

Legal Basis For GeSAR

ABSTRACT

The Gelephu Special Administrative Region (GeSAR) represents a groundbreaking initiative with executive, legal, and policy autonomy. Established by a Royal Charter issued in February 2024, the GMC SAR operates under a unique legal framework. While Bhutan's Constitution does not explicitly provide for SARs, Article 2, Section 16e grants the King prerogatives for actions not covered by existing laws, legitimising the SAR's creation to some extent. The Local Government Act 2009, which governs local administrations, does not envision an SAR, suggesting the GMC operates outside current legal structures. Parliamentary approval was bypassed and national referendum was not deemed appropriate. This article shall look into constitutional, legal and other operational hurdles in the GMC realisation.

Keywords: Special Administrative Region, Royal Charter, Bhutan Constitution, Autonomy, Local Governance

Introduction

King Jigme Khesar Namgyal Wangchuk during his 2023 National Day address in Gelephu announced that “we will establish a Special Administrative Region (SAR) in Gelephu. As our economic hub, the SAR will have the autonomy to formulate laws and policies that are needed. It will have executive autonomy and legal independence” (Wangchuk, 2023 December 17). The SAR is the first of its kind in Bhutan and no one had the idea how legal parameters of the SAR would be developed or administered.

On February 10, 2024 a royal charter was issued (The Bhutanese, 2024 February 17) at a special ceremony held in Machen Lhakhang

in Punaka Dzong formally establishing GMC SAR and subsequently first law for administering the area was unveiled too.

Constitutional Provision

The royal charter is not yet publicly available. Royal Charters in Bhutan are basically the mini constitution for operationalising any newly established institution. The Bhutanese constitution does stipulate any provision of Royal Charters but past examples show they are issued for specific purpose to strengthen the enforcement or realisation of certain provisions of the constitution.

The constitution has provided authority to the King for any actions not covered by constitutional provisions. Article 2, Section 16e of the constitution says ‘the king shall have the prerogatives to exercise powers relating to matters which are not provided for under this constitution or other laws’ (Constitution of Bhutan 2008). Because Section 15 of the same article makes the King sacrosanct and is not answerable for his actions, there are no questions raised about his missions. Historically, his actions are deemed constitutional in Bhutan. While monarch being not answerable in court is general provision for many monarchies globally, peculiar to Bhutanese monarchy is that his action cannot be challenged at the court and the court has no authority to overrule his decisions.

Article 22 of the constitution provided for existence of local governments in the country. Section 1 of the article authorises the decentralisation of executive power through provision of local government but such decentralisation is limited by Section 2 of the article.

Section 2 of the article says, ‘Bhutan shall have Local Governments in each of the twenty Dzongkhags comprising the Dzongkhag

Tshogdu, Gewog Tshogde and Thromde Tshogde (Constitution of Bhutan 2008).’ The constitution does not imagine a different kind of local governments outside of the 20 districts or presence of regional government such as SAR.

Creation of a SAR is a groundbreaking initiative in Bhutan and is a subject of national importance. The constitution mandates for a national referendum on such issue of national importance. SAR declared without a national referendum means the subject has not been treated to be of national importance which may undermines its success.

Local Government Act

Bhutan’s decentralisation history dates back to 1981 when district councils or Dzongkhag Yargay Tshochungs were established. These were further expanded to block councils called Gewog Yargay Tshochungs in 1991. The Local Government Act 2009 was unveiled in line with the new constitution promulgated in 2008. The Act stipulates the provision of local governments in 20 districts – Dzongkhag Tshogdu at district level, Gewog Tshogdue at block level and Thromde Tshogde at municipality level. While district and block councils were continuation of the previous practices, municipalities were created in urban centres – a provision for the new form of local governments to cater for urbanisation. Creation of municipal administrative blocks is the prerogative of the parliament and they are determined based on the local needs.

The Act does not articulate or imagine any other form of local governments. It may be argued SAR is not part of the local government structures. However, it is a form of power devolution from Thimphu and as the constitution provision provides basis for

only two level of governments in Bhutan, SAR should definitely be categorised under local government in the Bhutanese legal context.

Parliamentary Approval

The GMC is not a project approved through parliamentary process but a proposal from the palace. This is not the single project developed outside the purview of the parliamentary approval in Bhutan. While some argue, institution of monarchy is being described as one arm of the parliament, he has the authority to make laws and decision. While Article 10, Section 1 of the constitution says ‘parliament consists of king, national assembly and national council’, section 3 of the same article contradicts this provision. Section 3 includes the provision of election for members of the parliament, which cannot be implemented if king forms an arm of the parliament. This implies the legislative powers under the Bhutanese constitution are vested with the National Assembly and the National Council.

Article 20, section 2 of the constitution provides executive power to the council of minister, not the king. As constitutional monarch, King was to act on the advice of the council of ministers and seek advice from the parliament if he sees the subject in question is sensitive. King does not have authority to override the decision of the cabinet. However, Bhutan has several other examples where the King has overstepped this authority to announce several projects. Two recent examples were the Gyalsung and De-suung. The parliament approved related laws, with no amendments to the submission, few year after the projects were implemented. The draft of the legislations relating to Gyalsung and De-suung were proposed by a non-parliamentarian – outside the traditional practice in a Westminster system.

A law governing the GMC has already been unveiled, though the government is yet to make decision on the GMC and parliament is yet to see a legislation relating to establishment of a SAR in the country.

The process has set the precedent that Bhutanese parliament has lost its authenticity as the ultimate body to formulate laws and the elected government has lost its executive authority as the final decision maker of the country. The process has proved the status of a Bhutanese nation to be an active monarchy.

The New Law For GMC

Gelephu has been given green signal for self-rule. This requires a legislative procedures to formulate laws and need a structured bureaucracy to operationalise the future legislation. The proposal has so far been concentrated in inviting investors but lacked far behind in creating legal, constitutional and bureaucratic environment to smoothen the process when investors come in.

The GMC Law No. 1 (Lamsang, 2024 December 28) was announced in December 2024 (The Bhutan Live, 2024 December 28). In a parliamentary process, the laws are drafted and debated at parliament before being approved and received royal ascent. While GMC SAR is expected to have its own legislative, executive and judiciary independence, it received its first law without the due process. It remains to see if the future legislative and executive of the city will revisit this law.

The concept designer of the whole project BIG become the first company to register in the SAR under the new law.

The new law integrates Singapore's common law and Abu Dhabi Global Market (ADGM) regulations to govern company incorporation, employment, taxation, and financial services within the GMC. The law projects for quicker commercial success of the SAR and provides financial autonomy to the region. If the legislative, judiciary and executive formations are delayed, there are chances the SAR would evolve into a corporate structure, ruled by self-appointed individuals. The concept of 'GMC Founding member' (Northeast Live, 2024 December 12) providing shares and dividend as benefits to the investors also give some direction for us to understand that the GMC is rather headed towards a corporate structure.

Othe Legal Hurdles for GMC

The region has been proposed to have independence from adopting Bhutan's laws. However, in absence of the any laws and legislative process, it is still unclear whether the SAR adopts the national regulation on several of its development fronts or follow the direction from king ad its governor Dr Lotay Tshering. One latest example shows the GMC will continue following the national law (Quendren, 2025). The challenges listed below are on assumptions that the SAR operates under current Bhutanese legal provisions until it receives all required laws.

Land Acquisition And Environmental Concerns

Land acquisition for large-scale projects like the GMC may face challenges under Bhutan's strict land laws, which prioritise environmental conservation over commercial activities. Even though Land Act requires payment of compensation to landowners and approval from the National Land Commission (NLC) prior to acquiring public or private land, the SAR idea might overrule the requirement of NLC approval for the GMC.

The process has already begun with residents around the proposal Gelephu Airport are told to vacate the land with no opportunity to buy any land within the district. While SAR expects population growth, it is asking the local residents to leave the region, reducing the consumer population in a future metropolis.

While the GMC awaits its environmental law, current process might attract Bhutan's Environmental Assessment Act (2000) which mandates environmental impact assessments (EIAs) for large projects. The GMC is yet to complete the EIA to ensure it aligns with Bhutan's commitment to maintaining at least 60 per cent forest cover and protecting biodiversity.

Environmental Protection Act (2007) and Biodiversity Act (2003) impose strict regulations on projects that could impact ecosystems, wildlife, and natural resources.

Zoning And Urban Planning

The GMC requires reassessment of the land use, new building codes, re-zoning and development control regulations. It needs to comply with the Land Act 2007 to ensure fair redistribution of land to affected landowners. Urbanisation mandates a rapid growth in infrastructures and other facilities which require heavy investments. Bhutan does not have adequate capital to invest in infrastructure, which would discourage the investors and businesses to move to the proposed city.

Culture Preservation

Bhutan has some of the strictest laws on cultural preservation. For decades the country promoted being vulnerable to foreign cultural swamp over its endangered Drukpa Buddhism. Bhutan has invested heavily in protecting its cultural fabric through dress codes, cultural

events and heritage sites. Bhutan's Heritage Act (2015) protects cultural and historical sites. If the GMC project area includes such sites, it may face restrictions or require special permissions for development.

Driglam Namzha or the national dress code was compulsory. The social media and internet access has influenced for changes in such stricter dress codes in Bhutan too. In recent years, the King has ignored this rule to imply that Drukpa dress code is required only for formal setting.

The GMC project aligns with Bhutan's GNH framework, which emphasises sustainable development, cultural preservation, and environmental conservation and happiness of its residents. Any perceived deviation from these GNH principles could lead to public criticism. But, globalisation, urbanisation, generational shift, social media influences and disruptors can pose significant challenges in cultural preservation doctrine of the Drukpa Buddhist.

Foreign Investment And Labour Laws

The project involves foreign investments. Bhutan hardly has foreign investments. The disincentives for foreign direct investment in Bhutan are attributable to its geographic location, market size, regulatory hurdles, lack of economic diversification and cultural priorities over economic advantages. The SAR would have complete independence on national FDI policy. However, other factors would still pose hurdles in attracting foreign investments. Foreign workers and investors involved in the project would need to comply with Bhutan's strict Immigration Act, which regulates visas, work permits, and residency until SAR gets its own migration laws

Public Participation And Transparency

The project should have engaged public in decision-making, as mandated by the Local Government Act (Article 145 & 146). This includes consultations with local communities and stakeholders. Transparency in planning, budgeting, and implementation is required to gain public trust too. Despite such provisions, there has not been any events of public consultation in the GMC in its preparation for a mega city. The streamlined public participation is missing without its elected legislative body.

Conclusion

The GMC represents a groundbreaking initiative with executive, legal, and policy autonomy. Despite this, the King overstepping the legislative authority of the parliament means the democratic process and mandate of the adult franchise are at risk in Bhutan. Formulation of laws for SAR without instituting its legislative arm raise concern if the future city would operate democratically. The real democracy would see the people's representative take the lead and public participation is guaranteed. A new governance structure not imagined by any laws in Bhutan should have been treated as the matter of national importance which should have been decided through a national referendum.

The challenges of the GMC heading to a corporate structure are real. This would fundamentally damage the Bhutanese environmental serenity and acclaimed happiness parameters.

During his National Day address in 2024, king pointed out that the establishment of a SAR under the principle of "One Country, Two Systems" is a bold initiative, admired globally. While the concept is sound and carefully thought out, the risk lies in inadequate execution, which could undermine its success. One country, two

systems principle is applied only in China. Bhutan adopting this principle suggests the direction to Bhutan is poised to follow.

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