the more he or she excels in these dimensions of life. GNH deems a person happy if he or she achieves adequacy in at least two-thirds of these indicators.²⁹

The GNH seeks to ensure the attainment of national success for Bhutan through developmental activities that do not destroy, environmental management that does not drain

²⁴ GNH Centre Bhutan, *The 4 Pillars of GNH*, (19 November 2017) GNH Centre Bhutan <<http://www.gnhcentrebhutan.org/what-is-gnh/the-4-pillars-of-gnh/>>.

²⁵ Ura, Alkire, Zangmo and Wangdi, above n 6, 7.

²⁶ Ibid 8.

²⁷ Thinley, above n 4, 1-8.

²⁸ Centre for Bhutan Studies and GNH Research, above n 7, 5.

²⁹ Ura, Alkire, Zangmo, and Wangdi, above n 6.

resources, a governance model that endeavours to achieve human development, human wellbeing, and human service rather than financial profit or success, and balanced production of goods and happiness of the people. These reflect the purpose of governance and values of society.³⁰ In its quantifiable detail, the notion of GNH, as shown in the diagram below, comprises a number of domains and indicators.



Diagram 3.2 The Nine Domains and indicators of GNH.³¹

This GNH index helps to systematically assess the impact of every policy and project on GNH.³² However, this index is neither static nor exhaustive. Since 2006, the Centre for Bhutan Studies (CBS) has been, as mandated by the Royal Government of Bhutan (RGoB),

³⁰ Karma Ura, *The Experience of Gross National Happiness as Development Framework* (Asian Development Bank, 2015) 7.

³¹ Ura, Alkire, and Zangmo, *The Gross National Index - Happiness Index of Bhutan: Method and Illustrative Results*, Centre for Bhutan Studies, Thimphu (Presented by Sabina Alkire, OPHI, University of Oxford, 12 October 2011, OECD). *Driglam Namzha*, also described as the way of harmony is defined as ‘expected behaviour of (consuming, clothing, moving) especially in formal occasions and in formal place’: Ura, Alkire, Zangmo, and Wangdi, above n 6, 22.

³² Ura, above n 30, 12.

devising and updating the GNH Index, track the status of happiness, and establish goals related to GNH.

3. GNH DETERMINANTS AND THE JUDICIARY

The conceptual framework of GNH is argued to contain within it a key element, the Good Governance domain, that, it is argued, is relevant and important to justice and fair trial. This domain relates to the relationship between the people and the government, how government functions are perceived by people, and how the government is structured and operated and whether it is able to serve the pursuit of GNH by its people.³³ It evaluates in general whether people are able to participate in government decision-making processes, whether the government actions are appropriate and whether there are proper rights and freedoms.³⁴ The achievement of good governance is assessed through four measures as shown in the table below.

GNH Domain	GNH Determinants	GNH Indicators
Good Governance	Decision-making opportunity Anti-corruption Legal recourse Rights Gender Transparency	Political Participation Services Governance Performance Fundamental Rights

Table 3.2 Good Governance Domain of GNH and its indicators³⁵

As mentioned in the table, the good governance domain explicitly focuses on rights, trust in institutions, the performance of the governmental institutions, and political participation.³⁶ These measures were developed to evaluate the efficiency and effectiveness of the government or governance.³⁷ It centrally looks at how efficient, transparent and accountable the government is.³⁸ It, along with other determinants, determines the conditions in which, and the extent to which, Bhutanese thrive.³⁹ This domain can be argued to obligate the state to efficiently, transparently, and ethically dispense public services,⁴⁰ including justice services.

³³ Ernest C. H. NG, 'Corporate Sustainability and Legacy Building in Business through the GNH Framework' in Dasho Karma Ura and Sangay Chopel (eds) *GNH of Business* (Centre for Bhutan Studies & GNH, 2018), 369, 380.

³⁴ Centre for Bhutan Studies and GNH Research, above n 7, 39.

³⁵ Adapted from Gyambo Sithey et al, 'Interpreting GNH Determinants from Health Policy Perspective: A Guide for Health Policy Makers' (2017) 36 (Summer) *Journal of Bhutan Studies* 58, 88.

³⁶ Ura, Alkire, Zangmo and Wangdi, above n 6, 25.

³⁷ Ibid.

³⁸ Ernest, above n 33, 380.

³⁹ GNH Centre Bhutan, *The 4 Pillars of GNH*, (19 November 2017) GNH Centre Bhutan <<http://www.gnhcentrebhutan.org/what-is-gnh/the-4-pillars-of-gnh/>>.

⁴⁰ National Report submitted in accordance with paragraph 15(A) of the Annex to Human Rights Social Council Resolution 5/1 – Bhutan, G A/HRC/WG.6/6/BTN/1, UNGA (3 September 2009) 38.

The term good governance is not clearly defined.⁴¹ This paper follows the definition provided by Dessalieu. The governance is good if it produces results that correspond to the collective aspirations and needs of those governed.⁴² Good governance must produce better societal outcomes that accord with the expectations of society.⁴³

In 2015 the third nation-wide survey on GNH was conducted. The survey collected and updated information to track the quality of life of the people.⁴⁴ Amongst other things, it found over 80 percent of people enjoy (fundamental) rights and freedoms.⁴⁵ However, not all fundamental legal rights were considered for the GNH measurement.⁴⁶ There are no specific measures related to the delivery of fair trials, the right to representation or justice. Furthermore, the government performance indicators have no direct association with the judiciary. Neither the 2010 nor the 2015 surveys contain any mention about the judiciary and the services it provides. Neither survey contains any reference to ‘court,’ ‘fair trial,’ nor ‘justice.’ The 2015 survey questions on good governance (questions 80-88 of 148 questions) do not relate to the judiciary and judicial services. Conversely, the GNH Policy Screening Tools identifies ‘judiciary efficiency’ and ‘judiciary access’⁴⁷ as two of many criteria for policy screening but contains no further elaboration. This overview suggests that the GNH governance and development discourse might have come to be shaped in more political and economic terms.

It is, however, argued that the judiciary in a GNH state cannot remain isolated from the overall vision of the country. Satisfying and making conflicting and competing parties in cases happy may not be possible at all times. However, while the judiciary must uphold the rule of law and strengthen the confidence of people, it must also actively contribute towards achieving the visions of GNH. Lungten *J* states that there is an intrinsic link between justice and good governance reasoning that, without rule of law or justice, good governance cannot be ensured or guaranteed.⁴⁸ As well, without good law and justice, governance cannot be good.⁴⁹ Further, the GNH governance and development discourse is a broad subject, relevant to not only government institutions and officials but also to other internal and external bodies and citizens.⁵⁰ Indeed, unprecedentedly, the 12th Five Year Plan (2018-2023) of the RGoB included the need for strengthening justice services and institutions as one of the sixteen National Key

⁴¹ Renata Lok Dessalieu, *Democracy, Good Governance and Happiness: Some Views from the Kingdom of Bhutan* (Centre of Bhutan Studies Publication, 2005) 5. The author provides a review of how this concept has come to be defined by differing institutions like the United Nations Development Programme, European Commission, World Bank, Asian Development Bank, etc.

⁴² *Ibid* 9.

⁴³ *Ibid* 38.

⁴⁴ Ura, Alkire, Zangmo and Wangdi, above n 6, 43.

⁴⁵ Centre for Bhutan Studies and GNH Research, above n 7, 192.

⁴⁶ 2015 GNH Survey considered only a limited number of rights and freedoms. It considered the right to: freedom of speech and opinion, vote, join political party of choice, form *Tshogpa* (Party), equal access and opportunity to join public servant, equal pay for work of equal value, and be free from discrimination based on religion, language, and political affiliation: See Centre for Bhutan Studies and GNH Research, above n 7, 193.

⁴⁷ Ura, above n 30, 13.

⁴⁸ Lungten Dubgyur, *The Parasol of silken knot* (Royal Court of Justice, Research Division, High Court Thimphu 2005), 142.

⁴⁹ ‘.... Governance is good when laws are good and there is justice’: His Majesty the King, Audience to the *Drangpons* (Judges), 16th Annual Judicial Conference, 27th August 2002.

⁵⁰ *Ibid* 11.

Reserve Areas (NKRA).⁵¹ Although the five-year development plans were meant to ensure balanced development between all the nine domains of GNH, Bhutan used the GNH index as the instrument to measure development since the 10th Five Year Plan (2008-2013).⁵² Particularly, from the happiness perspective, the 12th Five Year Plan is mandated to bring about greater wellbeing and happiness for the people of Bhutan through, amongst other things, achievement of sixteen NKRA.⁵³

The judiciary, as the judicial arm of the RGoB, must also foster happiness through its administration of justice. This may be difficult given its responsibilities. Pursuant to the *Constitution* and procedural law, the courts must protect and ensure rights and justice.⁵⁴ They must serve as a neutral forum for adjudicating both civil and criminal cases.⁵⁵ Justice, equality, and fairness must be the guiding principles.⁵⁶ The courts and judges must be free of bias, and remain impartial, independent and immune from outside influence. Despite these constraints, the judiciary must ensure a sound legal system to uphold the nation's independence, security, GNH, and the rights and freedoms of people.⁵⁷ The Chief Justice of Bhutan, Lyonpo Tshering Wangchuk states that the rule of law and fair justice is critical to sustainable development.⁵⁸ He reasoned that while justice conventionally relates to peace, it is increasingly tied with socio-economic development that must be approached in a holistic manner. If the GNH discourse leaves judicial services and the repercussions that it might have on the litigants in particular, and public and country in general, outside of its purview, the GNH measurement might not be representative of the overall GNH experience in the country. As such, it is argued that the justice delivery system should be part of a common destination - a happier Bhutan. In the words of His Majesty the Great Fourth, justice is one of the two most primary needs of the Bhutanese people.⁵⁹ GNH as a conceptual framework encapsulating collective wellbeing and expression

⁵¹ Gross National Happiness Commission, *Twelve Five Year Plan Finalized AKRA(s)* (March 2017) <https://www.gnhc.gov.bt/en/?page_id=1338>. NKRA is a national development outcome to contribute towards achieving the plan objectives under one or more GNH domain.

⁵² Ura, above n 30, 9-10.

⁵³ Royal Government of Bhutan, Government Order – Guideline for the Preparation of the 12th Five Year Plan (5 January 2017) <<https://www.gnhc.gov.bt/en/wp-content/uploads/2017/05/gnh.pdf>>.

⁵⁴ Sonam Tobgye, *The Constitution of Bhutan: Principles and Philosophies* (Supreme Court of Bhutan, 2015), 334.

⁵⁵ *Ibid* 335.

⁵⁶ “[T]he most precious love of a King is his people; the most cherished wish of the people is peace and prosperity; Law is the root of peace and prosperity. Thus, no other goal should be noble than the creation of a society based on justice, equality, and fairness”: His Majesty’s Address to the 20th Annual Judicial Conference, 2010 cited in Tobgye, above n 54, 334.

⁵⁷ His Majesty’s Address to the Judges, 11th June, 2010 cited in Tobgye, above n 54, 337.

⁵⁸ Round Table Meeting Secretariats, *Ensuring Responsible Development Through a Strengthened Justice System* (25 July 2016) <<https://rtm.gnhc.gov.bt/ensuring-responsible-development-through-a-strengthened-justice-system/>>.

⁵⁹ His Majesty the Fourth King, Audience to the Drangpons (Judges), 27 August 2002 after 16th Annual Judicial Conference, cited by Lungten Dubgyur, ‘Review of Judicial Reforms in Bhutan’ in Karma Ura and Sonam Kinga (eds), *The Spider and the Piglet- Proceedings of the First International Seminar on Bhutan Studies* (The Centre for Bhutan Studies, 2004) 379.

of the common good, can also be a useful ethical concept to explore applicability to the judiciary within its ‘multiple applications.’⁶⁰

Justice services may relate to all the domains and indicators of GNH in one or another way. However, the primary focuses or the indicators of the Good Governance domain of GNH is argued to specifically align with the tenets of a fair trial. The idea of a fair trial and the role of legal representation can be seen to fit within this domain. The holistic model of GNH can also be used as the framework to formulate, revise and implement certain justice policies or reforms that can enhance happiness. The multi-dimensionality of the GNH theory can accommodate a requirement for the shared responsibility of the judiciary in a GNH state to create an enabling environment for peace and happiness. An example of this can be seen in the Survey Report on Access to Justice in Bhutan commissioned by the Bhutan National Legal Institute (BNLI) in 2012 which sought to, amongst other things, study the satisfaction of the litigants in meeting their expectations.⁶¹ The sample was comprised of respondents in urban areas from nine districts. The Report suggested that the correlation between the favourability of litigants’ experience with the court and the favourability of the outcome of the case is positive.⁶² While the majority of the respondents were seen to be generally satisfied with the court system, they perceived fair treatment as an issue.⁶³ The respondents reported that the court procedures are cumbersome. One-fourth of the 874 respondents felt that the lack of confidence that a judge will deal with a case fairly was one of the barriers to justice.⁶⁴ While the general cost of litigation is not seen as an issue, the cost of hiring legal counsel is an issue.⁶⁵ There was also a perception among the respondents that not all receive fair treatment under the laws of the country.⁶⁶ They also felt that their court experiences would have been better if there were, amongst other things, legal aid and counsel to those who cannot afford it.⁶⁷ They found the court documents like judicial forms and verdicts are not user friendly.⁶⁸ Most of them believed that having honest and fair judges, as well as good lawyers/counsel, is critical to winning cases.⁶⁹ Based on the findings, the Report, amongst other things, recommended the need to review court procedural practices, institute legal aid, and secure and increase the pool of lawyers for the litigants in criminal cases.⁷⁰ The Report, however, makes no reference to GNH. It also does not substantially address issues relating to SRLs in the country except via a casual reference about the difficulty of court language and the need for legal aid. But it is one part of the critical evidence that suggests that the judiciary might have to reconsider the governance underlying the justice service delivery for better service. Likewise, analysing SRLs

⁶⁰ See Dasho Karma Ura and Dorji Penjore (eds), *GNH: From Philosophy to Praxis* (Centre for Bhutan Studies & GNH, 2017) and Dasho Karma Ura and Sangay Chopel (eds) *GNH of Business* (Centre for Bhutan Studies & GNH, 2018).

⁶¹ Bhutan National Legal Institute, ‘Access to Justice in Bhutan: Excerpt of the Report from the Survey Commissioned by the Bhutan National Legal Institute’ (2018) IX *Bhutan Law Review* 93.

⁶² *Ibid*, 95.

⁶³ *Ibid*, 98.

⁶⁴ *Ibid*, 97.

⁶⁵ *Ibid*, 97.

⁶⁶ *Ibid*, 98.

⁶⁷ *Ibid*, 100.

⁶⁸ *Ibid*, 101.

⁶⁹ *Ibid*, 103.

⁷⁰ *Ibid*, 109.

and their impact on the court process or trial process and its relationship to achieving GNH could improve understanding of the performance of judiciary.

While GNH indicators specific to justice or judicial service could develop in the future, the present Good Governance determinants applicable to the judiciary and SRLs, as the central concern of the paper, include legal recourse and rights. These determinants are discussed to demonstrate how GNH could apply to the judiciary and the services it provides.

First, legal recourse as a GNH determinant requires that the legislative frameworks can adequately guarantee entitlement and enable the enjoyment of rights and protection.⁷¹ Laws should be able to guarantee access to justice, a forum for redress and reparations for people who suffer the violation of their entitlements and rights. The right to counsel vis-à-vis SRLs is seen to be guaranteed under the current legislative framework. However, this framework is arguably insufficient in guaranteeing an effective availability of the right to counsel for the SRLs, including indigent criminal defendants.⁷² In this regard, it is critical to reexamine laws and other regulatory mechanisms relating to the right to counsel or legal representation vis-à-vis SRLs and GNH. Lesser public awareness about legal aid may be the reason why people are not insistent on the provision of free counsel by the government or why people generally appear in person before the court.

Second, rights as a determinant of GNH, for now, cover 10 fundamental rights enshrined in the *Constitution*. Rights considered for the GNH survey were whether there is, and whether people were able to enjoy, their rights to - freedom of speech, vote, form political parties, equal access and opportunity to join public services, equal pay for equal work, and freedom from discrimination. Consequently, rights which are related to judicial services like the right to legal counsel, fair trial, equality before the law, equal protection of the law without discrimination, to name a few, remain out of GNH purview. At the same time, not every right may be relevant and feasible to ask about for the GNH Survey and not every right may facilitate the generation of data that can demonstrate representative GNH experience of the entire population. However, a sizeable portion of the population is still involved in litigation despite the country's age old tradition of alternative dispute resolution mechanisms and practice of Buddhist values of tolerance and compassion. The Access to Justice Reports⁷³ discussed earlier suggest that the experience of this portion of the population with the court is not favourable. Even in the absence of specific GNH determinants, this experience is argued to demonstrate an unhappy portion of the population that requires consideration. This determinant can, therefore, assist in understanding the current justice delivery system to ensure the effective right to legal counsel and fair trial, and link to GNH.

Relating these illustrative GNH determinants to judicial service and fair trial has some resulting policy implications. Illustrative questions that arise from this interpretation, at least in relation to the right to counsel and fair trial, might include: whether the current laws are inadequate in themselves or fall short of implementation in guaranteeing an effective right to counsel for SRLs? Whether there is a need for a specific legislative, regulatory or policy

⁷¹ Gyambo et al, above n 35, 68.

⁷² This argument is dealt in detail in Chapters Two and Five of the thesis.

⁷³ Bhutan National Legal Institute, above n 61.

framework to facilitate the implementation of the relevant laws? Whether the current legal framework and formulation of the new approach, to what extent and under what measurements, would be able to address those adversely affected and fix a new set of efficacy, transparency, and accountability? Whether articulation of justice delivery system with and integration of GNH's middle path approach (discussed later) can ensure an effective right to legal counsel and fair trial?

4. APPLYING GNH TO THE ADMINISTRATION OF JUSTICE AND FAIR TRIAL

Since GNH was propounded, its relationship with the law has been increasingly recognised in Bhutan. Sonnenberg and Lham claim that GNH is, by theory and practice, relevant to the legal profession. They observed that the unique development approach of GNH has begun to have an evolutionary impact on its legal system, what they call as a process of 'development-to-law' in contrast to 'law-to-development'.⁷⁴ They predict that the more Bhutan takes the developmental vision of GNH seriously, the more its legal system will reflect its pledge to 'a more holistic, humane, and sustainable social improvement'.⁷⁵ As already mentioned, prioritising the need to strengthen the justice services and institutions, is one of the many examples, which will continually require the legal professionals in Bhutan to incorporate their understanding of GNH and law in their practice. Gradually, they could emerge as the guardian and interpreters of GNH – continually guiding and encouraging behaviours consistent with the objectives of GNH.⁷⁶

As argued, GNH as an alternative framework could help justice stakeholders, the judiciary in particular, to develop a broader, more inclusive justice delivery system to ensure a fair trial and secure justice. This, in turn, could facilitate and enhance the generation of contentment and happiness among the litigants and judicial officials. The application and relevance of GNH to the administration of justice and fair trial are illustrated in the following discussions.

4.1. GNH POLICY FORMULATION PROTOCOL – A CONSTITUTIONAL MODEL OF GNH RELEVANCE AND IMPLEMENTATION

The Protocol for Policy Formulation of the RGoB⁷⁷ provides a procedure for policy formulation and implementation. Except for Royal Commands and those that relate to national emergencies, all policies must originate as a concept note which the Gross National Happiness Commission (GNHC) will review and approve and then by the Cabinet Secretariat. If a concept note is approved by the GNHC and Cabinet, the proponent formulates policy and submits the draft policy to the GNHC who will review and make it available to all relevant stakeholders and the public for comment. Upon incorporation of comments, both the proponent and GNHC will subject the draft policy to the GNH Policy Screening Tool. The proponent will then submit

⁷⁴ Sonnenberg and Lham, above n 3, 7.

⁷⁵ Ibid.

⁷⁶ Ibid, 13.

⁷⁷ Gross National Happiness Commission, *Protocol for Policy Formulation* (March 2015) <<https://www.gnhc.gov.bt/en/wp-content/uploads/2017/05/policy0001.pdf>>.

their screening results to the GNHC. Thereafter, the draft policy will be reviewed and approved by an independent 15-member multi-sector committee constituted by GNHC and then by the Cabinet. If approved, the proponent or the agency identified within the policy will then implemented it.

This protocol can be seen to establish a certain constitutional model that mandates consideration of GNH and an integrated approach in the policy process. Only those policies that enhance GNH could be approved and those that adversely affect GNH are rejected. To this extent, GNH remains a relevant and critical consideration, if not the overarching principle in the public policy and governance spheres, including the judiciary and judicial services.

4.2. GNH AND LAW

GNH also outlines the basis to protect, promote, and integrate human rights as one of the constituent elements of Bhutanese society.⁷⁸ It advocates the equality of all human beings, their connectedness with other living beings and non-living things, and the resulting rights and duties to guide their conduct.⁷⁹ GNH seeks ultimate harmony and happiness.⁸⁰

While there is no express incorporation of a fair trial or the happiness of parties within the justice system in the official development matrix, it is arguable that the purpose of the government and law in Bhutan has always been to create and promote happiness. The Buddhist equivalent of ‘Social Contract’ of 1675 declared the mutuality and dependency of happiness of all sentient beings and the Buddha’s teachings.⁸¹ The 1792 Bhutanese Legal Code, a short constitution of medieval Bhutan,⁸² also more specifically mandated that laws must uphold the happiness of sentient beings. It was founded on the thesis that there was no purpose for a government to exist if it could not create and promote happiness for its people.⁸³ A government ruling Bhutan over any period of time always had one explicit purpose – to facilitate generation of and foster happiness for its people.

As in the past, the pursuit of happiness for Bhutan is inviolable. Since 2008, GNH is both a normative concept and a legal concept. The visions and objectives of GNH are now legislated in Bhutan. The preamble of the *Constitution* contains the word ‘happiness.’ It reads:

Preamble

WE, the people of Bhutan:

...

SOLEMNLY

⁷⁸ National Report, above n 40, 8.

⁷⁹ Ibid.

⁸⁰ McDonald, above n 10, 161.

⁸¹ Thinley, above n 4, 1.

⁸² Centre for Bhutan Studies and GNH Research, above n 7, 29.

⁸³ The Legal Code dated 1729 (earth bird year) is attributed to the 10th Desi Mipham Wangpo while he was serving on the Golden Throne of Bhutan, as representative of the Shabdrung Rinpoche, and based on the Shabdrung’s earlier work cited in Ura, Alkire, Zangmo and Wangdi, above n 6 and Centre for Bhutan Studies and GNH Research, above n 7.

pledging ourselves 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; ...⁸⁴

The Preamble, referred to as ‘the soul of the constitution,’⁸⁵ reiterates Bhutan’s sovereignty, and stresses people’s aspiration for perpetual liberty, justice, tranquility, unity, happiness, and wellbeing.⁸⁶ The government is specifically (and constitutionally) mandated to pursue GNH for the people of Bhutan.⁸⁷ Therefore, the legitimacy of any Bhutanese government (including the judiciary as an arm of government) depends on its commitment to facilitate and create conditions that will enable citizens to pursue and achieve happiness.⁸⁸

The *Constitution* also stipulates that Buddhism which fosters peace, non-violence, compassion, and tolerance is the spiritual heritage of Bhutan.⁸⁹ It obliges the state to endeavour to create conditions that will enable a true and sustainable transformation of society into a good and compassionate one with Buddhist tenets and universal human values.⁹⁰ This principle of state policy that proclaims the spirituality of compassion overlaps with the fundamental rights and freedoms,⁹¹ wherein the pursuit of the latter by the individuals is argued to generate direct responsibility for others’ wellbeing and happiness. Indeed, the aspiration and prayer for collective happiness are contained in the last line of the national anthem of Bhutan: ‘May the teachings of the Enlightened One flourish, May the sun of peace and happiness shine over all people.’⁹² This constitutional and common proclamation of happiness as one of the supreme considerations and indicators of meaningful social progress is also argued as the mandatory directive policy for administering justice by the judiciary.

4.3. GNH AND JUDICIAL PROCESS

The general course of the procedural law in Bhutan is that of an adversary system. Notwithstanding this, there are possibilities for judicial involvement in fact-finding. A judge in Bhutan can, at his or her discretion, take part in the examination of witnesses and can gather evidence in addition to that produced by the parties. These features would allow judges to be more active in dealing with SRLs in general and SRLs in criminal cases in particular.

An accused may be unrepresented and lose the chance of acquittal owing to his or her ignorance of the law. He or she may be unrepresented because he or she cannot afford a lawyer. Legal aid may not be available. He or she may be under the misimpression of his or her capability to defend him/herself in the absence of a lawyer. Admissions or confessions to the commission of an offence might have been obtained through unlawful means. In the absence of necessary guidance and advice, he or she may be wrongly encouraged to enter into plea

⁸⁴ *The Constitution of Kingdom of Bhutan 2008* (Bhutan) (Constitution) Preamble, Emphasis added.

⁸⁵ Tobgye, above n 54, 50.

⁸⁶ Happiness is set as a virtue while peace is one of the conditions for happiness and progress: Tobgye, above n 54, 50.

⁸⁷ See *Constitution* a 9 s 2.

⁸⁸ Thinley, above n 4.

⁸⁹ *Constitution* a 3 s 1.

⁹⁰ *Constitution* a 9 s 20.

⁹¹ Centre for Bhutan Studies and GNH Research, above n 7.

⁹² *Ibid* 32.

bargaining. These are all situations that one may find in the absence of defence counsel in criminal cases.

In such scenarios, a mere hearing and deciding the case may not be enough to achieve a fair and just outcome. Judicial intervention may be needed. Without it, the result may be unjust, unfair, or even result in wrongful conviction. Such convictions can lead to suffering, which may not only be inconsistent with the objectives of procedural law but also contravene the overall GNH governance objectives. Criminal trial outcomes may affect the defendant's liberty, personal and social life, and employment prospects besides the adverse impact on his or her family and relatives. If the trial is not fairly conducted, the process can breed dissatisfaction and leave criminal defendants and their family and relatives disgruntled and unhappy with the criminal justice system. This section of the population would remain unhappy, powerless and left out. They may lose trust and faith in the institution of justice.

In some cases judicial intervention, to protect the rights of defendants, especially SRLs, can be argued as both a judicial and a GNH responsibility. Effective shouldering of these responsibilities can facilitate both ensuring a fair (and inclusive) process that can yield a fair trial and a just outcome, and promoting GNH in the courts. Under this broad responsibility, the court can, irrespective of the availability of legal aid and other assistance programs, start to recognise SRLs as an inevitable component of the Bhutanese justice system and addresses their needs and difficulties. In this way, processes employed in the administration of justice and outcomes achieved therefrom can eventually align with the promotion of happiness.

4.4. GNH AND JUDICIAL PROFESSION

At the governance level, the collective happiness consideration of GNH also includes and provides another dimension of considering the happiness of the judges and judicial officers. They are indispensable officials tasked to ensure equality before the law and a fair trial under 'the methodological, systematic and exhaustive judicial process.'⁹³ While any policies, law, or programs associated with running a trial that are inconsistent with compassion and concern for others must be ruled out, the creation of GNH does not end with addressing the needs of others alone but also includes the happiness of self within that collective happiness spectrum. A relevant source of happiness to a judicial officer can stem from their contentment of having absolved cases in accordance with law, justice, equity, and good conscience. Therefore, in a GNH state, examining whether the current practices of administering criminal justice (in general and to SRLs in particular) bring about contentment (and eventual happiness) to the judicial officials or whether there is a need for any, general or specific, procedural reform to the current system to facilitate the generation of contentment and happiness both at their subjective level as well as objective level is arguably a critical consideration. If the judicial officers are not happy with the current system, the governance model that drives the current system is arguably deficient. Under such a governance model, the judges and judicial officials, would remain unhappy, complacent and left out as well as unable to facilitate the pursuit of happiness by the litigants and judiciary.

⁹³ Tobgye, above n 54, 341.

At the individual level, one of the tenets of GNH as a space for individual practice⁹⁴ is argued to oblige judges and judicial officials to practice GNH. If they are able to practice GNH and act justly and fairly, this could bring about individual contentment as well as administration of fair justice. Otherwise, the judge can neither be happy nor contribute to the justness and the happiness of others and the society. Therefore, diagnosing the experience of judicial officials with the justice system in light of the GNH visions can also offer new insights into the responsiveness of the justice delivery system.

5. CONCLUSION – GNH : A MIDDLE PATH TO EFFECTIVE ADMINISTRATION OF JUSTICE?

The Bhutanese way of life and thinking, strongly driven by religious values, is based on the general ideals of moral self-regulation – having a calm mind and right intention as both the way to avoid and solve the disputes.⁹⁵ Belief in the karmic consequences of one's act (whether through speech, mind or body) may be motivating adherence to this moral regulation. This Buddhist tenet, that the acts in the present life will be rewarded or punished in the future life, is argued to provide a powerful motivational principle. If not for this natural law of karma and justice,⁹⁶ the pursuit of happiness can become self-centered and chaotic - the result is that neither self nor others will achieve happiness. Accepting happiness as the goal of all sentient beings offers another basis for ethics.⁹⁷ The fact that no sentient being likes unhappiness must motivate mindful pursuit of happiness, including motivation of compassion and kindness towards one another. Happiness as an ethical practice,⁹⁸ therefore, can close the gap between the instinct for self and others, and inspire a higher level of sensibility and mindfulness in one's conduct.

Happiness is also as a compassionate state of being⁹⁹ and can impose a responsibility on every individual to contribute to other's wellbeing. By contributing to other's happiness, one could also improve his or her chances of happiness. Therefore, examining whether one is a socially responsible and valuable member of the community and society can also depend on whether he or she is able to contribute to the happiness and wellbeing of others.¹⁰⁰

⁹⁴ Verma and Ura, above n 5, 4.

⁹⁵ Alessandro Simoni and Richard W. Whitecross, 'Gross National Happiness and the Heavenly Stream of Justice: Modernization and Dispute Resolution in the Kingdom of Bhutan' (2000) 55 *The American Journal of Comparative Law* 165, 171.

⁹⁶ Barbara O'Brien, *Buddhism and Karma- Introduction to the Buddhist Understanding of Karma* (30th September 2017) ThoughtCo <thoughtco.com/buddhism-and-karma-449992>.

See Chirayu Thakkar, *Karma*, (30 September, 2017) Ancient History Encyclopedia, 2015 <<http://www.ancient.eu/Karma/>>. See also Kyabje Kanghur Rinpoche, *Commentary on Nagarjuna's Letter to a Friend* (Snow Lion publications, 2005) 39:

“Perform no evil, even for the sake
Of brahmins, bikhus, gods, or honored guests,
Your father, mother, queen, or for your court.
The ripened fruit in hell's for you alone.”

⁹⁷ Ura, above n 30, 3.

⁹⁸ *Ibid*, 5.

⁹⁹ Ross McDonald, *Taking Happiness Seriously - Eleven Dialogues on Gross National Happiness* (Centre for Bhutan Studies, 2010) 4.

¹⁰⁰ *Ibid*.

GNH encapsulates a broader and holistic conceptions of happiness. It melds subjective wellbeing and the Buddhist conception of happiness, and therefore, constitutes the third broad concept of happiness.¹⁰¹ This broad GNH conception of happiness can help to redefine legal and professional ethics, influence cultivation of a more mindful profession, and judicialise GNH and promote happiness.¹⁰²

Courts are places of significant human interactions of different degrees. The diverse background of litigants before the court triggers varying needs and expectations. Everyone will have his or her strategies to secure a just outcome. As mentioned, to feel content and happy with the judicial service may not necessarily be entirely dependent on a successful outcome in the case, but also on how such an outcome is achieved. The conventional role of a non-interventionist judge applying the procedural law may not be sufficient to do justice and ensure a fair trial in some cases, especially those involving SRLs. The adversarial trial process combined with a number of inquisitorial powers of the court does not doom the Bhutanese judges to passivity.¹⁰³ As discussed earlier, the political manifesto enshrined in GNH contains no elaboration on the role of courts/judge except the catchwords of ‘good governance’ and ‘rule of law’¹⁰⁴ and the later inclusion of ‘judiciary access’ and ‘judiciary efficiency’ as GNH Policy Screening Tool. Nonetheless, differential treatment of SRLs (in order that they receive fair treatment and a fair trial) may be legally necessary and justified under their inherent judicial discretionary power and duty to ensure a fair trial, as well as in due observance of their GNH obligation to facilitate the pursuit of happiness by litigants, including SRLs. For that matter, the obligation of the judiciary to address the needs of and render certain differential treatment to SRLs is also found in appreciating the GNH foundation of administering justice besides traditional principles of equal treatment and fair trial in Bhutan. Being able to act based on both law and GNH and adjudicate cases fairly can become one source of happiness to the judicial officers and litigants as well as to the society as the courts become more inclusive, active, accessible and fair to all the litigants – thereby, contributing towards the creation of a just and happy society.

GNH as a holistic ideology and the overall vision of the country can also seemingly guide any subject even without the development of specific determinants. Drawing ideological influence of GNH may be enough for the present purpose of analysing how GNH relates to and might orient Judiciary and its services towards happiness. However, it may be argued that the effective use of GNH as a holistic policy and development measurement tool may depend on the development of a precise GNH determinant relevant to a specific subject, justice services, and judiciary. Only then could the GNH substantially uncover and mitigate, for example, the adverse impact of the present criminal justice system to SRLs. The GNH could serve as the assessment tool for the judiciary to assess its practices and alternatives and strategically avoid any unwarranted judicial outcomes and promote fair trial, justice, and happiness.

Interpretation of GNH may also vary as its determinants are evidently evolving. Nonetheless, examination of the definition and determinants of GNH, and its implications for

¹⁰¹ Ura, above n 30, 3.

¹⁰² Sonneberg and Lham, above n 3, 11-7.

¹⁰³ Simoni and Whitecross, above n 95, 171.

¹⁰⁴ Ibid, 182.

fair trial and right to legal counsel and justice in general, suggest that GNH can also offer a middle path to effective administration of justice. At least for Bhutan in its development paradigm, GNH has provided a normative orientation for state and societal activities.¹⁰⁵ GNH has guided policy formulation, public discussions, and enactment of laws. New norms of decision making and institutions have emerged. These developments have facilitated Bhutan in striking a harmonious balance between, for example, modernity and tradition, environment and economic growth – which would not have been possible without invoking GNH. Likewise, GNH can provide normative orientation to the judiciary and inspire and encourage it to reconsider its conventional justice delivery framework.

Therefore, an enquiry into how judges integrate GNH into their practice can assist to understand the extent to which the societal or collective wellbeing is considered and valued during the judicial deliberation and pronouncement besides the legislative framework. The judiciary can examine whether there is a responsible delivery of justice services. It can offer new insight into how happy the judicial officials are and reveal factors if any that might be adversely affecting their wellbeing as well as their effective functioning and fair treatment of the litigants. It could also help to evaluate and substantially determine whether the judiciary is able to promote and facilitate the pursuit of happiness behind its conventional role of absolving disputes through legally sustainable solutions.

¹⁰⁵ Ura, above n 30, 22.