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**ROYAL COURT OF JUSTICE  
HIGH COURT**

དཔལ་ལྷན་འབྲུག་པའི་ཁྲིམས་ཀྱི་འདུན་སའི་འཁྲུན་ཆོད།

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HIGH COURT, BHUTAN

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ROYAL COURT OF JUSTICE

**CASE CONCERNING CONSTITUTIONAL VALIDITY OF  
THE TAX REVISION BY THE GOVERNMENT**

**Judgment Rendered**

*18 November, 2010*

**(Summary translated version)**

**(OPPOSITION LEADER vs. GOVERNMENT)**

Opposition Leader.....Plaintiff

*Versus*

The Government,  
Represented by Attorney General.....Respondent



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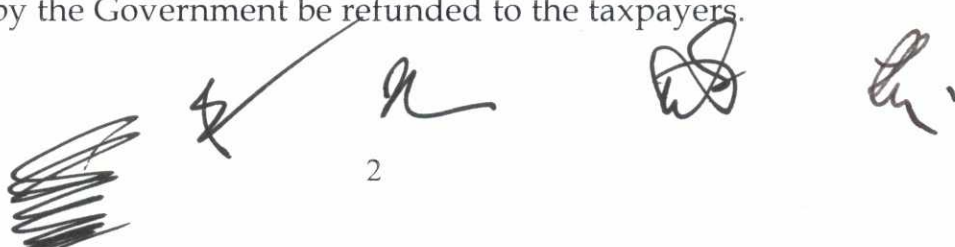
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### Synopsis

**Locus standi** – scope of court’s jurisdiction - Can a sitting Member of Parliament invoke the principle of ‘right to initiate’ a suit - the Opposition Leader representing the Opposition Party – in what manner is the Opposition as an individual affected – Causation of the case – is the action redressable – objection for representation by Damcho Dorji, the Hon’ble Member of Parliament of the Opposition Party who once held the post of a Drangpon – issues surrounding legal aid for the Petitioner – Separation of Powers – principle of check and balance as enshrined in the Constitution.

**Procedural and substantive obligations** – any dereliction of duty in imposition of taxation measures – Is *suo motto* action of the Government *ultra vires* the Constitution – Any procedural infraction in raising the revenues through tax – Whether taxes are part of Budget or Money Bill – Commission of act by the Government in isolation but in pursuant to Sales Tax, Customs and Excise Act, 2000 a violation of the Public Finance Act, 2007 and the Constitution – harmonized construction or conflict of laws between the Sales Tax, Customs and Excise Act – Public Finance Act – Doctrine of *ultra vires*.

**Relief** – Reference drawn to Part I, Chapter 3, Section 4.2; and Part II, Chapter 4, Section 6.1 of the Sales Tax, Customs and Excise Act, 2000, **and** Chapter I, Section 2 and Chapter III, Sections 9, & 14(b) of the Public Finance Act, 2007 and that of Article 14, Section 1 of the Constitution. Imposition of tax measures by the Government be declared *ultra vires* of the Constitution and rule that the taxes collected by the Government be refunded to the taxpayers.



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JUDGEMENT

**Constitutional Bench**

Before the Constitutional Bench presided by Hon'ble acting Chief Justice Sangay Khandu, Justice Lungten Dubgyur, Justice Norbu Tshering, Justice Tshering Namgyel and Justice Tashi Chhozom.

**Facts and issues**

The Opposition Leader moved the Court seeking its intervention on the Government's approval of the rationalization and the broadening of the existing tax structure. The Finance Minister, while presenting the Annual Budget 2010-2011 in the 5<sup>th</sup> Session of Parliament, reported that "Rationalization of Sales Tax and Customs Duty rates" would generate revenue of Nu. 200 million and "that Broadening the Sales Tax Base" would generate a further Nu. 250 million for the Government.

While the Government invokes provisions from the Sales Tax, Customs and Excise Act, 2000, the Opposition Leader relies upon several Sections of the Public Finance Act, 2007 and draws Article 14, Section 1 of the Constitution thus claiming the act of the Government *ultra vires* to the Constitution.

The Opposition Leader argued that raising of revenues through taxes shall be authorized by Parliament and not through *suo*

  
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*motto* action of the Government. Furthermore, he contends that the Article 1, Section 10 of the Constitution supersedes all provisions of any laws that are inconsistent with the provisions of the Constitution. Thus, he pleaded that Part I, Chapter 3, Section 4.2 and Part II, Chapter 4, Section 6.1 of Sales Tax, Customs and Excise Act, 2000 be repealed.

The Petitioner represented by Damcho Dorji, who is one of the Members of Parliament in the Opposition Party submitted before the Court that the Opposition Party be allowed to seek funding from the Government to represent the case, if not he be allowed to represent as the interested parties to the case. The Attorney General, representing the Ruling Government as Respondent objected that as per Section 24 of the *Jabmi* Act, the representative of the Petitioner cannot practice before any court of law as he is a retired Drangpon. Against this objection, the representative of the Petitioner argued that there was no option other than to represent the case as there was no response from the Government on the Petitioner's plea of seeking monetary support to hire a lawyer, and that he is not practicing before the court of law but representing the party as a legal entity and the initial intention of Section 24 of the *Jabmi* Act was to permit retired judges to practice in the higher courts and not in the lower courts. However, the Attorney General contended that as per Section 24 of the *Jabmi* Act, it is succinctly clear that the representative of the Petitioner cannot practice before any court and did not differentiate between lower or higher courts. Pertaining to the question of the Opposition Party being a

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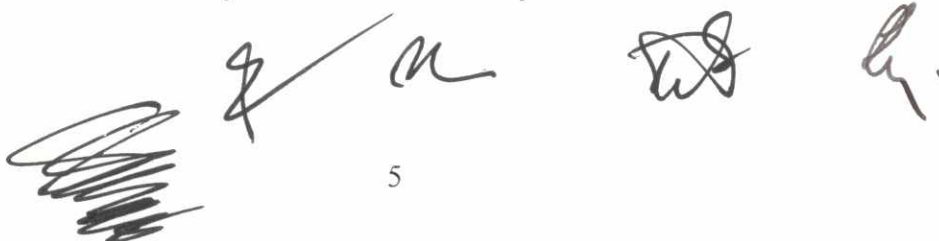
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“legal entity”, the Respondent submitted that he may have the right to approach courts, should there be any legal injury.

With respect to the plea of the Petitioner to allocate fund to pay for its lawyer, the Respondent argued that Petitioner may not be entitled for such fund as there are no laws provided for the Government to pay for the lawyer of the Petitioner in a case filed against the Government, although Section 34 of the Civil and Criminal Procedure Code, 2001 provides that an indigent accused shall be entitled to Legal Aid. The Respondent submitted that the Petitioner in all circumstances cannot be treated as “indigent” person to be entitled for the benefits under this Section. Should the Government in its discretion entertain such request, it is quite possible that the Government will again be sued for making payment not provided by any law. Further, the Respondent was not aware of any such practices, where the Government was sued and the litigation cost too was borne by it. Moreover, if the Petitioner bears the mark of “*class action*”, the cost of the lawyer’s fee must also be borne by the party to it and the Government is not bound to pay for lawyer’s fee.

The Respondent argued on the following three core issues:

- (1) Whether the Petitioner has *locus standi* to file petition before this Hon’ble Court challenging the Constitutionality of tax revision by the Government;







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- (2) Whether this Hon'ble Court can entertain or admit such petition and rule on the merit of the case when the subject matter is already under consideration by Parliament; and
- (3) Whether the Government had infringed provisions of the Constitution in revising the taxes.

The Respondent contended that the Petitioner lacks legal standing to register a case before the Court on the following grounds:

- (a) While Article 21(18) of the Constitution specified that every person has the right to approach the courts on the subject of the Constitution, the Petitioner must be subjected to Article 7(23) of the Constitution which provides that a person can approach a court of law subject to the "procedures prescribed by law". Section 31.2 of the Civil and Criminal Procedure Code, requires a party to have legal standing and argued that the Petitioner must prove that he has suffered actual or legal injury by the act of the Government;
- (b) To have 'legal standing' in a class action suit, the Petitioner who is representing the interests of members of the class, must also be an aggrieved or legally injured member of the class of people aggrieved or legally injured as per Section 149 of the Civil and Criminal Procedure Code. The Respondent stated that it was not clear from the petition as to how the Petitioner was aggrieved or legally injured and who the other members of the

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aggrieved class are. The petition bears the mark of “class action” because it is signed for the Opposition Party seemingly representing the interest of the aggrieved class. Such a petition has no basis if the act of the Government has an impact on all citizens of the country.; and

- (c) Payment of tax as revised or imposed by the Government is a fundamental duty of all citizens under Article 8(8) of the Constitution. It is one of the means by which the State endeavours to “promote equitable distribution of public resources” and minimize “concentration of wealth” in the hands of a few [Article 9(7) of the Constitution]. And added that unwillingness to pay tax cannot be clothed under the alleged breach of the Constitution and laws.

The Respondent submitted that the Petitioner as the Opposition Leader, representing the Opposition Party cannot invoke Article 18(1) of the Constitution to justify his act of taking the Government to the Court as Article 18(1) provides for the Opposition Party to play a ‘constructive role’ to ensure that the Government and the ruling party functions in accordance with provisions of the Constitution. The Respondent argued that this role is to be played by engaging in a constructive debate in Parliament and at the same time providing “dignified opposition” to the Government [Article 18(3) of the Constitution]. Further, the Opposition Party has the right to oppose the elected Government, to articulate alternative policy positions and to question the Government’s conduct of public business [Article 18(5) of the Constitution]. According to these



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Constitutional provisions, the Respondent argued that the Opposition's role is confined to debates within the framework of Parliament. These provisions do not provide for the Opposition Party to take the ruling party (the Government) to Court for not yielding to its argument raised in Parliament. The act of suing the Government by the Opposition Party tantamount to challenging the will of the people and argued that the Opposition Party is not the Government but rather the 'Government-in-waiting' whose mandate is confined to dignified opposition in Parliament. The Respondent reminded that if the Court entertained such petitions, it may have serious implications and the chances of leading to a Constitutional crisis. If the Opposition is not able to subject the ruling party and the Government to its wishes and demands in Parliament, it will paralyze the Government by filing petitions before the Court. The Respondent believed that it would then mean that the Opposition Party will seek the intervention of the Court to impose its will on Parliament in direct violation of the principle of the functioning of Parliamentary democracy.

The Respondent submitted that the issue raised by the Petitioner is under legislative process. And as such, the Court's consideration of the case will tantamount to judicial interference in the legislative process. If the Court were to decide on a law or part of laws on which legislative action is already in process, the Respondent was concerned that it might amount to judicial interference in the legislative process. Conversely, if such issues are discussed in the Legislature simultaneously (as the matter was already in motion in

  
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Parliament) it might raise the questions of the Legislature being in violation of deliberating on a matter that is *sub judice* before the court and thereby interfering in the judicial proceedings. These issues according to the Respondent was of a major constitutional question, whether it may be wise enough to consider the merit of the Petitioner's case before determining the implication of court action on the principle of the independence and separation of the powers among three branches of the Government. The Respondent argued that the Petitioner is indirectly persuading the Judiciary to step into the domain of the Legislature in violation of Article 1(13) of the Constitution.

The Petitioner rebutted that the Court has by registering its case has accepted the Opposition Party's legal standing. The Petitioner further submitted that they preferred not to rebut on Respondent's detailed arguments on the legal standing as it would only distract its attention away from the main case.

The Petitioner argued that the issue raised by the Petitioner is not under legislative process since the motion moved by the Chairperson of the National Assembly Legislative Committee was to amend Section 4.2, chapter 4, Part II; Section 4.1, chapter 3, Part I; Section 6.1, chapter 4, Part II; and Section 4.1, Chapter 3, Part III of the Sales Tax, Customs and Excise Act in accordance with the provisions of the Constitution. The Petitioner submitted that the issue raised before the Hon'ble Court was on the implementation of the Government's taxation measures, without obtaining the approval of Parliament in

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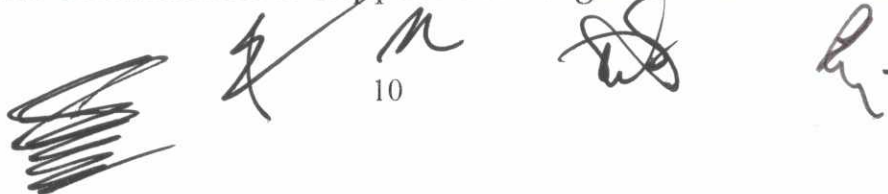
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accordance with Article 1(10), Article 13(2) and Article 14(1) of the Constitution and Section 2, Section 9 and Section 14(b) of the Public Finance Act as unlawful and unconstitutional.

Therefore, the said motion sought to address completely different issues and the Respondent cannot argue that the case "is under consideration simultaneously by the Legislative and the Judiciary". In any event the Respondent's argument that the consideration of this case by the Hon'ble Court "will tantamount to Judicial interference in the legislative process" is erroneous in view of Section 93 of The National Assembly Act that states, "Members shall refrain from referring to any matter in relation to which legal proceeding are active." However, the Respondent contended that Section 93 of the National Assembly Act will apply only if the case is admitted by the courts before consideration by the Legislature.

The Respondent, assuming but not conceding that the Petitioner has legal standing to challenge before the court, submitted that the act of tax revision carried out by the Government was in accordance with existing laws and none of the provisions of the Constitution is infringed both in *letter and spirit*.

According to the Respondent, the issue of breaching Constitutional provisions does not arise because none of the provisions of the Constitution requires that imposition of tax should be approved by Parliament. The Petitioner cited Article 14(1) of the Constitution to support their argument which states



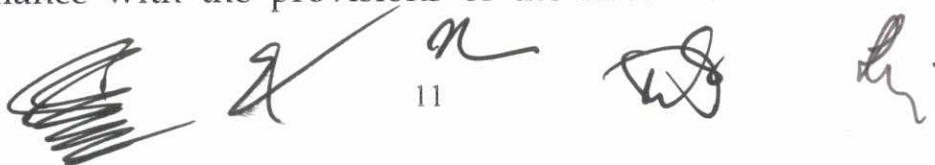


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that: "Taxes, fees and other forms of levies shall not be imposed or altered except by law". The Respondent opined that "except by law" means taxes may be imposed or altered as per the provisions of the laws enacted thereof. This Article delegates taxation matters to be carried out as per the laws and it does not direct how tax must be imposed. In this case, taxation must be carried out as per the provisions of the Sales Tax, Customs and Excise Act and the Income Tax Act. Since these two Acts are specific and principal laws on taxation, the Respondent maintained that it has not violated the provisions of the Constitution and other laws.

According to the Respondent, the Sales Tax, Customs and Excise Act and Income Tax Act are the laws within the meaning of "except by law" [Article 14(1) of the Constitution]; both of which are not inconsistent with Article 14(1) of the Constitution and provide for indirect taxation and direct taxation respectively. The Sales Tax, Customs and Excise Act empowered the Government to fix or alter rates of tax, tariff, and duty thereof. Therefore, the fixation or alteration of tax by the Government as submitted for information to the National Assembly was based on the authority granted by the Sales Tax, Customs and Excise Act. The imposition of tax under the subject matter of Income Tax Act requires Parliamentary approval. Accordingly, during the 5<sup>th</sup> Session of Parliament, the Government had proposed the amendment of certain provisions of the Income Tax Act, since it did not have the power to fix or alter rates for direct tax. This bears testimony to the fact that the Government acted in compliance with the provisions of the laws - that is seeking







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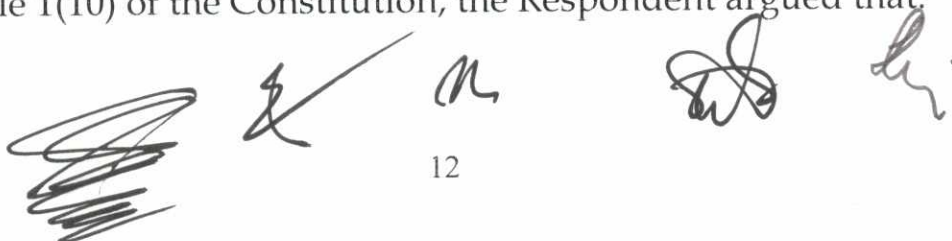
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Parliamentary guidance, if the subject matter of taxation falls within the purview of Income Tax Act (direct tax), while fixing and revising the tax rates by the Government, if the subject matter of tax falls within the Sales Tax, Customs and Excise Act (indirect tax).

Accordingly, Section 4.2, Chapter 3, Part I of the Sales Tax, Customs and Excise Act authorizes the Government to fix rates of sales tax and it does not state that Parliament shall approve rates and its revisions thereof. Similarly, Section 6.1, Chapter 4, part II of the Sales Tax, Customs and Excise Act authorizes the Government to carry out fixation of customs tariff and revision thereof and does not state that Parliament shall approve customs tariff and its revisions. And that Section 4.1, Chapter 3, Part III of the Sales Tax, Customs and Excise Act authorizes the Government to fix and alter rate for excise duty and it does not state that Parliament shall fix and revise excise duty thereof.

Therefore, the above provisions of the Sales Tax, Customs and Excise Act conclusively empowered the Government to approve and revise sales tax, customs tariff and excise duty without tabling them before Parliament for approval.

On the Petitioner's argument that the provisions of the Sales Tax, Customs and Excise Act were repealed by Section 2 of the Public Finance Act, and therefore, the provisions of the Sales Tax, Customs and Excise Act were needed to be repealed by Article 1(10) of the Constitution, the Respondent argued that:





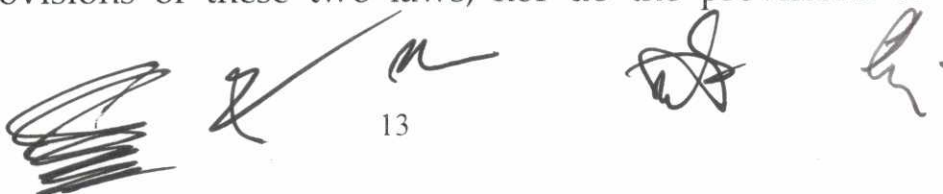
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- (1) Section 2 of the Public Finance Act does not repeal provisions of the Sales Tax, Customs and Excise Act and it was neither the intention nor would it be desirable for the Public Finance Act to repeal the provisions of the Sales Tax, Customs and Excise Act. To do so would have been a major mistake as the Sales Tax, Customs and Excise Act cover a diverse set of legislative requirements which are not and cannot be covered by the Public Finance Act. If one were to argue that the Public Finance Act supersedes the Sales Tax, Customs and Excise Act, then the Government would be left with no specific provisions to administer taxes on sales, customs and excise matters.

Section 2 of the Public Finance Act itself provides for saving of other laws when it provides that "... **except ... or as otherwise specified herein**". "**Except ... or as otherwise specified herein**" clearly pertains to Section 21 of the Public Finance Act. It saves the "**powers**" acquired by the Government before the enactment of the Public Finance Act. "Power" includes the power to fix or alter rates of indirect tax as per the Sales Tax, Customs and Excise Act.

- (2) If at all, the Public Finance Act provisions repeal provisions of the Sales Tax, Customs and Excise Act, it will do so only to the extent they are "inconsistent". The Respondent neither finds any inconsistency between the provisions of these two laws, nor do the provisions of







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Sales Tax, Customs and Excise Act conflict with Article 1(10) of the Constitution so as to render them *null and void*.

- (3) The general principle of interpretation of statutes is that provisions of specific law will prevail over the general laws. In this case, the Sales Tax, Customs and Excise Act being the specific laws on taxation in these specific areas will over-ride the provisions of the Public Finance Act should there be conflict between its provisions and those of the former Acts and not otherwise.

Further, on the Petitioner argument that Section 9 of the Public Finance Act providing "*Raising of revenues through taxes shall be authorised by the Parliament*" prevents the Government from approving tax rates/revisions, the Respondent claimed that the argument of the Petitioner does not hold good for the reasons stated below:

- (1) The Legislature has authorized the Government to alter or revise tax (indirect tax). It was to grant such authority to the Government that the Sales Tax, Customs and Excise Act were enacted whereby the Government is empowered to alter and revise tax or duty.
- (2) In case of new levies and changes in direct tax, the Government requires Parliamentary approval. It was for this reason that the Finance Minister, during the 5<sup>th</sup> Session of Parliament, had proposed the amendment of certain



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Sections of the Income Tax Act since the Government did not have power to revise the rates for direct tax. If Section 9 of the Public Finance Act is to be applied to tax revision/approval, it will only apply in cases of Income Tax Act (direct tax) where the Government has no authority. Therefore, Section 9 of Public Finance Act can be invoked and understood in this context.

Refuting the Petitioner's contention that Parliament is the sole authority to approve taxation measures as per Section 14(b) of the Public Finance Act that the Minister of Finance shall be responsible, *inter alia*, for "proposing taxation measures to the Parliament, and raising other revenues and resources for the Government", the Respondent submitted that:

- (1) This provision must be interpreted in light of direct and indirect taxation measures. Fixation or alteration of rate for indirect taxes, like, - sales tax, customs tariff and excise duty are powers vested in the Government, whereas power for fixation or alteration of rate for direct tax remains with Parliament. This is clearly provided under Section 45.1, Chapter 9, Part I of the Income Tax Act; Section 12.1, Chapter 5, Part II of the Income Tax Act; and Section 14, Chapter 3, Part III of the Income Tax Act.

Therefore, if the Government wishes to alter tax rates for the subject matters mentioned in the above Sections, the Government must seek approval of Parliament. The rates of taxes are expressly provided in the Income Tax Act and






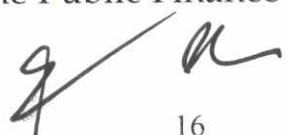




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the Government cannot alter or revise them except through amendment procedures in Parliament. The Respondent maintained that requirement under Section 14(b) of the Public Finance Act must be understood in the context of rate for Corporate Income Tax, Business Income Tax and Personal Income Tax which requires approval of Parliament.

- (2) The Respondent further argued that Section 14(b) of the Public Finance Act does not deal with the authority of the Finance Minister to raise or fix tax rates. This Section merely provides for the responsibility of the Finance Minister among which is to propose taxation measures to Parliament. This has to be understood that Finance Minister has to propose tax measures to Parliament if and when required. Under this requirement, it is only in the case of direct taxes that he has to table before Parliament and not so in the case of indirect taxes where Parliament empowers the Finance Minister through the Sales Tax, Customs and Excise Act.
- (3) The application of Section 14(b) of the Public Finance Act is further qualified by Section 21 of the Public Finance Act. This means the “**power**” to impose, alter or revise sales tax, customs tariff and duty is the “**power**” already acquired by the Ministry of Finance or the Government before the enactment of the Public Finance Act and such power shall continue to be exercised by the Government. Section 21 of the Public Finance Act is purposefully put in



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place to save the provisions of the Sales Tax, Customs and Excise Act which authorizes the Government to fix and alter sales tax, customs tariff and duty. To substantiate further, the saving clause under Section 2 of the Public Finance Act providing “... **or otherwise specified herein**” means power to fix or alter rate for indirect tax is saved by Section 21 of the Public Finance Act.

- (4) It is necessary to delve into the legislative intent of the provisions. The rationale for authorizing the Government to vary tax rates through the Sales Tax, Customs and Excise Act is to: respond quickly to emerging economic challenges as Parliament will not be in Session continuously to deal with issues of such nature, with respect to the annual budget, if immediate action is required; give the Government flexibility to raise revenues; use tax as an instrument of economic policy to encourage or discourage consumption pattern; and balance trade and generally promote equitable and sustained growth.

On the contention of the Petitioner on Article 13(2) of the Constitution, that taxation measures should be as per the established legislative procedures, the Respondent submitted that such legislative procedure must be followed by the Government only if taxation measures pertain to fixation and alteration of taxes which are within the purview of the Income Tax Act. In other words, the Respondent submitted that if the Government wishes to alter the **rate of income tax for**





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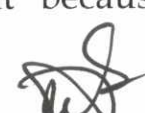

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**companies** under Section 45, Chapter 9, Part I of the Income Tax Act; the **rate of Business Income Tax** under Section 12, Chapter 5, Part II of the Income Tax Act; and the **rate of personal income tax** under Section 14, Chapter 3, Part III of the Income Tax Act, the procedure mentioned under Article 13(2) of the Constitution will have to be followed, but not so, in the case of the subject matter, which falls within the purview of the Sales Tax, Customs and Excise Act.

The Respondent was of the opinion that perfect harmonization and reconciliation of the pre-constitutional laws with the provisions of the Constitution as well as amongst themselves is and must be an ongoing endeavor of the Legislature. Respondent further submitted that the Government in the interest of ensuring the rule of law must continue to be guided by the provisions of the existing Acts and customary practices, unless they are in direct conflict with the Constitution. Respondent submitted that it would be appropriate that ambiguities in the laws with the Constitution come to light when the laws are being implemented. If each time such problems arise, the Opposition Party is to take the Government to Court, the only option for the Government is not to act, and for Parliament to declare all previous laws *null and void*, until they are revised. To avoid such a situation, it would be more appropriate, if, instead, the Opposition Party were to channelize its endeavours through the legislative process.

The Respondent argued that the petition cannot be taken as being the action against the Government because the tax

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revision was endorsed by the National Assembly through majority action. This means that it was the decision of the National Assembly that the approved tax measures must be implemented bearing in mind the compulsions on the part of the Finance Ministry and the Government to meet requirements of the budget. The Petitioner's grievance stemmed primarily from the endorsement/resolution of the National Assembly. The Respondent opined that the National Assembly resolution must be honoured for two reasons:

- (1) To challenge the decision of the very institution where the Opposition Party themselves were party to it, *ipso facto* negates the claim of the Petitioner; and
- (2) To dishonor the majority decision of the National Assembly implies challenging the very foundation of democracy and principle of majoritarian rule enshrined in Articles 17(1) and 13(4) of the Constitution.

Refuting the above argument, the Petitioner maintained that the clause "except by law" in Article 14(1) of the Constitution must be interpreted to mean that specific legislation must be passed every time taxes are imposed or altered.

The Petitioner's interpretation that "except by law" means that specific legislation must be passed every time taxes are imposed or altered is also consistent with Section 9 of the Public Finance Act which states that: "Raising of revenues through taxes shall be authorized by the Parliament," and with Section





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14(b) of the Public Finance Act which states that: "The Minister of Finance shall be responsible, inter alia, for proposing taxation measures to Parliament....."

If, as the Respondent argues, "except by law" must be understood to mean that "taxes may be imposed or altered as per the provisions of the laws enacted thereof" then, having enacted such laws, Parliament would have no authority to question the imposition or increase of taxes. The Petitioner also raised that on the other hand the Government would be able to impose or increase taxes unilaterally, and checks and balances between the Legislature and the Executive on taxation as intended in the Constitution would be completely undermined.

According to the Petitioner, taxes – especially increasing taxes – have an important impact on the lives of the people and therefore, given specific mention in the Constitution. As such, people expect their representatives in Parliament to engage in thorough discussions whenever the Government proposes to impose or increase taxes which is the intent of Article 14(1) of Constitution. Further, the Petitioner submitted that the procedure for introducing the Bill is clearly specified in Article 13(2) of the Constitution which states that "Money Bills and financial Bills shall originate only in the National Assembly whereas any other legislative Bill may originate in either House." "**Money Bills and financial bills**" include all tax measures and all forms of taxes, and are not limited to "fixation and alteration of taxes which are within the purview of the Income Tax Act" as argued by the Respondent. As such, any

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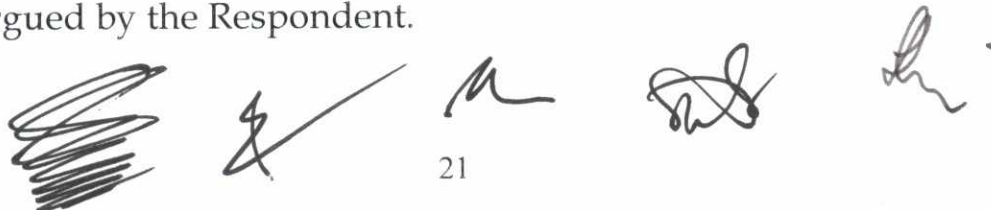
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measures to fix and alter any taxes must be deliberated in Parliament. This requirement is further elaborated in Section 14(b) of the Public Finance Act which states that "The Minister of Finance shall be responsible, inter alia, for proposing taxation measures to the Parliament...." The Petitioner further contended that even Article 8, Section 8 of the Constitution specified that an obligation to pay taxes by a person was in accordance with laws only.

The Petitioner argued that "Taxes" mentioned in Section 9 of the Public Finance Act must refer to all forms of taxes, including what the Respondent calls "indirect taxes", as the Act regulates all aspects of the financial management of the Government. This is evidenced by the Preamble of the Act which reads "An Act to **regulate the financial management of the Royal Government of Bhutan** in order to promote the effective and efficient uses of public resources, strengthen accountability and provide statutory authority and control for sound and sustainable fiscal policy", and by provisions in the Act which cover all aspects of financial management including public finance, revenue, accounts, budgets, appropriation, loan and grants.

Similarly, the Petitioner submitted that "taxation measures" for which the Finance Minister is responsible to propose to Parliament as required by Section 14(b) of the Public Finance Act must also refer to all forms of taxes, not just "indirect taxes" as argued by the Respondent.







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The Petitioner maintained that Section 4.2, Chapter 3, Part I of the Sales Tax, Customs and Excise Act which provides that "The fixation of rates of Sales Tax and revision thereof....shall be **approved by the Royal Government of Bhutan**" is inconsistent with Section 9 of the Public Finance Act which states that "Raising of revenues through taxes shall be **authorized by the Parliament**" and with Section 14(b) of the Public Finance Act which states that "The Minister of Finance shall be responsible, inter alia, for **proposing taxation measures to the Parliament**...." As such, the Petitioner observed that Sections 2, 9 and 14(b) of the Public Finance Act must supersede Section 4.2, Chapter 3, Part I of the Sales Tax, Customs and Excise Act. The supersession of Section 4.2, Chapter 3, Part I of the Sales Tax, Customs and Excise Act by the provisions of the Public Finance Act is also consistent with the general principle of interpretation of statutes according to which, when provisions of two laws conflict, the provisions of the later law will prevail over the provisions of the previous law.

Furthermore, the Petitioner contended that Section 4.2, Chapter 3, Part I of the Sales Tax, Customs and Excise Act is inconsistent with Article 14(1) of the Constitution. As such, according to Article 1(10) of the Constitution, Section 4.2, Chapter 3, Part I of the Sales Tax, Customs and Excise Act is to be rendered null and void. Similarly, Section 6.1, Chapter 4, Part II and Section 4.1, Chapter 3, Part III of the Sales Tax, Customs and Excise Act are superseded by the Public Finance Act, and is prayed to be rendered null and void by the Constitution.



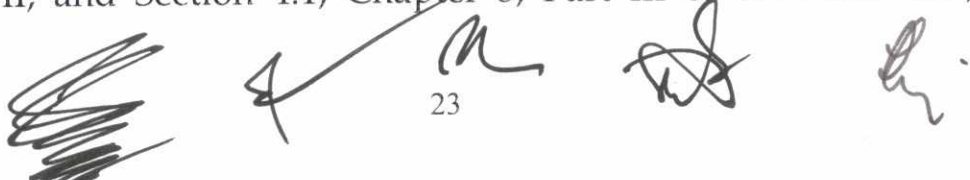
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The Respondent's argument that "If.....the Public Finance Act supersedes the Sales Tax, Customs and Excise Act, then the Government would be left with no specific provision to administer taxes on sales, customs and excise matters" has not understood that the Petitioner has argued that only three provisions of the Sales Tax, Customs and Excise Act viz., Section 4.2, Chapter 3, Part I; Section 6.1, Chapter 4, Part II and Section 4.1, Chapter 3, Part III have been superseded by the Public Finance Act. The other provisions - all 93 Sections of the Sales Tax, Customs and Excise Act - must continue to be enforced by the Government, as long as these provisions do not violate the provisions of the Public Finance Act and the Constitution.

Section 4.2, Chapter 3, Part I; Section 6.1, Chapter 4, Part II; and Section 4.1, Chapter 3, Part III of the Sales Tax, Customs and Excise Act are not "saved", as argued by the Respondent, by Section 21 of the Public Finance Act which states that: "*The provisions of this Act shall not affect the obligation, rights, privileges, powers and liabilities acquired or accrued by the Ministry of Finance prior to this Act*".

While Section 4.2, Chapter 3, Part I; Section 6.1, Chapter 4, Part II; and Section 4.1, Chapter 3, Part III of the Sales Tax, Customs and Excise Act **empower the Government** to fix and revise taxes, Section 21 of the Public Finance Act **saves the powers of the Ministry of Finance, not the powers of Government**. Therefore, Section 4.2, Chapter 3, Part I; Section 6.1, Chapter 4, Part II; and Section 4.1, Chapter 3, Part III of the Sales Tax,





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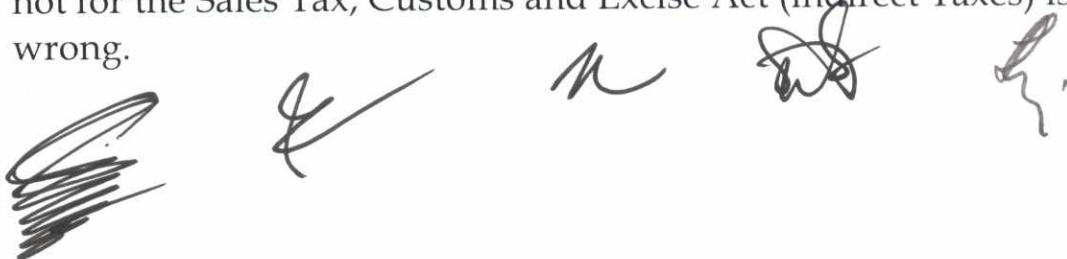
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Customs and Excise Act are superseded by Section 9 of the Public Finance Act.

Thus, the Petitioner contended that the Respondent's argument that the application of introducing Bills only in direct taxes and not for the Sales Tax, Customs and Excise Act (indirect Taxes) is wrong.





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#### 14. COURT FINDINGS

14.1. This case involves the rationalization and the broadening of the existing tax structure and the imposition of taxation measures by the Government. The Opposition Leader instituted the case under Article 18, Section 1 of the Constitution challenging the act of raising taxes by the Government and thus seeks Court's intervention to quash such an act as being in violation of Public Finance Act, 2007 and the Constitution.

14.2. The petition filed on 23<sup>rd</sup> August 2010 by the Opposition Leader alleged that the Finance Minister's announcement in Parliament during the presentation of the Annual Budget 2010-2011 invoking the provisions of the Sales Tax, Customs and Excise Act, 2000 and the revision of taxes thereof was in contravention to Chapter I, Section 2 and Chapter III, Sections 9, & 14(b) of the Public Finance Act, 2007 and that of Article 14, Section 1 of the Constitution. Therefore, the Petitioner is of the opinion that Part I, Chapter 3, Section 4.2; and Part II, Chapter 4, Section 6.1 of the Sales Tax, Customs and Excise Act, are in contravention of Article 1, Section 10 of the Constitution and thus may be declared **null and void**.





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## 15. Merits of the Case

Before, the Court decides on the merits of the case, it deemed necessary to establish a legal framework and to subsequently address on pertinent issues related to the case. Firstly, the *locus standi* of the Opposition Leader - whether the Opposition Leader, who represents a political party and being a Member of Parliament in the National Assembly has *locus standi*, to file a case before the Court in a matter relating to legislative issues, in this case, the revision of Taxes? What are the extent and scope of the Court's jurisdiction, in determining the merits of the case as per the Constitution? Secondly, whether the representative of the Petitioner has *quo standi* being Ex-Drangpon? Thirdly, whether the Petitioner has merits of seeking Government funding for hiring a lawyer to represent the Petitioner? Fourthly, based on the facts and the circumstances of the case, what are the issues related to the principle of the Separation of Powers among the three branches under the Constitution?

Subsequent to the determination of the above issues, the Court shall then consider, whether the question raised by the Opposition Leader concerning the Constitutionality of the imposition of taxes without passing as law is valid under the Constitution? Did the action of the Government contravene the alleged violation of the Constitution, if so what are the remedial measures?



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**16. *Locus Standi* and the Scope of Court's Jurisdiction**

The Opposition Leader invoked his right to institute the case before the High Court to determine the constitutionality of the Government's approval of the said taxation measures without obtaining the approval of Parliament, and, therefore, prayed for the Court's intervention into the matter. The Petitioner particularly draws his *locus standi* to initiate the proceeding against the Government under Article 18, Section 1 of the Constitution and the Supreme Court's direction to initiate proceeding before the High Court.

Article 18, Section 1 of the Constitution provides that "*The Opposition Party shall play a constructive role to ensure that the Government and the ruling party function in accordance with the provisions of this Constitution, provide good governance and strive to promote the national interest and fulfill the aspirations of the people.*"

Before establishing the *locus standi* of the Opposition Leader, the Court deemed appropriate to set precedent for the sustenance, nurturing and the functioning of a vibrant democracy by virtue of power vested upon its judicial functions and the fair administration of justice. Article 21 of the Constitution in general and Sections 1 and 2 in particular mandates the Courts to uphold the due process of law.

Notwithstanding the argument of the Petitioner and the Respondent, the Court deemed it necessary to consider whether the Opposition Leader in his individual capacity has the right





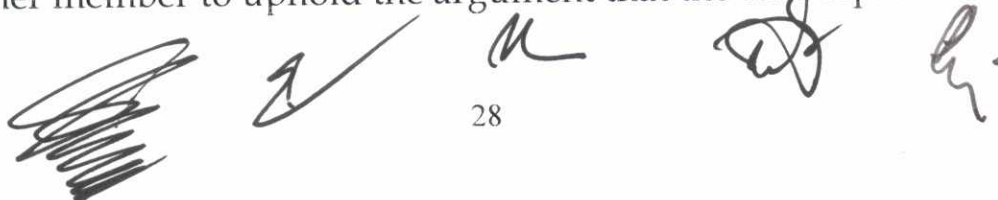
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to initiate such proceeding and invoke his *locus standi* under Article 18, Section 1 of the Constitution?

The Court, based on the application of the jurisprudential rules of interpretation, observes that the Opposition Leader by simply invoking the above Article does not have *prima facie locus standi* or the Court's jurisdiction to accept the alleged cause of action. This Article in its original intent, does not seem to vest the sole individual jurisdiction or power upon the Opposition Leader alone without drawing strength and consent of the other Members of Parliament in the Opposition Party. In other words, the Opposition Party rather has a collective role, even under Article 18, Section 5 of the Constitution, and, therefore, has no *de jure* right to initiate proceeding in his individual capacity. However, in the Preliminary Hearing the other member of the only two members Opposition Party in the National Assembly, by appearing in person, before the High Court on behalf of the Petitioner testified that "the case was that of the Opposition Party" and submitted that he would represent the case if the fund for hiring a lawyer was not provided by the Government. Hence, the Court construed the implied consent of the Opposition Party as a whole to bring the case against the Government.

However, the hindsight of the case is that the Petitioner had signed only on his own individual capacity when the case was initially registered before the Court. The said petition did not bear the signature or expression through written consent of the other member to uphold the argument that the case represented





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the collective will of the Opposition Party as required under Article 18, Section 1. The Court notes that both of them should have enjoined as party to the case at the time of registering a case before the Court. If that was the case, the Petitioner could have established *prima facie locus standi* and had it not been for the representation and the oral testimony of the only other member of the Opposition Party, the case in hand would have lacked inherent jurisdiction to decide upon the constitutional merits of the issues and the probable dismissal of the case at the preliminary stage.

The Court notes that *locus standi* rule of the Petitioner must be based on the application of the doctrine of causation, redressability, and the proportionality of injury or harm caused by such taxation measure resulting from the alleged arbitrary action of the Government in contravention of the Constitution. The *locus standi* of the Petitioner can also be invoked on the grounds of public interest principle. However, the Court's intervention in alleged procedural and substantive breach of introducing taxation measures and the interpretation thereof of the Constitution as sought by the Petitioner has been upheld on the basis of public interest as well as on the legitimate grounds that both the members of the Opposition Party has construed to have filed the case with precluded consent under Article 18, Section 1 of the Constitution.

Further, the scope of jurisdiction of the Court to interpret the constitutional validity of the taxation, inadvertently, derives from the premise that there is concrete case of controversy of





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public interest standing under Section 31.2 of the Civil and Criminal Procedure Code. This issue of case in controversy establishes a *prima facie* case to the extent that the Government has not only introduced but implemented taxation measures, purely invoking the provisions of the Sales Tax, Customs and Excise Act, 2000 without due consideration of other prevailing laws in force. Hence, the Court in its affirmative action, legitimize its *status quo* of exercising ancillary jurisdiction as per Section 125 of the Civil and Criminal Procedure Code. The exercise of ancillary jurisdiction is founded upon the principle that the Petitioner would have no other alternatives than to address the disputes through the court.

Moreover, the dismissal of the case for want of consent of the other member of the Opposition Party without considering the merits would have caused grave *lacuna* and irreparable harm by our legal system. Further, the dismissal of the case based on the out dated technical hitches of the rule of *locus standi*, and thereby, debarring from bringing the matter before the Court would abdicate the rule of law and set wrong precedent without first undergoing the test of its legality through the courts and the justice system. The Court as the final interpreter of the laws and the Constitution must remedy error, set just precedent and discourage unlawful conduct or perpetuate wrong. Any willful violation and abrogation of legal regime may not be desirable for the ultimate good of a Parliamentary democracy. The alleged injury of unlawful taxation by the Government upon citizens has imminent ramification upon the tax payers and long term implication for building confidence of




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our democratic culture in transition. Therefore, the established jurisprudence of taxpayer's *locus standi* is the concept that any person who pays taxes should have standing to file a case against the taxing body if the taxation imposed is unlawful. When it concerns unlawful taxation issues, even an individual taxpayer may invoke one's right to initiate proceedings under Article 21, Section 18 of the Constitution.

However, the citizens of the country must be mindful that it is also the legitimacy of the Government in power to raise revenue through taxes or other measures for economic well being, progress and development of a nation. Introducing progressive taxation measures by the Government ensure just and equitable distribution of wealth and the share of economic prosperity among the citizens. Introducing appropriate taxation policy measures legitimizes the rule of law and ensures accountability of the government and enhance tax payers legal regime to hold the Government in power answerable on finance and expenditure. One must legitimately be proud of being a tax payer. The web of tax burden or liabilities as required to be complied with by the laws on the one hand and that its moral responsibilities on the other, underscores, the responsibility of sharing the wealth in proportion by the rich to the poor and the disadvantaged. The pursuit of Gross National Happiness as enshrined under Article 9, Section 2 of the Constitution would have no substance or meaning if our goals are not founded upon establishing an egalitarian society based on the principle of equality and justice. The plausible bridging of the gaps between the well-off and the poor is only possible







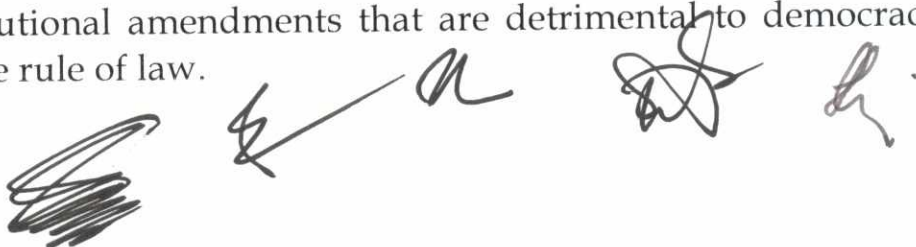
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through the adoption of sound taxation system so that the vision to minimize inequalities of income or the concentration of wealth, and promotion of equitable distribution of public facilities among people, and that the comparable allocation of national resources for socio-economic development and the achievement of economic self-reliance with open and progressive economy as provided under Article 9, Sections 7, 8 and 9 of the Constitution is achievable.

Weighing this delicate balance of law and its merits of argument, the Court do hereby, establish the *locus standi* of the Petitioner to entertain the case in hand but subject to the ruling of the Court as specified in this decision.

As the appellate Courts are vested with the power of judicial review and being the final authority in its interpretation, the framers contemplated that Constitution as the paramount law of the land is to guide the Government's conduct as well as of the legislature. Any action repugnant to the Constitution is void and courts as well as other institutions are bound by the supreme law. The application of strict legalism as per Constitution and the concept of judicial restraint are based on the principle that each branch of government will stick to its own proper function. The need for judicial review envisaged by the Constitution is to ensure a just balance against protracted constitutional amendments that are detrimental to democracy and the rule of law.





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The nature of this first constitutional case in a way has provided an avenue, and, if not carefully weighed, the balance of justice may allow opportunist value of opening a floodgate of endless litigation out of parliamentary affairs. The Constitution is the embodiment of best practices and recognizes the doctrine of the Separation of Powers as per Article 1, Section 13 of the Constitution among the three branches of the government. Articles 10, 11, 12 and 13 of the Constitution and other related provisions of the Constitution provides for the legislative or lawmaking functions of Parliament. Article 20 and other related provisions provides for the functions of the Executive arm of the government.

The fundamental principle of the Separation of powers enshrined under Article 1, Section 13 of the Constitution is imbued with procedural and substantive power sharing mechanism and relationships. The lawmaking jurisdiction rests with Parliament. The application, implementation and the enforcement is upon the Executive. The roles of the interpretation of the laws are bestowed upon the Judiciary and the Constitution emphatically expounds the province and duty of the judicial branch to say what the law is or the Constitution means. These divest and distinctive power sharing mechanism in a democracy is to ensure that no interference or encroachment of powers is allowed within the arms of the government. No single organ or constitutional bodies must be allowed to exercise and usurp complete authority, each being interdependent to the other. Therefore, power thus divided should prevent absolutism or anarchism and must enable



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checks and balances on each other. Securing the independent status of the three branches helps to maintain permissible limit from excesses of their powers.

The principle of the concept of horizontal and vertical check and balance mechanisms are adequately enshrined under the provisions of the Constitution. The principle of vertical check and balance for the Parliamentary functions are ensured with the institutional independence of bi-cameral legislature. Further, the procedure established under Article 13 of the Constitution provides ample mechanism of vertical institutional check and balance before a Bill becomes a law. The procedure established thereof, under the said Article is intended that constitutionality of the Bills are secured through these institutions. Each levels of institution must overzealously protect from the mistake that the laws made are not in contravention to and inconsistent with the Constitution.

It is intrinsic through this judgment that the branches of the government must anchor upon the fundamentals of collective responsibility to exhaust all remedies available within the ambit of ones own organ, so that no protracted judicial activism be encouraged. Since the very source of the power of the three branches of the government draws its strength from the Constitution, it is fundamental that each branch must abide, protect and uphold our supreme law that bestows and legitimizes the power. Ensuring the rule of law would enable the sustenance of institution and the protection of individual rights and invariably promote common good, progress, and



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socio-economic development. Hence, it is inherent and important to set a just standard and just practice at this stage of our democracy. Any citizens and more importantly so for those who occupy the seats of the august office of decision making must be conscious of setting right precedent for the future well being of a nation. Any failed legislative reconciliation must be sought to resolve within the mandate and ambit of our Constitution. In view of the above, the Court deemed appropriate to establish certain procedural guidelines to bring forth any constitutional cases by the Members of Parliament in the future.

17. Ex-Drangpon: *quo standi* issues

The Petitioner represented by Damcho Dorji, who is one of the only two Members of Parliament in the Opposition Party submitted before the Court that the Opposition Party be allowed to seek funding from the Government to represent the case. If funding was not granted, there was no option for the Opposition to file another case against the Government or he be allowed by the Court to represent the case as interested parties. The Attorney General, representing the Ruling Government as Respondent objected that as per Section 24 of the *Jabmi* Act, the representative of the Petitioner cannot "practice" before any court of law as he is a "retired" Drangpon. The representative of the Petitioner argued that there was no other option but to represent the case himself as the Government did not respond to the plea of seeking fund. He further argued that he is not







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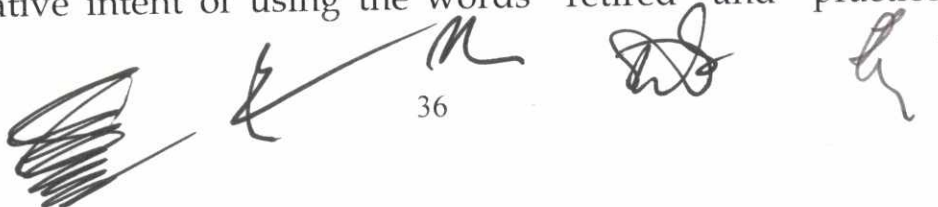
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practicing before the court of law but representing the party as a legal entity and submitted that the initial intention of Section 24 of the *Jabmi Act* was to permit retired judges to practice in the higher courts and not in the lower courts. However, the Attorney General contended that as per Section 24 of the *Jabmi Act*, it is very clear that the representative of the Petitioner cannot practice before any court and did not differentiate between appellate and lower courts.

The main issue from the submissions of the parties whether the representative of the Petitioner can represent or not relates to the Court's interpretation of Section 24 of the *Jabmi Act*, 2005 which states that:

*No retired drangpon shall practice before any Court of law as a Jabmi.*

Notwithstanding that the representative of the Petitioner was allowed by the Court to represent the case based on the preliminary assertion of his *quo standing* under Section 31.1(e) of the Civil and Criminal Procedure Code, the issues raised by the Respondent warrants for the interpretation whether the Petitioner's representative is barred to represent the case in question because of him being Ex-Drangpon. The dispute in this context concerns the interpretation of two most important words "retired" and "practice" used in the above particular section of the law. What meaning do the words "retired" and "practice" convey in their ordinary literal sense? What is the legislative intent of using the words "retired" and "practice"





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other than any synonyms? How should the particular section read as a whole? What purposive interpretation can the Court give in order to address the contention between the parties?

The word "retired" in its ordinary sense is to construe that one has given up working or have stopped working in a particular job, say in this case having retired from the service of judgeship. The word "retired" is generally defined in the ordinary literal sense to convey that a person has "*Withdrawn from one's occupation, business, or office; having finished one's active working life*" or "*having given up one's work, office, etc., esp on completion of the normal period of service*". Thus, by application of the literal rules of interpretation, the word "retired" is to be construed that one has retired from the service after completion of one's "*normal period of service*" or *one's active working life*. This means that the intention of using the word "retired" in the section has to be interpreted to mean that the particular Drangpon should have completed his normal working period. In other words, the Drangpon should have been retired from the service after the completion of a normal period of service, which conversely is to mean that one should have been under retirement. According to Black's Law dictionary, retirement is defined as "*Voluntary termination of one's own employment or career, esp. upon reaching a certain age.*" This draws conclusive inference that one must have been superannuated from the service. For instance, Section 170 of the Judicial Service Act, 2007 provides that "*The age of superannuation for Dzongkhag and Dungkhag Drangpons shall be sixty years.....*" Conversely, the word "retirement," "retired" or "superannuation" has to be



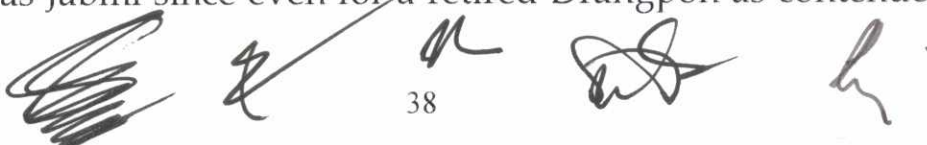


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interpreted against the word "resignation". Resignation is ordinarily defined as *"the formal act of giving up or quitting one's office or position..... A resignation can occur when a person holding a position gained by election or appointment steps down, but leaving a position upon the expiration of a term is not considered resignation."* According to Black's Law dictionary, resignation is defined as *"The act or an instance of surrendering or relinquishing an office, right, or claim...A formal notification of relinquishing an office or position."*

As per Section 24 of the Jabmi Act, the construction of the sentence is that no retired *drangpon* shall practice before any Court of law as a *Jabmi*. This particular section in its ordinary meaning does not *per se* have any ambiguity. It has to be read and construed to mean that any Drangpon who has retired or been superannuated from service after attaining the retirement or superannuation age is barred by this particular section to "practice" as *Jabmi* before any Court of Law. The word "practice" in one sense is defined *"to exercise or pursue as a profession, art, or occupation: to practice law."* Thus, the particular Section does not bar for instance a Drangpon who has resigned from service to practice before any court of law as *Jabmi* or legal counsel but is prohibitive to the one who has been superannuated or "retired." firstly on the ground that he does not come under the category of Drangpons who are retired, but under the category of the Drangpons who have prematurely resigned from the post; secondly, his representation in the present case is not even to be construed as "practice" before the Court as *Jabmi* since even for a retired Drangpon as contended



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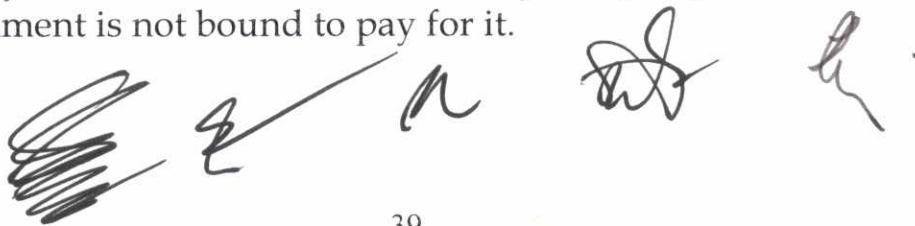
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by the representative of the Petitioner that there is no law that bar for the retired Drangpons from appearing for his own cause or as *ngotsab*.

**18. Government funding: issues related to hiring a lawyer to represent the Petitioner**

The representative of the Petitioner submitted that the Government must allocate fund to pay for a lawyer to represent their case. The Court was informed that such request was made in writing. However, the Respondent argued that the Petitioner may not be entitled for such fund as there are no such laws mandating the Government to pay for a lawyer of the Petitioner in a case filed against the Government, although Section 34 of the Civil and Criminal Procedure Code provides that an indigent person shall be entitled to Legal Aid. In this case, the Petitioner in all circumstances cannot be treated as "indigent" person as envisaged under this Section. The Respondent further argued that should the Government entertain such request, it is possible that the Government will again be sued for making payment not provided by any law. Further, the Respondent argued that they are not aware of any such practices, where the Government was sued and the litigation cost too was borne by it. Moreover, if the Petitioner bears the mark of "*class action*", the lawyer's fee must also be borne by the party to it and the Government is not bound to pay for it.





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Upon deliberation on the arguments of the parties, the Court reached consensus to determine on two issues:

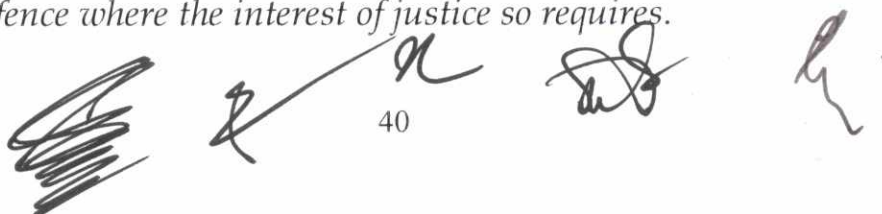
Firstly, whether the Opposition Party has substantive right in seeking State funding for the legal representation?

Secondly, whether Section 34 of the Civil and Criminal Procedure Code is applicable in determining legal aid for the Opposition Party?

The basic principle for the requirement of legal aid arises from the fact that it is considered necessary to provide certain level of legal aid to persons who is otherwise unable to afford legal representation. Failing to provide legal aid would deprive such persons from equal access to the justice system. Alternatively, they would also be at disadvantaged situations where the State or a wealthy individual takes them to court. Legal aid is a means to justify its ends of ensuring fair representation and to uphold the principle of equality before the law and effective protection of law, ensure due process, access to justice and the rule of law as per Article 7, Sections 1 and 15; and Article 21, Section 1 of the of the Constitution.

Further, Section 34 of the Civil and Criminal Procedure Code is far from ambiguity. It is self explanatory and technically provides as to who should avail legal aid when it states that:

*Only an indigent accused shall have legal aid provided for one's defence where the interest of justice so requires.*





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Therefore, the demand advanced by the Opposition Party urging for Government funding for their legal representation has to be analyzed in light of substantive issues involved in their claim. The Court notes that there are no established corollary jurisprudence and principle of law to draw inference to grant State or otherwise Government funding for legal representation when the two Political Parties in Parliament are before the Court seeking Court's intervention for the constitutional case. It is only just and appropriate with the application of legal doctrine that the one who comes to seek justice in first place in its "traditional theories of adjudication" must have capacity to pursue the matter through their own means. Thus, the Court, having considered the issues, declines the demand of the Opposition Party for the Government funding of a lawyer. This invariably, arises to answer the second question whether the Opposition Party is entitled to legal aid under the procedural rights in accordance with Section 34 of the Civil and Criminal Procedure Code?

The particular section of the Civil and Criminal Procedure Code concerning the legal aid has to be weighed in context of those persons who are indigent or impecunious. Therefore, it is essential to consider and decide whether such person is in need of legal assistance by reason of his being unable to afford full or part of the costs of hiring a private legal practitioner. The legal service in respect of which the assistance is sought is generally based on the condition that a person in a case can not bear the cost for defence and the interest of justice will not be served.







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Hence, the current case does not fall within the purview and context of the above analysis to honour legal aid to the Opposition Party and that seeking State funding for a legal representation arises only in a situation that a person is unable to bear the cost for a trial.

#### 19. Breach of procedural and substantive obligations and alleged violation of Constitution

The Petitioner alleged procedural and substantive violation of laws and that the Government's imposition of taxation measures as unconstitutional. The Petitioner also alleged that the Finance Minister's announcement during the presentation of the Annual Budget 2010-2011 to the Fifth Session of Parliament invoking the provisions of the Sales Tax, Customs and Excise Act, 2000 and the revision of customs tariff thereof, had contravened Chapter I, Section 2 of the Public Finance Act, 2007 which states that the Act shall, "*Supersede all laws, regulations, rules and notifications that are inconsistent with the provision of this Act, except the Constitution of the Kingdom of Bhutan, or as otherwise specified herein*" and further procedurally breached Chapter III, Sections 9, which states that, "Raising of revenues through taxes shall be authorized by the Parliament", and Section 14(b) of the said Act which states that "The Minister of Finance shall be responsible, *inter alia*, for proposing taxation measures to the Parliament, and raising other revenues and resources for the Government", and finally contravened Article 14, Section 1 of the Constitution.



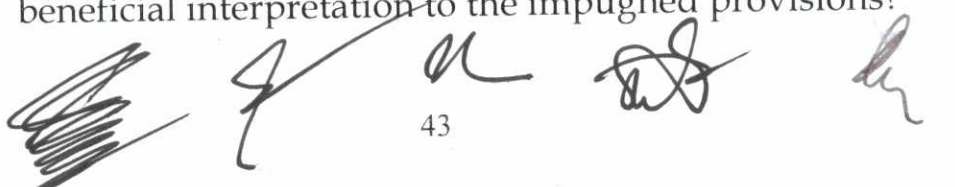
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Therefore, in the opinion of the Petitioner there is breach of procedural as well as the substantive obligation of the laws and prayed that Part I, Chapter 3, Section 4.2; and Part II, Chapter 4 and Section 6.1 of the Sales Tax, Customs and Excise Act, 2000, may be declared **null and void** in accordance with Article 1, Section 10 of the Constitution which states that:

*"All laws in force in the territory of Bhutan at the time of adopting this Constitution shall continue until altered, repealed or amended by Parliament. However, the provisions of any law, whether made before or after the coming into force of this Constitution, which are inconsistent with this Constitution, shall be null and void."*

Upon deliberation on the above issues, the Court deemed appropriate to determine whether there is alleged procedural breach and substantive violation from the following tests.

- (a) What is the literal or plain ordinary meaning of the particular section or the provisions of the laws that were intended by the legislation?
- (b) Is there any ambiguity or mischievous provision so that the Court will try to adopt the meaning which is most likely to give effect to the purpose or reform which the statute is intended to achieve?
- (c) Can the doctrine of harmonized construction help to serve the purpose of giving effective solution or beneficial interpretation to the impugned provisions?







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The Court while answering the above issues derives a common approach of purposive interpretation which is generally founded upon the principle that,

"... the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament".

A more sensible approach of the Court is therefore to treat any such clarifying provision as one of general and universal application. In such a case, the harmonization and integration of the Sales Tax, Customs and Excise Act with Public Finance Act and that of the Constitutional provisions must establish a profound application of both procedural and substantive application when introducing tax measures by Parliament.

Part I, Chapter 3, Section 4.2 and Part II, Chapter 4 and Section 6.1 of the Sales Tax, Customs and Excise Act, 2000, provides that the fixation of the rates of Sales Tax, Customs Tariff and any revision thereof, shall be approved by the Royal Government. Hence, the controversy of the case stems from the interpretation of the word "approved by the Royal Government". Similarly, Chapter III, Section 9 of the Public Finance Act, 2007 states that the "Raising of revenues through taxes shall be authorized by the Parliament", and Section 14(b) of the said Act states that "The Minister of Finance shall be responsible,...for proposing taxation measures to the

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Parliament, and raising other revenues and resources for the Government”,

The interpretation and application of the words “approved” and “authorized” is fundamental when considering whether Section 4.2 of Chapter 3, Part I and Section 6.1, Chapter 4, Part II of the Sales Tax, Customs and Excise Act is *ultra vires* or null and void. The application of the doctrine of *ultra vires* enshrined under Article 1, Section 10 of the Constitution means that any provisions of the statutory laws that are in contravention to the Constitution needs to be struck down.

The term used in the said specific provisions of laws have to be weighed in order to understand its substance and meaning that it ultimately conveys. The words or phrases used in the impugned legislations must together coalesce and be capable of adherence to legal reasoning. The conflict of laws in itself, generally, originates from situations where the ultimate outcome of a legal dispute depended upon which law applied is in conflict or that disparities exists among the laws. The fundamental concept is that the provisions of laws as far as possible must be interpreted based on the doctrine of the “canon of constitutional avoidance” or in such a way as to be constitutionally valid. The constitutional validity means that no law shall be passed or any Executive action undertaken which are in contravention to the provisions of the Constitution. Thus, it is fundamental to establish profound precedent from the very beginning that the powers granted upon government by the primary legislation to make public policy must also adhere that

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policies framed do not undermine its relation to prevailing laws and the Constitution.

The word "approve" in accordance with Black's Law dictionary is "To give formal sanction to; or to confirm authoritatively." And the word "authorize" is defined as "To give legal authority; to empower; or to formally approve; or to sanction." This draws that Sections cited under the Sales Tax, Customs and Excise Act, 2000 which uses the word "approved by the Royal Government" and the Public Finance Act as "authorized by Parliament" must be read in complementary, beneficial or in harmonious construction.

The principle of "harmonious construction" is the one that effect shall be given to all the provisions and for that any provisions of the statute should be construed with reference to the other provisions so as to make it workable. Particularly, the Bhutanese courts and its justice system always had an inimitable practice when certain provisions of one law are inadequate or ambiguous; the court had always made citation in reference to the same subject matter from other prevailing laws. This is no different in the present case. The only difference is that Sales Tax, Customs and Excise Act, 2000 was enacted prior to the Constitution meant to be in force at that point of time and till such a period that the particular law is amended, repealed or saved. However, the Court in the interpretation of said contested provisions, do not find *ab initio* contradictory so as to declare the impugned law null and void or even declare it voidable, because the language or the phrase



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used is "approve by the Royal Government" which in essence perfectly harmonizes to interpret as to confer the power of approval of tax schedule by the Ruling Government for tabling in the National Assembly by the Finance Minister in accordance with the Public Finance Act and the Constitution.

The approval of the tax reforms or in the particular matter the revision of tax schedule as provided under the Sales Tax, Customs and Excise Act, 2000 is the part and parcel of democratic governance by a party in power which is founded upon the will of the people through free, fair, just and periodic elections. It is a democratic norm that election campaign promises made by the party are to be fulfilled or achievable, the taxation policy measures are one of the ways that the government in power is solely vested to deal with but in accordance with all relevant laws and more fundamentally the Constitution. Thus, the wisdom of the collective responsibility of the Ruling Government to vest with power to approve taxation measures as per the provisions of Sales Tax, Customs and Excise Act, 2000 read with Public Finance Act, 2007 and the Constitution perfectly harmonizes in whole.

Therefore, it is the solemn duty of the Court to avoid the conflict and construe the provisions to that they are harmonious and make such construction of a statute which shall suppress the mischief and advance the remedy. Further, it is an established rule of construction that "in case of ambiguity, the provision should be so read as would avoid hardship, inconvenience, injustice, absurdity and anomaly." In settling



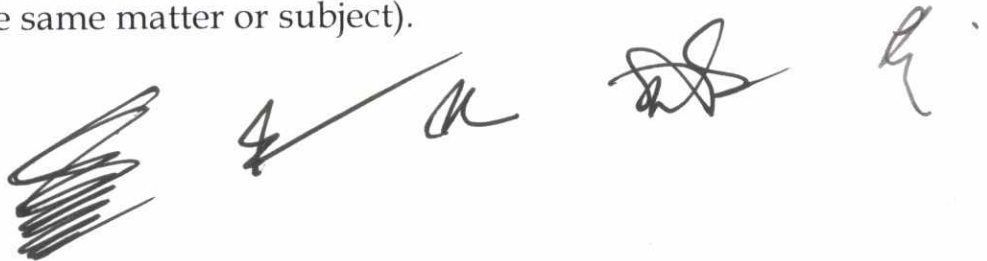


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out the difference of interpretations, the Court is also bound to adopt just, reasonable and sensible approach towards justice. Any statutory interpretation which makes the provisions of law consistent to each other should be the ultimate aim of the courts so that a construction avoids inconsistency or repugnancy between the various sections of the law or laws. This is to further say that to declare the particular sections of the Sales Tax, Customs and Excise Act, 2000, as null and void, would make the matter even difficult for the Government and Parliament to pass complete new provisions amending the said law. This would entail cost and time. Thus, in the opinion of the Court in all its substance and meaning applied to the law, the Court seizes to declare that there are no substantive issues to declare the provisions *ultra vires*. The thumb rule to interpretation of any statute is the rule of harmonious construction. However, harmonious construction does not mean that "non obstante clause" of the whole provisions of the said law has to be made applicable or the whole of the other law has to be made inapplicable.

Therefore, the Court in its final interpretation has no basis to rule that the word "approved" and "authorized" are contradictory to each other as the two words are *In pari materia* (of the same matter or subject).





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**20. The term “except by law” and its relevant issues**

The contention of the parties stems from the interpretation of the term “*except by law*” reflected under Article 14, Section 1 of the Constitution which provides that:

*Taxes, fees and other forms of levies shall not be imposed or altered except by law.*

According to the Respondent, the Sales Tax, Customs and Excise Act and Income Tax Act are the laws within the meaning of “*except by law*” under Article 14, Section 1 of the Constitution. They argued that both the laws are not inconsistent with said provision and provides for indirect and direct taxations respectively. The Constitution delegates taxation matters to be carried out as per the laws and does not direct how tax must be imposed. The Sales Tax, Customs and Excise Act empower the Government to fix or alter rates of tax, tariff, and duty thereof. Therefore, the fixation or alteration of tax by the Government as submitted for information to the National Assembly was based on the authority granted by the Sales Tax, Customs and Excise Act. The Respondent further argued that the imposition of taxes under the subject matter of Income Tax Act requires Parliamentary approval. Accordingly, the Government had proposed the amendment of certain provisions of the Income Tax Act during the Fifth Session of Parliament since they did not have the power to fix or alter rates for direct tax. Thus, the Respondent submitted that this itself is a testimony to the fact that the Government acted in compliance with the provisions of





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the laws and Constitution. They substantiated their arguments by noting that the Government needs to seek Parliamentary approval only in case of Income Tax Act (direct tax) while they need not do so in case the Sales Tax, Customs and Excise Act (indirect tax).

Refuting the above argument, the Petitioner maintained that the clause "except by law" in Article 14, Section 1 of the Constitution must be interpreted to mean that specific legislation must be passed every time taxes are imposed or altered which is also consistent with Sections 9 and 14(b) of the Public Finance Act. The Petitioner further submitted that the taxes referred to in the Public Finance Act 2007 and the Constitution mean all taxes and do not differentiate between direct and indirect taxes.

However, the Respondent contended that Section 2 of the Public Finance Act itself provides for saving of other laws when it provides that "... **Except ... or as otherwise specified herein**" clearly pertains to Section 21 of the said Act. It saves the "**powers**" acquired by the Government prior to the enactment of the Public Finance Act. "Power" includes the power to fix or alter rates of indirect tax as per the Sales Tax, Customs and Excise Act. Further, the Respondent contended that the Constitution and the Public Finance Act are generic laws and do not specify how the taxes are to be imposed which is left to the specific laws such as the Sales Tax, Customs and Excise Act and the Income Tax Act. The Constitution delegates this power when it provides for such delegation by use of the

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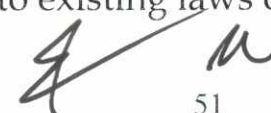


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phrase 'except by law' and the Public Finance Act delegates the power by the phrase 'authorized by the Parliament'. The Respondent prayed that the Court may kindly note the difference between direct and indirect taxes and not with reference to the Public Finance Act. The difference between the two forms of taxes is clearly established in the specific taxation laws.

The Respondent argued that the petitioner's reasoning that when provisions of two laws conflict, the provisions of the later law will prevail over the provisions of the previous law, is not tenable in the present case. A later law will prevail over the previous law only if the later law concerns the same subject matter as that of the earlier one. In this case, the subject matter, the purpose and the intent of the Public Finance Act and Sales Tax, Customs and Excise Act are substantially different. The subject matter of the Sales Tax, Customs and Excise Act is on how tax (indirect tax) shall be imposed and raised by the Government. Whereas, the subject matter of the Public Finance Act is to provide for the management and allocation of money raised as per the Sales Tax, Customs and Excise Act and the Income Tax Act. Further the case at hand is different in that, the earlier law is specific and the later law is generic. The general principle of interpretation of statutes is that, the provisions of specific law will prevail over the general laws.

Based on the above arguments, the question raised by each of the parties needs to be interpreted whether "except by law" is meant in reference to existing laws or future laws?





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In the general sense Black Law Dictionary defines Law as *"The regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure, backed by force, in such a society;"* This means that the laws are meant to regulate human conduct and impose certain norms in a given society.

Article 14, Section 1 of the Constitution specifies that no taxes, fees and other forms of levies shall be imposed or altered except by law. The definition of taxes and its synonyms are duty, levy, toll and excise. Further, levies include charges, tolls, duties or tariffs. Therefore, the said Article in its clear mandate confers that no taxes, fees or any form of levies be imposed (made to pay) or such taxes, fees or levies be altered (changed or revised) except by law. The term "except by law" as reflected in the particular section of the Constitution meant that no alteration of taxes shall be made except as provided by the existing laws or the new laws. Therefore, it is inferred that "except by law" apply both to the existing laws (which in this case is the Sales Tax, Customs and Excise Act, 2000 and Income Tax Act, 2001) as well as to the future laws that relate to such imposition or alteration of taxes.

The term "except by law" is also synonymously referred under different provisions of the Constitution as "in accordance with law." Thus, "in accordance with law" conversely had to be interpreted as referring to the existing laws as well as any laws that would have come into existence after a new Bill is



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introduced by way of amendment, repeal, or saving or when complete new laws are passed by Parliament.

Based on the above analysis, the taxation laws of Bhutan, be it indirect or direct taxation, the laws in force shall remain in force unless repealed, amended or enacts a new law, or the particular law or provisions of such law are inconsistent with Article 1, Section 10 of the Constitution, be it in existence before or enacted after the adoption of the Constitution. Otherwise, these laws once passed have the binding effects across generations whether it is before the adoption of the Constitution or after. Hence, the Court establishes that “except by law” invariably applies to refer for the future laws as well as to give effect and protect the existing laws.

As regards to the contention of the parties, whether special law or general law will prevail, the Court concurs with the Respondent that in case of a conflict between two statutes that are of generic and special in nature, the special law would over rule the general law as embodied in the principle “*Generalia specialibus non derogant*” (a general provision does not derogate from a special one). However, in the present case, there is no question of conflict between two laws; rather the two can be read as complimentary to each other as the object, intent and the purpose of said provisions are same. The impugned Sections of the Sales Tax, Customs and Excise Act, and that of Public Finance Act deals with the same subject matter on taxes. The former specifies that the tax schedule shall be “approved”



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by the Government and the later provides for it to be "authorized" by Parliament.

It is a general rule of interpretation that the special law will remain unaffected by the later general law only if there is no such provision in the general law or that the provisions are completely inconsistent with each other. "Inconsistent", according to Blacks Legal Dictionary, means mutually repugnant or contradictory; contrary, the one to the other so that both cannot stand, but the acceptance of the one implies the abrogation of the other. This means that inconsistency would arise, when two provisions are such that they relate to the same subject matter under same situation and that the provisions substantially overlap.

The terms and impacts of the provisions between two statutes in order to be co-extensive must uphold the principle that both the provisions of laws needs to prevail. On the contrary, if the provisions of one statute need to prevail over the others and declare the provision repugnant, then in such a case such overriding provision must prevail wholly.

The principles of inconsistency between two statutes made by the same legislature can also be ascertained through the test of "direct conflict between the provisions of the two statutes." Further, "the complete code test" specifies that when Parliament enacts a statute dealing or intending to deal exhaustively on any particular subject matter i.e., by enacting a complete code or complete new law, it is deemed to be a matter



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of legislative intent that any other provisions of law on the said subject matter were not intended to also be operative. The very existence of two sets of legal provisions, one a complete code and the other not, by itself lead to an inference of mutual irreconcilability or fatal inconsistency. The complete new law then impliedly repeals the provisions of other statute. The Court based on the above findings, rules against the Respondent's contention that the special law shall prevail over the general law in the present case. Therefore, the Court concludes that the word "approved" and "authorized" are complementary to one another as reflected in the two Acts.

**21. Article 13, Section 2 of the Constitution and whether Government can raise revenue through taxes by clubbing it with budget**

The Petitioner argued that the Government's rationalization and the broadening of the existing tax structure during the Fifth Session of Parliament were in contravention to Article 13, Section 2 of the Constitution. Further, the Petitioner submitted that as per this Article, it is mandatory that such revision of taxes must be introduced as Money Bill and Financial Bill so that it could be passed as law in accordance with the intent of Article 14, Section 1 of the Constitution. The Petitioner contended that money bills and financial bills include all tax measures and all forms of taxes, and are not limited to "fixation and alteration of taxes which are within the purview of the





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Income Tax Act" as argued by the Respondent and submitted that any such measures to fix and alter any taxes must be deliberated in Parliament. The Petitioner further argued that the Finance Minister's proposition and submission of report on raising revenue through taxes while presenting the said annual budget contravened the Constitution. Accordingly, the Petitioner believes that an approval of Budget by the National Assembly cannot be deemed that it was also appropriate to revise taxes within the Budget.

Responding to the Petitioner, the Respondent argued that Article 13, Section 2 of the Constitution requires that the taxation measures should be as per the established legislative procedures, and such procedure must be followed by the Government only if taxation measures pertain to fixation and alteration of taxes which are within the purview of the Income Tax Act (direct taxation). The Respondent submitted that the procedure mentioned under Article 13, Section 2 of the Constitution need not be followed in the case of the subject matter, which falls within the purview of the Sales Tax, Customs and Excise Act (indirect taxation). Thus, the Respondent concluded that Article 14, Section 1 of the Constitution is applicable only in case of direct taxes.

In light of the above arguments, the Court considered appropriate to interpret on two issues:



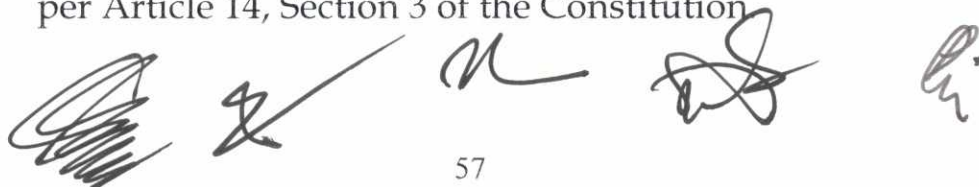
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- (a) Whether taxes would form the part of Money and Financial Bills under Article 13, Section 2 of the Constitution?
- (b) Whether Government could revise taxes by clubbing it with budget approval as done in the present case?

The Court deemed pertinent to define and interpret what actually encompasses Money Bill and Financial Bill. Concurring with the universally accepted definition and its corollary legal principles, the Court draws its wisdom as such to give its meaning and substance as per our Constitution. Conventionally, a Bill is deemed to be a Money Bill, only if it contains provisions dealing with all or any part relating to:

- (a) the imposition, abolition, remission, alteration or regulation of any taxes as provided under Article 14, Section 1 of the Constitution;
- (b) the regulation of the borrowing of money, or giving of any guarantee by the Government, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government as per Article 14, Section 4 of the Constitution;
- (c) the custody of the Consolidated Fund or the Contingency Fund, the payment of monies into or the withdrawal of monies from any such funds as per Article 14, Section 2 of the Constitution; and
- (d) the appropriation of monies out of the Consolidated Fund as per Article 14, Section 3 of the Constitution





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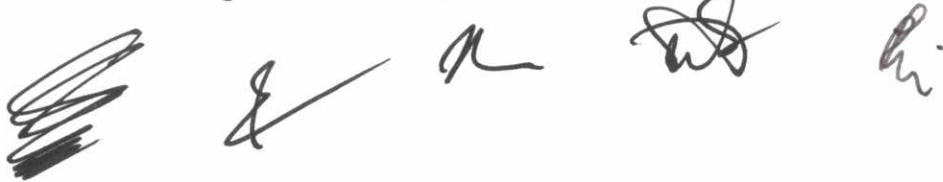
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Hence, under the Constitution of Bhutan, Money Bills are those Bills that comes under the ambit of Article 14, Sections 1, 2, 3 and 4 of the Constitution.

On the other hand a Financial Bill is defined to mean any matters related to Money Bills as defined above and may also encompass other matters not necessarily involving issues related to the Money Bill. Financial Bills also include those Bills, which if enacted and brought into operation would involve expenditure from the Consolidated Fund in accordance with Article 14, Sections 2 and 3 of the Constitution.

As in any ordinary Bills, Money Bills and Financial Bills become laws once passed by Parliament. However, unlike the ordinary Bills, which can originate from either House, any Bills related to Money Bill or Financial Bill shall originate only in the National Assembly as per Article 13, Section 2 of the Constitution so as to become law as per Article 14, Section 1 of the Constitution.





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22. DECISION

The Court constituted as above, after extensive deliberation on facts and issues and the application of laws and commonly accepted legal principles and the Constitution, do hereby unanimously rules as follows:

22.1. *Locus Standi* and the Scope of Court's Jurisdiction

Based on Findings No. 16, the Court hereby rules that:

- 22.1.1 No *locus standi* of the case be cited as precedent invoking Article 18, Section 1 of the Constitution by Opposition Leader or by any individual members of the Opposition Party unless a written consent is availed in writing of all the Opposition Party Members countersigned by the Secretary General of the National Assembly to file a constitutional case;
- 22.1.2 Article 18, Sections 1 and 5 do not guarantee *personam* jurisdiction without securing a written consent as (22.1.1) above of all the Members of the Opposition Party for filing constitutional case or seek Writ Petition under Article 21, Section 10 of the Constitution; and
- 22.1.3 No Members of the National Assembly in the Ruling Government, either individually or *en bloc* shall have the right to invoke jurisdiction and initiate





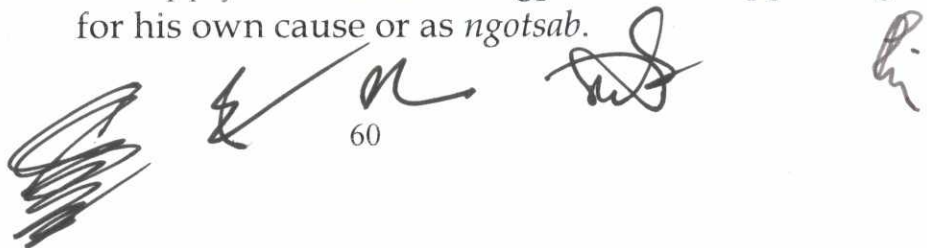
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constitutional proceeding on Parliamentary matters. It shall be construed as defection in violation of Article 15, Section 10 of the Constitution.

22.2 **Ex-Drangpon: *quo standi* issues**

Based on Findings No. 17, the Court hereby rules that:

- 22.2.1 the representative of the Petitioner although an Ex-Drangpon does not come within the ambit of the word “retired Drangpon” as his past service records are evident that he was appointed as the then Attorney General, and have thereafter resigned from the post to contest an election;
- 22.2.2 the representative of the Petitioner by then had not reached the age of superannuation and therefore, not a “retired Drangpon;”
- 22.2.3 the representative of the Petitioner’s *quo standi* in the current case can not be construed as “practice” before the Court; and
- 22.2.4 the particular section bars the retired Drangpons to practice before any courts as a *Jabmi* and shall not apply to retired Drangpons from appearing for his own cause or as *ngotsab*.





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**22.3 Government funding: issues related to hiring a lawyer to represent the Petitioner**

Based on Findings No. 18, the Court hereby rules that in absence of any substantive law, Legal Aid:

22.3.1 should be granted only to meet the ends of justice, uphold the fundamental principle of fair trial, equal justice before the law and effective protection of laws;

22.3.2 should be granted when the person is in need of legal assistance by reason that he or she is indigent to obtain the legal services of a private legal practitioner in the interests of justice; and

22.3.3 is only meant to be applied in cases where the person is an indigent as provided under section 34 of the Civil and Criminal Procedure Code. Thus, the Court dismisses the issues related to funding for the legal aid to the Opposition Party.





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**22.4. Breach of procedural and substantive obligations and alleged violation of Constitution**

Based on Findings No. 19 and 20, the Court hereby rules that:

- 22.4.1 the taxes referred in Section 9 of the Public Finance Act 2007 and the Article 14, Section 1 of the Constitution means all taxes and do not differentiate between direct or indirect taxes;
- 22.4.2 the Sales Tax, Customs and Excise Act and Income Tax Act are the laws within the meaning of “*except by law*” under Article 14, Section 1 of the Constitution and that both laws are not inconsistent with the said Article. The impugned provisions of Section 4.2, chapter 4, Part II; and Section 4.1, chapter 3, Part I; Section 6.1, Chapter 3, Part III of the Sales Tax, Customs and Excise Act, 2000 must be read with Section 6.1 and Section 14(b) of the Public Finance Act, 2007 and not in isolation;
- 22.4.3 in the instance of conflict between the provisions of two laws, the provisions of the later law will prevail over the provisions of the previous law when the two are repugnant to each other or that specific law will prevail over general law when





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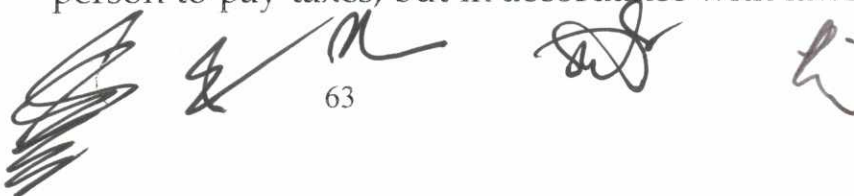
general law is silent on the subject matter.  
Therefore, the Court hereby rules that:

22.4.3.1 the particular impugned provisions reflected under two laws (Sales Tax, Customs and Excise Act, 2000 and the Public Finance Act, 2007) are not contradictory; and

22.4.3.2 the matter contested conforms to the same subject matter on the issues of taxation in reference to the particular provisions of both the laws and is not a separate subject matter.

22.4.4 Although, the Sales Tax, Customs and Excise Act is a specific law and that the Public Finance Act is generic, the said impugned provisions are not distinctive and were intended to apply for the same issues on the methods and procedure of raising taxes;

22.4.5 the fixation or alteration of taxes by the Government simply by submission of information and upon sole approval of the National Assembly is in contravention to Article 14, Section 1 of the Constitution. Further, Article 8, Section 8 of the Constitution mandates a person to pay taxes, but in accordance with laws.







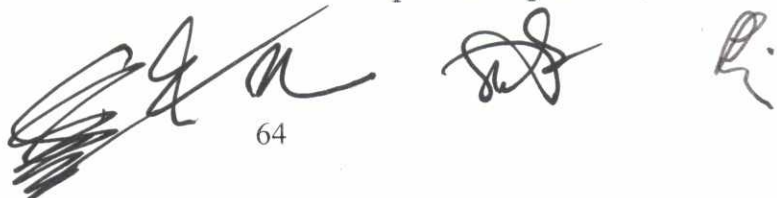
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Hence, the action of the Government mandating the payment of taxes beyond the prescribed limit as provided under the prevailing laws after the adoption of the Constitution is both procedural and substantive violations;

22.4.6 The impugned sections of the Sales Tax, Customs and Excise Act and the Public Finance Act should be interpreted as to mean and construe that:

22.4.6.1 the Government as per Section 4.2 of Chapter 3, Part I and Section 6.1, Chapter 4, Part II of the Sales Tax, Customs and Excise Act, 2000 has the power to “approve” the fixation of the rates of Sales Tax and Customs Tariff and any revisions thereof and also to approve the range of commodities and services under the Sales Tax Schedule;

22.4.6.2 once the Government or the Cabinet has “approved” as (22.4.6.1) above, the Finance Minister must propose and introduce such taxation measures as Money Bill before the National Assembly for the authorization of Parliament as per Chapter III, Sections





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9 and 14(b) of the Public Finance Act, 2007; and

22.4.6.3 the word “authorized” by Parliament as ((22.4.6.2) above must be read with Article 14, Section 1 of the Constitution which means that such taxation as proposed must be passed as law after introducing it as Money Bill under Article 13, Section 2 of the Constitution.

## 22.5. The term “except by law” and its relevant issues

Based on Findings No. 20, the Court hereby rules that:

- 22.5.1. the term “except by law” as envisaged in Article 14, Section 1 of the Constitution means that no taxes, fees and levies shall be imposed or altered except as provided by the existing laws or based on the new laws; and
- 22.5.2. the term “except by law” for the purpose of this case must apply to both the existing laws i.e., the Sales Tax, Customs and Excise Act, 2000 and Income Tax Act, 2001 as well as to the future laws that relate to such imposition or alteration of taxes.





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**22.6. Article 13, Section 2 of the Constitution and whether Government can raise revenue through taxes by clubbing it with budget**

Based on Findings No. 21, the Court hereby rules that:

22.6.1 All taxation measures, be it direct or indirect, intended to impose new or alter the existing taxes structure must be introduced as a Bill as per Article 13, Section 2 of the Constitution;

22.6.2 Taxes as revised or imposed thereof must be done only through the procedure of passing of Bills under Article 13 of the Constitution; and

22.6.3 The raising of revenue and introducing taxation measures merely along with the budget violates the constitutional mandate of introducing it as a Bill.



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ROYAL COURT OF JUSTICE

**23. ORDER:**

The Court granted full opportunity and full consideration to the parties' submissions. They were given full opportunity to defend themselves. All their submissions were given most careful consideration. Therefore, based on the above rulings, the Court hereby decides:

23.1 that the contention of the Opposition Leader to declare the impugned provisions under the Sales Tax, Customs and Excise Act, 2000 as null and void under Article 1, Section 10 of the Constitution is hereby dismissed without prejudice on the ground that it does not contravene Article 14, Section 1 of the Constitution;

23.2 that the Ruling Government by introducing taxation measures has violated the procedural and substantive obligation under Sales Tax, Customs and Excise Act, 2000 and the Public Finance Act, 2007, which invariably have also contravened Article 14, Section 1 of the Constitution;

23.3 that the Constitution is a supreme law of the State and that any act of legislature or the executive branch, repugnant to the Constitution is void.





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Therefore, the Court declares that the Government's imposition of taxation measures without introducing the revised tax schedule as Money Bill under Article 13, Section 2 and without a law to that effect as mandated by Article 14, Section 1 of the Constitution as unconstitutional;

23.4 and directs the Ruling Government to refund all taxes raised resulting from the *ultra vires* act of the imposition and the revision of the taxes thereof, in the Fifth session of Parliament; and

23.5 and orders an injunction under Section 67 of the Civil and Criminal Procedure Code, that the Government cannot revise and raise such revenue unless it is being passed as law by Parliament as per Article 14, Section 1 of the Constitution.

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23.6 Appeal

The Court hereby orders that an appeal may be preferred to the Supreme Court within ten days of this Judgment as per Sections 96.5 and 109.1 (c) of the Civil and Criminal Procedure Code. If not appealed, the decision shall be accordingly enforced.



(Drangpon Sangay Khandu)  
Acting Chief Justice

(Drangpon Lungten Dubgyur)  
Justice

(Drangpon Norbu Tshering)  
Justice

(Drangpon Tshering Namgyel)  
Justice

(Drangpon Tashi Chhozom)  
Justice