

**Global Refugee Crisis and South Asia's Geopolitics:
The Case of the Bhutanese Refugees**

Lopita Nath

University of the Incarnate Word

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Abstract:

The exodus of the Lhotshampas of ethnic Nepali descent from Bhutan since the 1990's is another case of forced migration in South Asia. After 17 years in refugee camps in Nepal and failed negotiations by the United Nation High Commissioner of Refugees to repatriate the refugees back to Bhutan, third country resettlement became the only solution. Since 2008, 100,000 refugees have been resettled in the United States, Australia, Canada, U.K., Netherlands, with over 86, 000 in the United States. This paper seeks to examine the implications of South Asia's Geopolitics on the creation and management of this refugee crisis which generated a lot of international attention and concern. The issues at stake were the legality of Bhutan's citizenship policies, and the labeling of its bonafide citizens as illegal migrants, refusing repatriation and negotiation for a solution. This also raised the question of the refusal of India to offer asylum to the refugees when they entered India during their initial flight and failure to offer or even find a durable solution to the crisis. The third issue was the deliberate policy of Nepal at 'warehousing' the refugees and finally refusing local integration and insisting on repatriation as the only solution. While assessing the Bhutanese Refugee Crisis one cannot ignore the historic treaty relations of mutual cooperation, understanding and friendship between India, Bhutan and Nepal and the political and economic relations involved. This led to overtly magnifying a crisis that could have been resolved regionally and amicably. Were the Bhutanese refugees victims of South Asia's geopolitics? The Bhutanese refugee crisis was the failure of South Asian countries to amicably resolve a domestic crisis leading to a gross human rights violation and adding to the refugee crisis of the 21st century.

Introduction:

At the beginning of 1991 a group of Lhotshampas (southern Bhutanese of ethnic Nepali origin) left Bhutan, crossed the border into India and arrived in Southeastern Nepal. Their stay in India was very brief, as the Border Police returned them across the border. The Lhotshampas fearing persecution if they returned to Bhutan, opted to seek refuge in Nepal. Camps were established in the southeastern corner of Nepal, very close to the Indian border. During 1990-1995, about 90, 000 Lhotshampas crossed the border into Nepal via India. This issue of the Bhutanese refugees raised serious questions of accountability and responsibility for the fleeing population. The three countries involved, Bhutan, Nepal and India were not signatories to the 1951 Geneva Refugee Convention or the 1967 Protocol. Both Nepal and India had refugees enter their borders in many instances since the 1950's, for example the Tibetan Refugees, for whom they had to develop

policies and programs. The question then arises as to why India, who had taken such a proactive decision towards the Tibetan refugees, failed to show any concern for the Bhutanese Refugees? Nepal who offered the refugees asylum, has been criticized for the nature of their support to the refugees in the camps, in terms of opportunities and pressing Bhutan for a solution. Bhutan as the perpetrator of the crime had violated international law. The legality of Bhutan's citizenship laws and exclusivist nationalism raises questions of accountability, since Bhutan was not held accountable for expelling its citizens from the country.

One of the smallest and thinly populated countries in South Asia, Bhutan, has a population of 733,643ⁱ and yet is ethnically and religiously very diverse. The four main ethnic groups are the Ngalong in the west, the Sharchop or central Bhutanese in the east and the Lhotshampas or Nepali Bhutanese in the South. The Ngalong, referred as the Bhote, trace their origin to Tibet migrating since the 9th century, introduced into Bhutan a branch of the Tibetan Buddhism known as the Drukpa Kargyu school of Mahayana Buddhism and speak the Dzongkha language. The Sharchop who were the earliest settlers, trace their origin to the tribes of Northern Burma or Northeast India and constitute most of the population in the east, and speak the Tsangla language. Over the years the Sharchops have been largely assimilated into the Tibetan-Ngalong culture.ⁱⁱ The first two are not only politically dominant but the Dzongkha has been the national language since 1961, and the Drukpa Kargyu school of Mahayana Buddhism, predominant in western Bhutan has statutory representation in the state institutions.ⁱⁱⁱ The core of the Bhutanese identity and culture emerged from the Drukpa sect, and their religious, social and political traditions, economic tradition of pastoralism, as well as their language, dress and dietary habits became typically Bhutanese.^{iv} The Lhotshampas who are originally from Nepal, are Hindus, and the Nepali language and culture had become commonplace in the south. The Bhutanese commonly distinguish between the Buddhist Drukpa of the North and the Lhotshampa Hindu in the south. The linguistic division between the three were also at 26.5 % (Dzonkha), 22.9% (Tshangla) and 25.9% (Nepali).^v

The Lhotshampas, peasant farmers from Nepal, migrated to Bhutan after the Anglo-Bhutanese war of 1865.^{vi} The early Nepalis mostly arrived from Eastern Nepal, while later migrants arrived through a process of "step migration" from Darjeeling, Sikkim and northeast India, where the

Nepalis were migrating during British colonialism to work in the tea gardens and other jobs. C. A. Bell in his report on Bhutan writes:

“The Nepalis, driven out of their own country by the pressure of the population on the soil, have flocked to Bhutan, as well as to the Darjeeling district and Sikkim for many years past, and now that the best lands in the Darjeeling district and much of the good land in Sikkim are filled up, the movement towards Bhutan is stronger than ever. They are not well treated by the Bhutanese, but the treatment is better than it used to be, since the Bhutanese officials realize the extent to which the Bhutanese settlers increase their revenue.”^{vii}

They settled in the South, which with subsequent migrations from Nepal was developed into the most productive food belt of Bhutan. Further treaty relations with the British encouraged migration from Nepal, brought in by licensed contractors until 1930's. The Lhotshampas paid their taxes in cash, unlike the northerners and became the main source of cash income for the Bhutan government. But there were some concerns due to the fast growing population. Bell's report hints at this: “Nepalis are not yet allowed to settle east of the A-mo-chu, except apparently in the foot-hills, since the Bhutanese *rai-yats* have successfully objected to their admission, on the ground that once admitted they would swamp the old inhabitants.”^{viii} This prompted the Bhutanese government initially to adopt a policy “to isolate the Nepali Bhutanese as completely as possible from the rest of Bhutan's society by restricting them to Southern Bhutan.”^{ix} The Lhotshampas in the South “constituted an overwhelming majority of the population. Most of them reside in villages which are as classically Nepali Hindu as any in Nepal, harboring at least some sense of alienation from the broader society in which they live and the government which rules over them”.^x This ethnic boundary also hardened the ethnic category of the Lhotshampa or People of the South and separated the Bhutanese from the Lhotshampas in every possible way, and instances of encroachment into each other's grazing lands were settled with fines. This, as Michael Hutt writes, was a “deliberate structuring of interaction...described as a government policy which was designed in order to protect ‘Bhutanese culture’ from being eroded or displaced by ‘Nepali culture’ through demographic pressure.”^{xi}

Forced Migration from Bhutan

The causes of forced migration of the Lhotshampas from Bhutan lay in this ethnic divide and the growth of an ethno-nationalism with the takeover of power by the Wangchuk family from Tibet. In 1907 Ugyen Wangchuk established absolute monarchy with the title of the Druk Gyalpo or Dragon King.^{xii} To this new king, who was yet trying to establish his rule and power over the ethnically diverse and tribally organized Bhutan, the only interest that the south served were the taxes in cash and kind that the Lhotshampas paid to his government, as opposed to the Bhutanese in the North who mostly paid in kind and in labor. The administration and tax collection was left to the *mandals* and other officers of the government who exploited as they pleased. It was only in the 1950's, under the king Jigme Dorji Wangchuk that an effort was made to integrate the South into mainstream Bhutanese administration and government.

The Nationality Act of 1958 granted citizenship to the Nepalis who entered Bhutan prior to 1958.^{xiii} Around the same time Bhutan's policy of "institution building and infrastructure development" with land reforms (1952), establishment of a National Assembly or *Tshogdu* in 1953, freedom of serfs (1956), establishment of a Royal Advisory Council or *Lodro Tshogdey* in the late 1950s, Five year plans for economic development and a road linking Thimphu, the capital with India brought the south, economically and politically into the mainstream and with it, the Lhotshampas.^{xiv} They entered government service and national life in large numbers and in the process also threatened those who saw their integration as too quick to be sure. These fears go back to the early 1950's when the Lhotshampas made early efforts at demands for integration and formed the Bhutan State Congress in 1952, a first political party in Bhutan. "The Bhutan State Congress pushed ahead with demands for democratization, seeking citizenship rights and political rights for Lhotshampa settlers."^{xv} The granting of citizenship and political integration, which many debate was due to this early revolt, did not do anything to assuage these fears among the northern Bhutanese.

Migration from Nepal, continued, with the new migrants acquiring residency permits which gave them access to education and employment, but without citizenship. An extract from Nari Rustomji's diary, states, "Both His Highness and Jigmie (the prime minister) stressed that they have no intention of discrimination against genuine Nepalese settlers of long standing. Their Nationality Law will offer full rights to practically all existing Nepalese in the state, its objective

being to safeguard against future immigration”.^{xvi} The royalty in Bhutan, King Jigme Dorji and King Jigme Singye Wangchuk still continued the policy towards limited secularization while acknowledging the pluralistic nature of the Bhutanese society and politics. The latter even carried the policy of national integration by establishing temples and Sanskrit schools for the promotion of Nepali and Hindu education and culture. It is important to mention that the Nepalis did all they could in promoting education among the Lhotshampas and also preserving their culture and tradition. But that changed soon.

In 1985 Bhutan enacted a more stringent Citizenship Act which narrowed down the terms for acquiring citizenship and tightened immigration into Bhutan. In 1988 a comprehensive Census Program was launched and all adult male members had to present papers dating back to 1958 to prove their citizenship. A Survey of land records also questioned land rights and illegal occupation of land held by the immigrants. Citizenship cards issued up to 1988, where illegal migrants holding lands legally, or with Bhutanese spouses were allowed residency permits, were no longer accepted. A foreigner marrying a Bhutanese was not eligible for citizenship and to encourage Lhotshampas to marry the Northern Bhutanese monetary compensations were offered.^{xvii}

From the 1970's onward the Government of Bhutan began to enact their “One Nation, One People” policies which was another attempt at Bhutanese nationalization and integration of the south, but also had as its objectives the preservation of Bhutanese culture and society, from what was considered the corrosive effects of modernization and westernization. Soon ethnic groups, Lhotshampas, Sharchops and Drukpa “would emerge as intermediate levels of identification, somewhere between local kinship groupings and the ‘maximal collectivity’ of the nation.”^{xviii} The policy for preservation of culture and to create a “one nation” was also directly connected to Bhutan's geopolitical position. As Hutt writes: in view of Bhutan's very particular geo-political position, the ethno-linguistic composition of its population, and power relations within the kingdom, it would be naïve to imagine that policies designed for the preservation of “culture” were not embedded in or would not have diverse impacts upon other spheres of contestation.^{xix} This can be dated back to the 1958 integration of the Lhotshampas into the mainstream Bhutanese life, which in turn led to political activism and minimal representation in the administration. During the 1970's the Government began to push their ‘One nation, One people’

policy where the Lhotshampas were given ‘two alternatives, they had either to subscribe actively and visibly to Drukpa customs which had been elevated into rules and laws (the Driglam Namzha code) and acquiesce again to a subordinate status, or else surrender their right to reside in Bhutan.^{xx} This policy of integrating the Southern Bhutanese Lhotshampas into the vision of a Drukpa Bhutan was aimed at diffusing the myth of a unified Nepal and differentiating them from the Indian Nepalis. In the proceedings of the National Assembly (October 1989), the need for Bhutan to promote a National identity was promulgated into a policy. This articulated as the Driglam Namzha code, defined as “way of conscious harmony”, was invoked and reinforced as a part of the government’s new cultural policy. Wearing of the Bhutanese dress, Gho and Kira, learning the Dzongkha language in schools, and government correspondence, including the code of conduct became pillars of this drive for Bhutanization. The policy on national dress, language and *Driglam Namzha* (traditional etiquette and values) emphasized Bhutanese exclusivism and distinct identity. Lhotshampas had to conform and change the way they dressed, the language they spoke or public displays of Drukpa culture. Bhutan’s sixth Five Year Plan (1987-92) adopted “preservation and promotion of national identity” as one of its nine policy objectives, and the King Jigme Singye issued a decree (Kasho) on national dress on 16th January 1989.^{xxi} “It was a new way of dressing. It was very hot and it was very uncomfortable to wear this in the South”.^{xxii}

Lhotshampas were subjected to harassments, denials, fines, imprisonment and constant assaults for violating the King’s decree, even on occasions when it had been customary, like weddings and funerals. The King’s decree and the code were extended to issues like the length of women’s hair or celebration of religious (Hindu) festivals. This while clearly violating the Human Rights conventions that Bhutan had signed, was justified constantly in the interests of geo-politics, where the king described Bhutan as “a small country between giant and powerful neighbours’ which had no resources, only its culture and identity.^{xxiii} Any reaction that the Lhotshampas had to this cultural policy, was taken as a violation of Bhutan’s national policy and liable for government action, which in time led to eviction. Lhotshampas, not wearing the traditional dress were denied treatment in hospitals, and even prevented from getting married.^{xxiv} Dzongkha was made the official language and gradually eradicated from the school curriculum in the south^{xxv} and the Southern Bhutanese (Lhotshampas), in Nepali dress unable to

communicate in Dzongkha were declared as aliens and *Ngolops* or anti-nationals. This was considered by the Lhotshampas a serious infringement on their Bhutanese citizenship and a violation of their human rights and a systematic effort to destroy their language and culture.

Protests and demonstrations were undertaken by pro-Nepali political groups, the Bhutan's Peoples Party being one of them. Amnesty International reports, how the BPP in their efforts to garner support of the Lhotshampas against the Royal Government of Bhutan, resorted to violence and extortion.^{xxvi} Many Lhotshampas blamed the BPP for the extreme policies resorted to by the Government towards the people which caused similar sufferings to the people.^{xxvii} The people caught between the BPP and the RGB, brought matters to Tek Nath Rizal, who was a Lhotshampa representative at the Royal Advisory Council. Rizal tried to warn the king and the government about the seriousness of the resistance movement in 1989, but was himself arrested and came in and out of internment until December 1999, when he became a spokesman for the cause of the Lhotshampas. This resistance soon became an excuse to step up the exclusivist policies and the Bhutan authorities and police began cracking down on the Lhotshampas. For want of identification papers, they were harassed and evicted from their lands and houses. Other measures were also enforced like restrictions on transportation of essential commodities, selling cash crops in open markets, and requirement for a 'No-Objection Certificate' for everything from applying for scholarships, to admissions in schools. Thus, Lhotshampa political activism in the 1990's was taken as speaking against the monarchy, and was applied severely leading to a forced expulsion of the Lhotshampas from Bhutan.

The Lhotshampas were offered the alternative of voluntary migration, to eviction or deportation and from 1991, 'a systematic eviction of southern Bhutanese' began through the government's use of 'voluntary migration forms', which many southern Bhutanese were pressured to sign, sometimes following physical violence and coercion.^{xxviii} "We were told to sign on the forms and then pictures were taken, where we were told to smile", so that it looked like that the refugees were happy to leave Bhutan."^{xxix} I left with my parents, brothers and the rest of the family overnight in open trucks."^{xxx} Once, the head of the family left, pressure was exerted on other members to follow. They had become refugees, but in countries that were not signatories to the Refugee Conventions.

The 1951 Refugee Convention and its 1967 Protocol: its provisions and implications

The Geneva Convention, Relating to the Status of Refugees, was finalized on July 28th, 1951 and entered into force on April 22, 1954. The convention was later amended by the 1967 Protocol “extending the convention to cover all refugees, past, present and future.”^{xxxix} The two instruments, collectively known as the Refugee Conventions, officially defined a Refugee as a person, “owing to well-founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.”^{xxxix}

This definition considered very Euro-centric and dated, was amended by the 1967 Protocol, which expanded its scope to universal coverage and also supplemented by the 1969 OAU Refugee Convention, and the later Cartagena Declaration, 1984. The 1951 Convention and its Protocol, despite its critiques, has remained the cornerstone of the refugee protection and the most relevant document, as when they were drafted. The definition emphasizes the protection of refugees from political or other forms of persecution. The convention is also very rights-based and status-based and is underpinned by fundamental principles like non-discrimination, non-refoulement and non-penalization.^{xxxix} The convention in its language reinforces ideas of non-discrimination in matters of race, religion and country of origin or in matters of sex, age, disability or other prohibited grounds of discrimination. The most important in the case of the Bhutanese refugees in addition to all above, is the principle of non-refoulement. “It provides that no one shall expel or return (“*refouler*”) a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threat to life or freedom.”^{xxxix} It thus, safeguards refugees from expulsion and is so fundamental that it allows for ‘no reservation and derogations’.^{xxxv} The provision on non-penalization also protects refugees from being penalized for illegal entry and violation of immigration entry laws. The convention also lays down minimum standards for treatment of refugees without prejudice. Such rights include access to the courts, to primary education, to work, and the provision for documentation, including a refugee travel document in passport form.^{xxxvi} These provisions are applicable to all refugees who seek refuge and thus establish the relevance of the Refugee Convention, even in its present day. The

convention and its protocol has shown a remarkable resilience over the last 60 years and despite the changes in the patterns and nature of conflict and generated refugee flows, “ are the only global legal instruments explicitly covering the most important aspects of a refugee’s life.”^{xxxvii} As such countries involved in a refugee crisis, in the case of the Bhutanese refugees, become directly or indirectly subject to the provisions of the Convention and its protocol because it is also an important aspect of International Human Rights Law. But as seen below, Bhutan, India and Nepal, by not signing the convention did not consider themselves bound to its provisions and used their own discretion and policies to deal with the Bhutanese refugees raising serious questions of legality, accountability and responsibility.

Legality of Bhutan’s Citizenship Policies

Bhutan is not a signatory to the Refugee Convention or its protocol but has obligations to the international legal system from its membership to the United Nations and certain human rights instruments. “The international human rights instruments to which Bhutan was a party ...were the Convention on the Rights of the Child (CRC 89) and the Convention on the Eliminations of all forms of Discrimination Against Women (CEDAW 79). Bhutan ratified both of these without reservation, and also signed, but had yet to ratify the convention on the Elimination of All Forms of Racial Discrimination (CERD 65).”^{xxxviii} These instruments, Article 7(2) of CRC, Article 9 of CEDAW and Article 5 of CERD, contain provisions that protect rights of nationality. The first case against Bhutan is the violation of this right of nationality, which also has its foundation in the Universal Declaration of Human Rights of 1948, where Article 15 states that, 1. Everyone has the right to a nationality, and 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. However, Bhutan’s citizenship laws violated these provisions of the UDHR to which Bhutan is a signatory.

The Citizenship Laws enacted by Bhutan in 1958, 1977 and again revised to be more stringent in 1985 were considered problematic. The Nationality Law of Bhutan in 1958, is usually taken as the government’s first ordinance in matters of citizenship and nationality.^{xxxix} Some of the main provisions of the law were: 1. A person with a Bhutanese father could be considered a Bhutanese national, regardless of their place of birth; 2. Foreigners could become citizens, by submitting a

petition to “an official appointed by the king” and taking an oath of loyalty, and should have reached majority, resided in Bhutan at least 10 years, owned agricultural land, or worked for the government for 5 years; 3. Foreign wives of Bhutanese nationals, could become nationals as long as they had reached majority and taken an oath of loyalty to Bhutan; 4, a person could be deprived of citizenship, if they became nationals of another country, left their land or Bhutan permanently, or engaged in activities against the king or people of Bhutan among others. An interesting clause was that loss of citizenship would occur if the person had “corresponded with or assisted another country with whom Bhutan and India were engaged in a war or was imprisoned for over a year in any country within five years of being granted Bhutanese nationality.”^{xi} At the 11th session of the National Assembly, all Nepalis settled in Bhutan before 1958 were granted Bhutanese citizenship.

Flaws were seen in the Nationality Act of 1958, as new migrants began to enjoy the benefits. “If the aim of the law was a one-time grant with a 1958 deadline’, Thronson writes, ‘that aim is not found in the language of the text’.^{xli} It did not have specific start or end dates and most of the people in the South were not even aware of its enactment till many years later. There was no certification or any affirmative application other than a resolution in the National Assembly, which stated, “That henceforth the Nepalese of Southern Bhutan should abide by the rules and regulations of the Royal Government...”^{xlii} They were required to pledge allegiance to Bhutan, not serve any other country, and take responsibility for the protection of the southern border. A Lhotshampa testimony, recorded by Hutt: Dorje said, “from now on do not call me Raja. From now on I am the Prime Minister. He (the King) is the Sri Panch Maharaj, and now what we must do is to develop the country from sunrise to sunset.’ And when we asked, “what does develop the country mean?” He said, ‘you must dig roads , make schools, make hospitals’ and if you cannot work and want to go back to Nepal, then go! But if you can bear this and stay, we will give you citizenship. Stay! We must develop our country.”

This made it clear what was expected of the new Bhutanese nationals. The 1958 law was amended by the citizenship acts of 1977 and then again in 1985. In 1977, an applicant for citizenship was required to have completed 15 years of service instead of the 5 years, and others had to have resided in Bhutan for 20 years instead of 10. Foreign wives had to apply like other

foreigners and were required to have knowledge of Bhutanese language. The last nail on this was Act of 1985, which “provided citizenship by birth (both parents were citizens), by registration (1958 law), or naturalization as in the 1977 law. Naturalization also required fluency in Dzongkha and knowledge of Bhutanese culture. Bhutan’s policy of preserving culture and Bhutan’s distinct identity via their Driglam Namzha code as mentioned earlier became a requirement for citizenship. Also mentioned in the King’s decree of 1989 was the ‘ Not to have spoken or acted against the Tsa-Wa-Sum (King, country or people of Bhutan)’. These changes seemed fair and like most countries that had evolving policies of citizenship with growth, was well within Bhutan’s rights as a sovereign nation to do so. What was not fair was Bhutan’s move towards an exclusivist policy of disenfranchising the Lhotshampas, depriving them of their citizenship and evicting them for trying to keep their culture. Bhutan’s law did not guarantee freedom of speech and cultural expression and violated all the Human Rights agreements.^{xliii}

The porosity and proximity of the borders with India and Nepal had allowed for a constant movement of population between the three countries and was common for the Lhotshampas to marry from across the border in India or in Nepal. With the changes in the nationality laws from 1958 to 1985, the status of these spouses and the children born of these marriages changed. While in 1958 they had only to petition and take an oath of loyalty, in 1977 they had to have resided in Bhutan for 20 years and apply like any other foreigner. In 1985, any children born of such unions were not granted Bhutanese citizenship because one parent was not Bhutanese. The census recording after 1988, applied the 1985 law with rigour and categorized each member of the family in the 7 established categories based on their birth, registration and naturalization. Marriage between Lhotshampas who were Bhutanese citizens and non-Bhutanese Nepalis assumed new dimensions. Even though they were ethnically similar, their Bhutanese citizenship or the future of their citizenship would not allow such unions.

These led to other denials and violations stated above. The 1985 act was based on the assumption that its enactment repealed the earlier laws of 1958 and 1977, but there was nothing clearly stated in the 1985 law. “While the 1958 Law categorically repealed all previous rule and regulations on nationality, the 1977 and 1985 Acts merely stated that their provisions would prevail over those of previous legislation when cases of conflict between provisions arose.”^{xliv}

By 1988, and again under the census of 1990 which assumed harsh proportions, a large proportion of the Lhotshampas were categorized as non-citizens. The Royal Government of Bhutan defended its census operation as an attempt ‘to identify foreigners and issue citizenship identity cards to all bonafide Bhutanese nationals’ or simply to identify Bhutanese nationals.^{xlv} To the Lhotshampas it was an attempt to strip them of citizenship and reduce the Nepali population from the south of Bhutan. The census operations of 1988 were flawed and like everything else violated every Human Rights law. The Lhotshampas had to prove citizenship with tax receipts dating back to 1958 (the first Nationality Law), as anything issued at a later date were unacceptable. Frequently, based on their birth, residence, or marriage, or availability of proof, members of a family were placed in all the different categories ranging from F1-genuine citizens, to F7- non-nationals.^{xlvi} Anyone placed in categories other than F-1 were harassed and were liable to be denied access to education and healthcare. Many were forced to leave.

At this time Bhutanese officials also reported the presence of over 100,000 illegal migrants in the southern borders of Bhutan. Bhutan remained firm on these allegations, when she was called to be a member of the Joint Verification Team to find a solution to the refugee crisis. Other harassments, persecutions, and discriminations against the Lhotshampas raise the question of the legality of Bhutan’s policies and also the lack of accountability. Bhutan by depriving the citizens of their nationality violated the provisions of the UDHR and also the other conventions ratified. Children (CRC), women (CEDAW) and also racial (CERD) rights were violated in the process. Even though Bhutan was not a signatory to the 1951 Refugee Convention, and its 1967 Protocol, by signing other conventions, has some obligation to International humanitarian law.

India’s role in the Bhutanese Refugee Crisis

India’s role in the Bhutanese Refugee Crisis was governed by its treaty relations with Bhutan and also by its own policy regarding the entry of Foreigners. India is also not a signatory to the Refugee Conventions mentioned above and thus, does not feel obligated to the terms stated in the Convention.

India shares the border with Bhutan and has a treaty relation with Bhutan that goes back to 1949 (*Treaty of Friendship between India and Bhutan*, 8 August 1949).^{xlvii} Article 2 of the treaty states that, “The Government of India undertakes to exercise no interference in the internal administration of Bhutan.” Further Art.7 states that, “The Government of India and the Government of Bhutan agree that Bhutanese subjects residing in Indian territories shall have equal justice with Indian subjects, and vice versa. Art.8 also states that, “The Government of India shall on demand being duly made in writing by the Government of Bhutan, take proceedings in accordance with the provisions of the Indian Extradition Act, 1903 (of which a copy shall be furnished to the Government of Bhutan), for the surrender of all Bhutanese subjects accused of any of the crimes specified in the first schedule of the said Act who may take refuge in Indian territory.” While on one hand the treaty allows Bhutanese nationals freedom of movement and access to resources in India and vice versa, on the other hand they are subject to India’s relations under the treaty. On a side note, this 1949 treaty was revised in February 2007, reiterating the terms of 1949, and re-establishing the historic and friendly relations between India and Bhutan.

India, like other South Asian countries, has not signed or ratified the Refugee Convention of 1951 or its 1967 Protocol. This is totally contradictory to the situation on ground, since India has always had refugee inflows since 1947 (Hindus from Pakistan, Bangladesh (1947, 1971), Tibetan refugees (1959), Chakmas, Sri Lankan and now Afghan refugees), and had to define policies and measures to deal with them. India’s argument against the Convention is that it is too Euro-centric and India does not want to be bound by the financial and other obligations which would entail assisting and harboring large groups of refugees at all times. “India’s reasoning for not signing the Refugee Convention is the fear of indefinite legal responsibility for the vast numbers of persons seeking shelter. The Indian government does not believe it successfully can handle the requirements of the Refugee Convention, and such new pressures would damage the country’s economic and social balance.”^{xlviii} India further argues, that its refugee policy, which is ad-hoc and deals with refugees on a case by case basis is in line with the International refugee policy.

Two issues are of concern here. India’s refugee policy is based on the Foreigner’s Act of 1946 and 1948, which lumps all foreigners in the same category and fails to distinguish between

refugees and other foreigners. “The Foreigners Act 1946 is an outdated and draconian piece of legislation that defines a foreigner as any person who is not a citizen of India, and includes refugees. A similar provision was also introduced through an amendment to the Indian Citizenship Act in 2003 which fails to make any distinction between refugees and their special circumstances and other foreigners and illegal immigrants.”^{xlix} Articles of the Foreigner Acts allow the Indian government wide discretionary powers to regulate entry of foreigners and require a valid passport and a visa for entry. Refugees in most cases do not have valid papers, or sometimes come in with false papers which raise the burden of doubt.

Despite India’s claim that their refugee policy is in line with the international policies, “The Foreigners Act allows the Indian government to refoule foreigners, including asylum-seekers, through deportation, and is therefore in violation of international customary law.”^l Not being a signatory to the refugee conventions, does not absolve countries from being bound to offer victims of persecution and fleeing home countries refuge, or violating the principle of non-refoulement, which are considered a rule of customary International Law and therefore binding on all states whether or not they have acceded to the refugee convention or protocol. Most states practice non-refoulement and respect it as a legal obligation. “Furthermore, states consider *non-refoulement* an obligation to all persons seeking asylum, regardless of whether they are in countries that are signatories to the Refugee Convention. Most states, regardless of whether they are parties to the Refugee Convention, hold that non-refoulement transcends the Refugee Convention and observe this rule.”^{li} India thus violates the Refugee Conventions and International Law when it refoules groups at the border.

Ipshita Sengupta writes that: Article 51 (c) of the Indian Constitution provides that India "shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another". Article 253 of the Constitution gives the Indian Parliament the "power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body." The Indian judiciary has also ruled in favor of harmonious construction of international and domestic law when it is consistent with fundamental rights (*Visakha v State of Rajasthan*, 1997 \[6 \[SCC] 241).^{lii} As such India

exercises its own discretionary powers backed by the constitution and its foreigner's acts to deal with refugees or any other foreigner entering India.

The immediate response of India and its border police regarding the Bhutanese refugees was to return them when they entered India. Since the Indian states of Assam and West Bengal, were the closest, the refugees crossed the border in big groups only to be told that they had to leave. This was a direct contravention to India's refugee policy so far, for example the Tibetans and Sri Lankans and also violated the principle of non-refoulement of the Refugee Conventions. The only explanation here is that India's Bhutanese Refugee response was guided by geo-political concerns and India did not wish to violate her treaty agreements with Bhutan and jeopardize that relationship, for strategic as well as economic reasons. Furthermore since the Bhutanese had the freedom of access and travel in India, India did not want to treat them as refugees and think it necessary to grant them asylum.

Another geo-political issue was India's relations with Nepal guided by the 1950 Indo-Nepal treaty of Friendship, which while recognizing the historic relations between the two countries, allowed for continuity of equal rights in terms of employment, occupation, movement, settlement and acquisition of property on a reciprocal basis for the nationals of India and Nepal in both countries. Nepali citizens do not require a Visa to enter India and vice versa.^{liii} This treaty has been subject to serious controversy in recent years regarding the terms and its implications for Nepali migrants, Indian Nepalis who have lived in India for centuries and are naturalized citizens and others, like the Lhotshampas (Bhutanese of Nepali origin). Other critiques of the treaty allege to the politico-strategic concerns and India's growing security concerns in the Himalayan region at the time of concluding the treaty.^{liv} India's concern at that time was the rising power of Communist China and thus sought to protect her borders and the newly independent republic by securing her borders and creating friendships with Nepal and also, Bhutan. These treaty relations had a negative impact on the Lhotshampas as India did not want to risk hurting those relations.

India has thus refused to be a player in the Bhutanese refugee issue declaring it to be a domestic issue of Bhutan and later a bilateral issue between Bhutan and Nepal. However, a large number of Bhutanese refugees returned to India, to Assam and West Bengal (Siliguri) to take advantage

of the treaty relations and approximately 15,000-30,000 ethnic Nepalis reside in India, some of whom might have been from Bhutan. These Nepalis or even Lhotshampas, who returned from the refugee camps in Nepal took advantage of the treaty provisions to secure employment, housing or even educational benefits. However, an article in the *Indian Politics* mentions that India does not acknowledge the presence of the “ethnic Nepalese Bhutanese who were forced to flee to be refugees, and nor has it provided any sort of assistance. The UNHCR does not carry out status determination for the Bhutanese.”^{lv} Although the Bhutanese are allowed freedom of movement and residence, the failure to recognize them as refugees and non-determination of status denies them refugee rights. They cannot avail of any of the amenities and assistance afforded to refugees. Despite being officially treated as equals to Indian citizens the refugees still experience difficulties in securing driving and business licenses, travel documents, cooking gas and school and university admission.^{lvi}

Refugees and Camp life in Nepal

The Bhutanese refugees began arriving in Southeastern Nepal beginning of 1991. Testimony from the refugees states how the Bhutanese were driven across the border by the Indian army and dropped off at Kakarbhitta. They erected a camp on the banks of the Kankai Mai river at Maidhar in the district of Jhapa. At Maidhar camp they had no support or food and supplies. As the numbers grew through 1991, camp conditions deteriorated with an epidemic of cholera, malnutrition, dehydration, diarrhea and measles. Records and testimonies estimate an approximate 50 deaths a day, with about 30 children and many suicides. The camp was finally dismantled and the remaining 24,000 refugees were relocated to camps in marginal forest land on various locations.^{lvii} In September 1991, at the request of the Government of Nepal, the UNHCR assumed responsibility of rehabilitation and relief of the Bhutanese Refugees in the camps in Nepal.^{lviii} The arrivals continued with the highest numbers in 1992 with as many as 600 arrivals every day, continuing through 1993 and 1994 until they trickled down to a couple a day in 1995.

Camps were established in the five different sites in Nepal, namely Timai, Goldhap, Beldangi and Khudnabari in the Jhapa district and Sanishchare in Morang. As the population grew the Beldangi camp was expanded with upto three additional camp sites. By September 1995 there

were about 90,000 Lhotshampas in the camps and by October 2006 with new entrants and children born in the camps the numbers swelled to about 107,000 registered.^{lix}

The UNHCR with (World Food Program) WFP and several other non-governmental organizations including Caritas and AMDA (Association of Medical Doctors of Asia), LWF (Lutheran World Federation), the Nepal Red Cross, Oxfam, Nepal Bar Association, and the CVICT (The Centre For Victims Of Torture, Nepal) launched a program in 1992 to coordinate all emergency assistance to the refugees in the camps. The WFP provided food and income generating activities in the camps while the UNHCR ensured that fuel and housing materials were provided to the refugee population.^{lx} During the early period the UNHCR hailed these camps as an example for the best refugee camps in the world. The refugee community was included in developing the infrastructure of the camps, complete with aid, education and other facilities. The Refugee-run organizations are the BRAVVE (Bhutanese Refugee Aid for Victims of Violence) and the BRWF (Bhutanese Refugee Women's Forum). These organizations among them have very effectively provided food, shelter and education, counseling and medical services to the camp inmates. The Camp Management committee was responsible for the day to day functioning of the camps.^{lxi}

In spite of all the assistance, there were certain limitations. The structural layout of the camps was very dense with the shelters only a few meters apart, prone to sudden and damaging fires. A devastating fire occurred in March 2, 2008 displacing and rendering homeless, almost 9770 refugees of the Goldhap camp, who had to be moved to makeshift shelters made of plastic sheets.^{lxii} Problems occur due to the climate, heat, humidity and rains during the summer, and cold during the winter, which frequently cause disease and illness, leading to epidemics, more so in the absence of adequate supplies due to aid fatigue. "Over time, however, the international donors have grown increasingly reluctant to continue funding a refugee situation with no end in sight and in the light of Bhutan's refusal to accept any Lhotshampas back into their country, programs initially designed to prepare refugees for repatriation have been scaled back. Agencies budgetary constraints have led to cuts in food, fuel, housing materials and clothing exacerbating difficulties for the population."^{lxiii} Examples are the rationing of the basic materials, reducing the supply of vegetables in the food basket, clothing and most importantly substituting briquettes for Kerosene. "The briquettes burn slowly, produces a foul smoke and cannot be used as lighting

fuel, thus preventing children from studying after dark.”^{lxiv} Even refugees with poor English skills know the words “languishing’ and ‘warehoused” and use these terms frequently to describe their situation in the camps.^{lxv}

The one positive issue in the camps was the education system set up by the camp inmates under the assistance and guidance of Caritas. The motivation behind this was the fear of a loss of culture and identity, coupled with the anxiety that the education denied to them in Bhutan would be lost forever. Schools were set up from the pre-primary to the Grade X, but for the higher levels (Grades 11 and 12 and University) they had to go out of the camps. Funding and scholarships for this was not readily available and they had to find alternative sources. The Bhutanese brought with them a high level of English proficiency and used it to teach others. They also found ready employment in the boarding schools in Nepal where English was not of a very high standard. As one refugee told me, “there were so many boarding schools in Nepal and they were hiring us as our English was better than what the Nepalis knew. It was very easy to teach them. All I had to do was follow the books and I was paid good money. This helped my family.”^{lxvi} The success rates in the camp schools which were at 94% in 2004, dropped to 70% in 2005. As of the 30th November 2006 the number of students attending schools in the camps was 37,403.^{lxvii}

Responsibility of Nepal

Nepal, like India and Bhutan is not a party to the Refugee Conventions. However, Nepal is party to almost all the major human rights treaties, including the *2000 Optional Protocol to the Convention of the Rights of the Child on involvement in armed conflict*. It has ratified the four *1949 Geneva Conventions* but none of the three additional Protocols. The fact that it is not a party to the *1951 Refugee Convention* is unfortunate considering the presence of Bhutanese refugee camps in Nepal and the fact that impunity for grave violations of human rights is one of the main human rights and humanitarian law issue today in Nepal.^{lxviii} Like Bhutan, Nepal is a party to the CRC , the CEDAW and the CERD and has the same obligations to international humanitarian law.

Critics of India and Bhutan’s policies, and adherents to International instruments have lauded Nepal’s efforts in offering refuge to the Bhutanese refugees. In addition to asking for UNHCR

assistance, and the establishment of the camps, Nepal also set up the Refugee Coordination Unit under the Home Ministry of the Nepal Government. Nepal's policy with the refugees had led to some discomfort in their relations with Bhutan, as "the Bhutanese government made much of the fact that the Nepalese government did not begin to screen arrivals until June 1993, when the main influx had all but ceased (the vast majority of the people in the camps were usually described as prima facie refugees accepted in humanitarian grounds) and also adopted a hostile attitude to UNHCR operations in Nepal."^{lxix} The role of the UNHCR was very crucial to find a solution to this issue and to begin negotiations with the Government of Bhutan for easy repatriation of the refugees.

From the very beginning the negotiations were deadlocked over the recalcitrant attitude of the Bhutan Government. Initially a Ministerial Joint Committee was established to verify the status of the people in the camps. However, meetings of the National Assembly in Bhutan called for a ban on the return, and with Nepal in the midst of political instability due to the Maoist movement, the refugee issue slipped down the domestic agenda. At the end of 2000, American Secretaries of State visited Bhutan and Nepal, and both countries agreed to commence the verification process. The Joint Verification Team submitted their report in 2003, which decided that only 2.5% of the Khudnabari camp population was "bonafide Bhutanese" citizens and would be allowed to return to Bhutan. Others who were categorized as "emigrants-70.5%, non-Bhutanese -24.2 and criminals-2.8%"^{lxx}, would be given the option of reapplying for citizenship which was not at all a friendly solution and would be dictated by Bhutan. The refugees were highly agitated at the report and were also very critical of the entire verification process in which Bhutan seemed to wield the upper hand. In addition to this Bhutan was being extremely uncooperative and refused to allow any third party on its soil to participate in the process. It was very apparent that Bhutan appeared to have used the strong arm in this situation and stood firm in their allegation that the refugees had left voluntarily and were illegal migrants. The UNHCR in 2003 described this as 'totally unacceptable' and made a decision to work towards a resettlement, calling on Nepal and India to 'identify durable solutions' to the problem.^{lxxi}

Nepal's initial aim was to repatriate the refugees to Bhutan, assisted by the UNHCR, but due to Bhutan's policy and recalcitrance, they decided to wait out for a solution. These governments were apparently willing to allow the problem to fester indefinitely until a solution could be found that

was fully consonant with their uncompromising rhetoric on the need for democracy and human rights in Bhutan. “The Nepali approach to the Bhutanese refugee problem may therefore be characterized as having moved from one of principled incompetence to an approach dictated by royal *realpolitik*.”^{lxxii}

This increased Nepal’s responsibility to the refugees in the camps on Nepalese soil. The refugees were considered “warehoused” in the camps. Refugees were required to live in the designated camps and were restricted from leaving the camps for work or educations. This as testified by the refugees was due to the native hostility to the refugees, since refugees would work for low wages and this took away jobs from the natives. The refugees however, found loopholes and ways to circumvent these rules, but it was always a matter of choice and need, since refugees with large families needed a supplemental income to meet their needs. The Prolonged encampment of the refugee population violated rights of free movement and employment under the Convention. This also deprived the refugees the right to pursue normal lives and to become productive members of the society often leading to frustrations and depression.

A solution to the Crisis

Seeking a solution to a crisis in regions where geopolitical concerns dominate and take precedence over humanitarian concerns was a challenge. In 2006, Ellen Sauerbrey, U.S. Assistant Secretary of State for Population, Refugee and Migration Affairs, announced in Geneva, that in the coming years, the U.S. would host about 60,000 refugees from an estimated total of 107,000 Lhotshampas.^{lxxiii} In addition to the United States, Australia, Canada, New Zealand, Norway, Denmark and Netherlands came up with similar offers, although the U.S. offer was the first concrete one in the last 17 years of protracted negotiations between the United Nations High Commissioner of Refugees (UNHCR), Government of Bhutan (GoB) and the Government of Nepal (GoN) to find a solution to this intractable crisis. By December 2014, about 75,000 refugees were resettled in the U.S. since the first arrivals in March 2008.^{lxxiv}

The U.S. Refugee Law of 1980 aligns with the definition of the 1951 Refugee Convention and its 1967 Protocol. Refugee resettlement is viewed as an “International Obligation and also as a durable solution by using the UNHCR to help determine resettlement eligibility, sometimes framing resettlement as an option of ‘last resort’ or primarily for those who are ‘at the highest

risk' (PRM 2010).^{lxxv} The US offers a relatively quick path to permanent rights with the requirement to apply for permanent alien status after one year, with the ability to apply for citizenship after five years, and with automatic citizenship to children born on the territory (PRM 2011).^{lxxvi}

For the Bhutanese refugees resettlement came with a new set of challenges. The pre-departure orientations for the most part were misleading, since the refugees realized that life in the U.S. was not easy. The primary goal of the resettlement is self-sufficiency. Refugees have to become self-sufficient by learning English, finding a job and negotiating the complexities of life in America. There have been culture shocks and difficulties of adjusting to this fast paced life, especially for the elderly, but the Lhotshampas are making every effort to become self-sufficient.

Conclusion

Sadako Ogata, former United National High Commissioner for Refugees said *"Refugees are not born but created by states, individuals and groups. The issue of human rights and the problems of refugees are inextricably linked. The vast majority of refugees are driven from their homes by human rights abuses. Persecution, torture, killings and the reprehensible practice of 'ethnic cleansing' generate huge flow of refugees"*.^{lxxvii} This places the responsibility not only on the country that generated the refugees, but also on countries that receive the refugees and /or offered them asylum. South Asia is one of the largest refugees generating and receiving regions of the world, yet has refused to accede to the international instruments for refugee protection. The Bhutanese refugees raised questions on this issue since policies of the three countries differed, based on their national policy, in dealing with the refugees. The main concerns of the three countries involved were their geopolitical and treaty relations rather than humanitarian action. The durable solution to any refugee crisis follows the trajectory of repatriation, host country settlement, and finally when other two fails, third country settlement. In the case of the Bhutanese refugees, repatriation failed as Bhutan refused to take them back. Host-country settlement for all the refugees was not possible due to Nepal's domestic economic and political situation. Third country settlement became the only solution and it took UNHCR with international powers like United States, Great Britain, Australia and other European nations

about 18 years before the first refugee family left the camps for United States. In the process, the refugees who had lived in the camps for over 18 years suffered aid fatigue, which led to depression and frustration and fears of a bleak future. The Bhutanese refugee situation fell to the third tier in importance of refugee issues around the world and suffered from lack of international attention. The only way such a crisis could have been avoided was a conscious dialogue between the three countries. Refugee issues, whatever the dimension, have the potential of causing grave social, economic and political crisis meriting international intervention. As such refugee issues today assume global dimensions and cannot be ignored. Regional solutions can be applied and are successful only when the countries involved take proactive action to find a solution. The Bhutanese refugee crisis displays the failure of the South Asian countries to find a solution to what could have remained a regional crisis leading to regional solutions, since the numbers were not large, as compared to other refugees. Pressure on Bhutan or the policy of burden sharing could have led to an early solution to the crisis. Yet, 20 years later, about 75,000 refugees have been resettled, families have been torn apart, elderly have been subject to huge cultural shocks and adjustments in foreign lands, and everyone suffer from loss of homeland and coping with life in a different setting; the other 25,000 are still waiting to return to Bhutan. What could have been a much easier solution, became one of the gravest human rights violations of the 21st century in South Asia.

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 4. Sinha, *Bhutan: Ethnic Identity*, 46,65.
 5. Hutt, 'The Bhutanese Refugees'. Hutt bases his research on the study of George Van Driem, who reported 160,000 speakers of Dzongkha, 138,000 speakers of Tshangla spoken by the majority of the Sharchop's and 156,000 speakers of Nepali out of a total population of 602,800 in 1990.
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