# HUMAN RIGHTS AND REFUGEE PROBLEMS IN SOUTH ASIA: THE CASE OF BHUTANESE REFUGEES[O]

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## Human Rights and Refugee Problems

The right to a country of one's own, i.e., "to belong to a sovereign state" is considered to be the most "primordial right" of a person (Stoessinger 1956). The very existence of a state essentially lies in the realization of this right as well as the general well-being of its people. People living within the state are entitled to fair and equal treatment irrespective of their race, religion, language or belief. The notion of human rights underlies the principle that "every human being is entitled to enjoy or to have protected" certain rights which exist "in some form in all cultures and societies" that "should be respected in the treatment of all men, women and children" (UNHCR 1994:11). Throughout history, human beings have ceaselessly struggled for the attainment of such basic rights and have made many positive achievements. The principles of democratic governance is the most outstanding of it. Self-determination, equality and non-discrimination have been universally recognized as the fundamental principle upon which the concept of modern state is evolved.

The establishment of the United Nations and the "Universal Declaration of Human Rights" in 1948 have been an epoch-making event in the history of mankind. The Declaration enunciates the same standard of rights to all human beings in the world irrespective of their race, religion, colour, sex, language, political or other opinion, national or social origin, etc. Accordingly, all human beings have "the right to life, liberty and security of persons". They have the right not to be subjected to torture, slavery or arbitrary exile as well as the right to a nationality, to own property, to move freely within their country and abroad.[1]

Despite the worldwide wave of human rights and democracy, there are many instances of human beings being victims of state atrocities and discrimination both on account of their individual or group characteristics. Claims of the state tend to be pervasive and absolute. There is always a problem of demarcating a borderline between the authority of the state and

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rights of the individual. There are instances of the state being tyrannical to suit the interest of particular race, religion, or ideology of the ruling elites. Resistances to such sectarian approach of the state and regime has been met with persecution, torture, killing, expulsion, etc. There has been iternational response to this problem.

A comprehensive body of international law has been established, which recognizes the rights of individual as well as the groups of people of their cultural, religion or linguistic identity. Those who wish to preserve their distinct identity should not be subjected to forced assimilation, segregation or discrimination. The International Covenant on Civil and Political Rights states that the minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.[2] Similarly, destruction, in whole or in part, of national, ethnical, racial or religious group is forbidden under the international convention on Genocide.

The term "refugee", as defined by the 1951 UN Convention, applies to a person who has a "well-founded fear of being persecuted for reasons 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; or who, not having a nationlality and being outside the country of his former habitual residence as a result of such event is unable or, owing to such fear, is unwilling to return to it."[3]

The world community today confronts a huge flow of political refugees across the international border. To begin with, the United Nations High Commission for Refugees (UNHCR), formed in 1951, had to look after about 2 million refugees. The number remained stable till the 1960s and mid-1970s. In 1976 the number of refugees was recorded 2.8 million. Eversince the number has increased manifold. In 1980 it crossed 8 million and by another six years 4 million more were added to it. The end of cold war not only accelerated the number of refugees but also changed the "refugee-producing situation", i.e. states splitting bloodily along "historical and ethnic lines" (Department of Public Information 1994).

Broadly speaking, the flow of refugees in the post-cold war era may be attributed to several factors, often called as "new humanitarian crises" (UNHCR 1995). The first category may be found in the formerly communist states like former Yugoslavia and CIS countries where the states have broken up. The concomitant struggle for power and territory amongst warring parties took the form of "ethnic cleansing". Secondly, in Africa, countries like Somalia, Liberia, Rwanda, etc. "existing political and administrative structures have been destroyed, society has fragmented and power has passed into the hands of local warlords and military leaders". Thirdly, in Asia, the countries like Myanmar, Bhutan, etc. the refugee flows

have been provoked "not by the break-up of countries, but by efforts to impose the authority of the state on minority groups, opposition movements and secessionist forces". As a result, the beginning of 1990s witnessed the staggering growth of refugees reaching up to 19 million and more in 1993 (Ghali 1993:173). In the succeeding years, the figure has come down and by the beginning of 1995 it was 14.5 million.[4]

**Table No. 1: World Refugee Population Concern to UNHCR 1995**

| Region | Total No. in '000 |
|---|---|
| Africa | 6,752.2 |
| Asia | 5,018.3 |
| Europe | 1,867.4 |
| Latin America | 109.0 |
| North America | 681.4 |
| Oceania | 51.2 |
| Total | 14,488.7 |

*Note: Total may add up due to rounding.*
*Source: UNHCR, 1995.*

Africa is the worst-affected region where the refugees constituted the highest in number accounting for more than 46 percent of the total world refugee population followed by Asia (34.6 percent), Europe (12.8 percent) and the remaining in other parts. South Asia shares more than 10 percent of the world's refugee population and about 30 percent of those in Asia. Almost all the countries of the region are affected by the flow of refugees either as a host or source country.

**Table No. 2: Refugee Population in South Asia**

| Country of asylum | Country of origin | Number '000 | Total '000 |
|---|---|---|---|
| Bangladesh | Myanmar | 116.0 | 116.0 |
| India | Afghanistan | 22.4 | |
| | Bangladesh | 53.5 | |
| | Sri Lanka | 73.5 | |
| | China (Tibet) | 108.0 | 258.3 |
| Nepal | Bhutan | 103.3 | 103.3 |
| Pakistan | Afghanistan | 1,053.0 | |
| | Iraq | 1.2 | 1,054.4 |
| Regional Total | | | 1,532.0 |

*Source: The State of World's Refugees 1995*

Among 44 largest refugee population by the country of origin Bhutan is 23rd followed by Sri Lanka (25th) and Bangladesh (29th). Among 28 world's largest country by asylum Pakistan is ranked as 3rd followed by India (15th), Bangladesh (25th) and Nepal (27th).[5]

The existence of a *de jure* state is the very first prerequisite of human rights wherein the individual is assured of his/her rights. State consists of political institutions and authority governing the people and rights of its people that closely depend upon the ways these institutions are formed and the authority exercised. Only a fullfledged sovereign state can provide an enduring political framework in which the rights of the people can be ensured through "institutionalized means" against the "abuse of power" by the state (Vasak 1982:11). Therefore, the political composition of a state, i.e., the structure and the rules of governance are basic to the realization of human rights in a nation and society. In the absence of the universal principle of democracy no state can fully assure its citizens of human rights. Exodus of people from the country of their own seeking shelter across the border is a testimony of conditions in which human rights are either absent or grossly violated. The vast number of refugees today are driven from their home mainly due to human rights abuses. It is therefore only in safeguarding human rights the current flow of refugees could be checked or minimized. The "effective safeguarding of human rights is possible only in a democratic framework" of the state (Ghali 1993:92).

Since the end of the Second World War, a considerable amount of efforts and resources has been devoted to the protection of refugees. As a result, a complex network of institution, laws and agreements relating to the people who have been forced to leave their country, often referred as the "international refugee regime" has come to exist in the international community (Helton 1994:380). The UNHCR which was established in 1951 with a statutory responsibility for "seeking permanent solutions for the problem of refugees", is the principal cordinating body of the refugees and other displaced persons.[6] However, the efforts of UNHCR and the convention and protocol related to it are basically confined to the humanitarian needs of the refugee protection in the country of asylum, their resettlement and voluntary repatriation. Little attention has been given to avert the flow of refugees by addressing its causes in the country of origin. Perhaps, it is due to the concept of "domestic jurisdiction" and the principle of noninterference in the domestic affairs of states, the international orgnaizations, particularly the UN agencies, until recently were not forthcoming to address the root cause of the origin of refugees.

Pursuant to the theme of the seminar "Ethnosectarian conflicts and Internal Dynamics of Regional Security in South Asia" this paper focuses

on the problems of Bhutanese refugees and the negotiating process between Nepal and Bhutan to find out solutions. The problem has arisen due to around 125,000 Bhutanese refugees mostly of Nepali ethnicity who had been forced to leave the country because of increasing incidence of human rights violation such as persecution, torture, expulsion, etc. by the state. Most of the refugees entered into Nepal crossing through a small track of Indian territory in West Bengal. Some of them have taken refugee in the adjacent Indian states – Assam and West Bengal. Despite the indifference maintained by the Indian government, the issue of Bhutanese refugees is invariably linked with India. Of late, the issue has generated considerable international concern. Failure to reach at an amicable solution, this is most likely to have enduring implications for Bhutan, Nepal and India in their relationship.

**Nature of Bhutanese Nation and Polity**

Bhutan comprises an area of 46,500 $km^2$ and 1.2 million population (1986). Its population consists of four major cultural groups, who had settled in Bhutan in course of a series of migration through centuries and each distinguished by distinctive socio-religious, cultural and linguistic characteristics (Karna 1987:33).

First, the Drukpas make the politically dominant group who have migrated into Bhutan from the North and settled in the northern and central region. They represent the disinctive features of Tibetan culture, religion and language and speak the Dzonkha language. Second, the Sarchops, settled mostly in southeastern Bhutan, are the people of Indo-Mongoloid culture and speak the Tsangla language of the Tibeto-Burman language family. Religiously, they are quite closer to the Drukpas. Third, the people of Nepali ethnicity have settled in southern Bhutan and speak the Nepali language irrespective of their different linguistic origin. Fourth, the people of Indian cultural origin who have settled in the Duars and southern foothills form a small minority population in Bhutan.

It is very difficult to get the authentic data on Bhutan's population. The figure goes on changing from one source to another. Even the government figures differ from one purpose to the other. The information bulletin of 1979 *Bhutan: Himalayan Kingdom* contains the population figures to be 1,200,000. The Department of Education stated the figure as being 1,375,000 in 1989. But in 1991 the Government revised the figure and claimed to be only 600,000 (Dhakal 1994:47-50). Based on various sources it could be estimated that Dzongkha, Tsangla and Nepali speakers are in closer proportion to each other in terms of their number. The Nepali-

speaking people are estimated to be around 30 percent of the total population (Upreti 1996:79-91).

Before it assumed the identity of a state towards the beginning of this century, Bhutan was ruled by a theocratic head called *Shabdrung*, belonging to the Mahayan Bhuddhism. It was only in 1907 Ugyen Wangchuk, the founder of the present monarchy, ascended to the throne and established "a strong central political authority over other feuding local Panelops or governors" the concept of state has taken roots in Bhutan (Karan 1987:17). However, the state is under the stronghold of Mahayan Buddhism. The present Bhutanese nation-state has thus its foundation back in the medieval period based on the Buddhist social order. The shift from theocracy to monarchical order in 1907 did not bring any substantial change till the 1950s. However, with the accession to the throne by Jigme Dorji Wangchuk, the third monarch, in 1952, Bhutan has undergone substantial changes particularly in socio-economic fields. Though the authority of the king is absolute the religious and cultural influence of Buddhist monastries and monks is widespread. The identity of Bhutan as a nation has been confined to the Buddhist religion, Drukpa values and culture and the Dzongkha language.

The state is run by the king of the Wangchuk dynasty as an absolute ruler. Since 1950s some institutional devices have been created to assist the king in the governance of the country. In 1953 King Jigme Dorji Wangchuk, the father of the present king, established a National Assembly, called Tshongdu, consisting of the representatives of the general public, civil administration and the monastic order. In 1965 he instituted the Royal Advisory Council called, Lodey Tshogdey to advise the king on matters of national concern. Since 1968 the council of ministers has been assisting the king in the day to day administration of the country. Likewise, by the end of the 1960s, the executive and the judicial branches of the government were separated to a considerable extent and the laws of the country were codified (Karna 1987:21).

King Jigme Singye Wangchuk, after his accession to the throne in 1972, continued the development programmes with more vigour and emphasis on national integration. It seems that the king has not concentrated all the powers at his hands. He has shared it with such institutions like the National Assembly, Royal Advisory Council, etc. He participates in the assembly debate and does not hold veto power over its decision. There are courts, including a High Court to adjudicate the legal issues. Recruitment and promotion of the administrative personnel is carried on by the Royal Civil Service Commission established in 1982. However, the apparatus of the state is still basically held by the king and his relatives.

The king had very good relations with the people of Nepali origin until the recent crisis erupted. He used to offer *tika* to the Nepalis in Dasain festival. He had assured them that they were no more "aliens' and they "must remain united as one people, one nation and forge ahead together" (Labh 1986:182-195). The Nepali community had 16 representatives in the 155 seats of the National Assembly, one Royal nominee in a 10-member Royal Advisory Council, and one High Court Judge out of 6. They had been holding various distinguished positions in the state apparatus (Baral 1996:152-177).

During the last 25 years Bhutan has accomplished significantly in the field of reforming its administration particularly at the local levels. Karan observes, "In 1960s Bhutan did not have enough trained manpower to head governmental offices. Over the last two decades it has built a relatively small but well-motivated cadre of administrators. Bhutanese nationals have replaced Indian deputies in almost every policy-making position in the government" (Karna 1987:21).

Bhutan is quite cautious enough to retain its traditional Lamait culture and identity and minimize any adverse impact of the development efforts on it. Various policy measures have been adopted to this end. The students educated abroad require to undergo "reintegration course" before entering into the public service (Karna 1987: 147) The course includes intensive lessons in Bhutanese history and culture. The government employees are also regularly given orientations in ancient tradition. Tourism and travel in the country is strictly controlled. Tourists who visit Bhutan must travel in controlled groups and strictly follow particular itineraries as fixed by the govenrment. The government seems to have discouraged the foreigners to travel Bhutan. The number of tourists visiting Bhutan has been restricted to 3,000 a year. Most of its towering mountain peaks and monasteries are restricted to foreign visitors. King Jigme Singe Wangchuk himself admitted that in the name of tourism Bhutan did not prefer to earn revenue "by commercializing religion and sacred places of worship."[7]

In 1984 Council of Ecolesiastical Affairs called Dratshang Lhenshog, was formed under the chairmanship of Je Khempo, the chief Lama of Bhutan. The council is aimed at promoting the welfare of Lamas in the country. In 1989 the king issued a decree to enforce Driglam Namzha, i.e., the traditional values and etiquette to promote Bhutanese national identity. This is a code practised by the Drukpa Community. With the issuance of Royal decree, the code has to be followed by all Bhutanese people irrespective of their customs and tradition. The code is allegedly an attempt to Drukpanization of the Bhutanese state and the Nepali community has resentment to it.

**The Nepali-Speaking Community in Bhutan**

The Nepali-speaking people, officially called Lhotshampa, in Bhutan have settled in the southern districts of the country. The region was accessible to the Nepali immigration through India. There are contesting claims regarding the origin of the Nepali community in Bhutan. However, most of them migrated into Bhutan in the 19th and early 20th century to meet the labour demands and settled in the malarial zone of the south.

The settlement patterns in Bhutan has characteristic to its demographic geography. The Ngalong mostly reside in the west and central Bhutan, the Sarchop in the eastern part and the Nepalis in the southern part. The Ngalong speak Dzongkha, originally a Tibetan dialect which is officially recognized as a national language. They follow "the Drukpa school of Mahayan Buddhism which distinguishes them from Tibetan and other brands of Buddhism". Bhutan's National identity is characteristic to the "Drukpa identity" (Parmananda 1996:110-115). The Sarchops speak different dialects of non-Tibetan origin and have their own dress, food habit and customs. However, they seem to have relatively integrated with the Drukpa culture.

The Nepalis, retain their distinctive culture and language, and are the least integrated community. The reasons might be their more recent origin as well as a strong cultural and linguistic ties with the people of their common ethnic bond in neighbouring India and Nepal. However, till the mid-1980s they peacefully lived in Bhutan and had enjoyed comfortable position both in the state and society. Their language was widely used in the southern Bhutan and had a semi-official status.

However, the ruling elites in Bhutan have had a constant watch on the Nepali community. Their numerical strength, nonconformist nature of their culture, occasional expression for political reforms, events in the neighbourhood like the merger of Sikkim with India, the Gorkhaland movement in Darjeeling and the like are some of the factors which provided grounds for the Drukpa to be sensitive. As early as the 1950s, inspired by the democratic changes both in India and Nepal, the Nepali community had formed a political party called the Bhutan State Congress in 1952.

To begin with, the response of the Bhutanese king to the changing aspirations of the Nepali community was not unfavourable. The Citizenship Act adopted in 1958 for the first time attempted to define Bhutanese citizens. Under this Act the Nepalis required "to submit a bond of agreement affirming their allegiance to the king and country, pledging not to serve any other authority." When it was done the Nepalis were granted citizenship and national treatment (Dhakal 1994:149). The Act was revised in 1977 and 1985. The 1985 Act adopted 1958 as cut-off year and accordingly introduced various stringent clauses that required to requalify for Bhutanese citizenship

with the documentary evidence of his/her residence in Bhutan in the year 1958 or to be born from the parents who could produce the required proof. The rest were required to go through the procedure laid down in the new Act in order to be enumerated in the census. The procedure contained additional clauses such as fluency in Dzongkha; good knowledge of culture, customs, traditions and history of Bhutan, etc. (Dhakal 1994:179-192). The Nepali community feared that such a change in the Citizenship Act was likely to forfeit many Nepalis of their Bhutanese citizenship.

The present crisis thus started with a fresh census in 1988 since earlier census was considered as having included many of non-bonafide nationals. Failure to be included in the census enumeration was liable to forfeit the status of citizenship and eviction from the country. The 1988 census along with the provision of the citizenship Act of 1985, thus put a serious challenge to the people of Nepali ethnicity. In the beginning, the Nepali community's response to it was moderate. Teknath Rizal, a member of National Assembly representing southern Bhutan and a nominee to the Royal Advisory Council, submitted a memorandum to the king expressing the concern with the census. But he was arrested and relieved of his position.

The census, as per the 1985 Act, was followed by an introduction of Driglam Namzha and its vigorous implementation which the government claimed to have been aimed at national integration and identity. According to this policy, all the Bhutanese were required to follow a unified code of conduct which contains the details of citizens behaviour with respect to eating, dressing, speaking, etc. wearing the traditional Drukpa dress, *Ghos* and *Kiras* - became mandatory to all the people. For the Nepali community it was an imposition of the Drukpa culture and tradition upon all the people who have different culture and tradition. In response, the Nepalis tried to resist it politically and a dissident movement took shape in Bhutan. Teknath Rizal, who had been in exile in Nepal following his release by the Bhutanese government, and other dissidents formed the People's Forum for Human Right (PFHR) which started protesting the government policies. Various other political orgnaizations like Bhutan Peoples Party, Bhutan National Democratic Party were formed. Between September and October 1990 the protest culminated in a mass demonstration throughout South (Dhakal 1994:208-215). The massive suppression of the Nepalis was undertaken by the government alleging the protest as a "terrorist movement" of the "antinationals".

**Influx of Refugees**

Nepal witnessed a massive influx of refugees from Bhutan in the early 1990s. The citizenship policies adopted by the Royal Bhutanese Government and subsequent revised census in the late 1980s had caused a

large scale eviction of the Bhutanese people of Nepali ethnicity living in southern Bhutan which precipitated in the flow of refugees. As usual to the standard pattern, the Bhutanese refugees sought asylum in Nepal where they had common ethnic and linguistic bond.

Started from the late 1990 with a few hundred asylum seekers, they had reached over 70,000 by the end of 1992. Since September 1991 the UNHCR has undertaken the work of assistance to the refugees on the request of the government of Nepal. The year 1992 witnessed the largest influx of refugees averaging 300-600 new arrivals a day. At present, out of an estimated 110,000 Bhutanese asylum seekers there are some 91,000 refugees residing in the camps of Jhapa and Morang Districts of eastern Nepal. The emergency phase has ended after 1992 and the programme is currently in "a care and maintenance phase"[8].

A Refugee Coordination Unit (RCU) was set up in mid-1992 to keep and update the registration and documentation of the refugees seeking political asylum in Nepal. A screening centre has been operating at a border checkpost in Kakarbhitta at Nepal-India border, which examines the claims of refugee status in detail. A joint verification of the refugees was completed by His Majesty's Government of Nepal (HMG) and UNHCR in 1993. The details of the Bhutanese refugees population as of December 1995, in the camps of Nepal are given in the table below.

**Table No. 3: Refugee Population Statistics**

| Camps | Number at the time of reporting | Births | Changes Deaths | New arrival | Others* | Total No. at the end of reporting |
|---|---|---|---|---|---|---|
| Timai | 6,389 | 80 | 6 | 0 | –4 | 8,459 |
| Sanischare | 17,360 | 188 | 18 | 3 | +9 | 17,542 |
| Goldhap | 8,069 | 70 | 4 | 0 | –1 | 8,134 |
| Beldangi-1 | 15,201 | 165 | 15 | 0 | –2 | 15,349 |
| Beldangi-2 | 19,108 | 187 | 17 | 4 | –9 | 19,273 |
| Beldangi-Ext. | 9,539 | 120 | 13 | 0 | +6 | 9,652 |
| Khudunbari-N** | 7,320 | 74 | 7 | 4 | +2 | 7,393 |
| Khudunbari-S** | 3,894 | 36 | 7 | 12 | +3 | 3,938 |
| Total | 88,880 | 920 | 87 | 23 | +4 | 89,740 |

*Note:* * *Ref-registration (transfer in and out)*

** *Merged into one camp in July 1, 1996.*

*Source: UNHCR/Nepal, No. 4/95, December 1995.*

There are some 25,000 other refugees who live outside the camps have not registered with the UNHCR. Likewise, approximatley 25,000 to 30,000 have taken refuge in India's West Bengal and Assam states. (Muni and Baral 1996:14). Thus the total number of people evicted from Bhutan comes to

around 140,000. Although the Bhutanese refugees mostly constitute the Nepali ethnic group there are reports that they also include a few families belonging to the Indian ethnic groups such as Jhagar, Santhal, Urou and Bengali.[9]

**Negotiating the Refugee Problems**

The initial response of Nepal to the flow of refugee and the situation in Bhutan was more guided by sentiments and reactions than the rational consideration of negotiating the problems. By the time the trouble started in southern Bhutan, Nepal itself was passing through a democratic mass upsurge. The previous Panchayat regime had no sympathy to the issue of Bhutanese Nepali. It had repatriated Teknath Rizal along with his two associates to the Government of Bhutan in 1989. Rizal and his associates were engaged in protest movement against the Bhutanese Royal Government since 1988. However, the political change in Nepal in April 1990 restoring the multiparty democracy also brought a change in Nepal's outlook towards the Bhutanese issue. Political parties and their leaders openly expressed their sympathy and moral support to the Bhutanese political activities. Bhutan Support Groups were formed in Kathmandu expressing solidarity with the Bhutanese movement for democracy.

After the formation of the Nepali Congress Government headed by Girija Prasad Koirala as the prime minister following May 1991 general elections, Nepal started to respond to the issue of Bhutanese refugees more systematically. The government's policy and position on this issue was made clear. On June 16, 1991 the prime minister Mr. Koirala stated:

> The Nepali Congress supports democratic movement whenever they occur. As such, the government has moral support for democracy movement in Bhutan. The Bhutanese refugees will be granted political asylum in Nepal. However, they will not be allowed freedom to do anything from Nepali territory which may disturb our friendly relations with Bhutan.[10]

At the same time, Nepal also made attempts to initiate dialogue with Bhutan for the resolution of the refugee problems, often termed as "quite diplomacy". Nepal had also taken the issue with India and had proposed a tripartite committee consisting of Nepal, Bhutan and India to be formed and seek solution of the problem. The foreign secretary of Nepal visited Bhutan with a letter of the prime minister Mr. Koirala to the king of Bhutan in March 1992. The Bhutanese minister of Social Welfare and Communication

visited Nepal with a letter from the Bhutanese king to the king of Nepal. The prime minister Mr. Koirala also discussed the matter with Narasimha Rao, the Prime Minister of India. But the latter suggested the issue be resolved by Nepal and Bhutan bilaterally. India had understandably advised Bhutan to proceed bilateral talks with Nepal. It was against this background the Bhutanese foreign minister, Dawa Tsering, visited Nepal in November to settle a meeting between Mr. Koirala and the king of Bhutan during the SAARC Summit in Dhaka,[11] in April 1993, which ultimately opened the official dialogue between Nepal and Bhutan on the issue of Bhutanese refugees.

The official negotiation between Nepal and Bhutan started in July 1993 when the home ministers of two countries met at Thimpu and agreed to form a Ministerial Joint Committee with following mandate:[12]

a. To determine the different categories of people claiming to have come from Bhutan in the refugee camps in eastern Nepal.
b. To specify the positions of the two governments as each of these categories,
c. To arrive at a mutually acceptable agreement on each of these categories, which will provide the basis for the resolution of the problem.

In the first meeting of the Joint Committee, the Nepali side presented the number and status of the refugees residing in the camps which were as following:

a. 10,073 families with citizenship document,
b. 1762 families with records pertaining to land ownership,
c. 251 families with health documents,
d. 40 families with education certificates,
e. 2490 families with documents such as the service in the government, marriage certificates and court documents,
f. 368 families who do not have any documents.

Since there were altogether 14,984 families and the average family size was 5.6, the total number of refugees in the camps thus constituted some 83,910. During the discussion it was agreed that the above mentioned refugees were to be verified on the basis of following four categories:

1. Bonafide Bhutanese if have ever been evicted forcefully,
2. Bhutanese who emigrated,
3. Non-Bhutanese people,
4. Bhutanese who have committed criminal acts.

Further meetings, held in February, April and June 1994 dealt with the mechanisms to be employed for verification and with the two governments' respective positions with regard to the agreed categories. The two governments were able to reach agreement for a blueprint for a verification procedure but not on its application to the population in the refugee camps. They remained apart on the fundamental question of how the four categories of people should be treated once so classified.

The main points of disagreement appear to centre on the modalities for the identification and treatment of persons in category 2, since a large number of refugees belonged to this category who claim that they were forced to leave their homes. The Bhutanese side is understood to have taken more rigid stand on category 2 of the refugees and insisted verification on the basis of citizenship and emigration laws of the two countries. Bhutan refuses to repatriate all the refugees claiming that most of them left "voluntarily" which automatically forfeits citizenship under the Bhutanese law. Similarly about the refugee under category 3 also the two sides could not reconcile with each other's position.

The Nepali side is understood to have taken a position that the three categories falling under category 1, 2 and 4 as having composed of the bonafide Bhutanese people who have come from Bhutan and now staying in the refugee camps. It insisted that all Bhutanese in these categories must return to Bhutan in safety and dignity with all the assurances that they can reavail their former means of livelihood including land and property. The foreign minister of Nepal has stated 'our position is that the whole idea of voluntary migration does not make sense because more than 90 percent of them carry Bhutanese citizenship or landholding certificates'[13] The land ownership in Bhutan is entitled only to its citizens. Nepal also proposed that the verification work be carried out with the technical assistance of UNHCR or a body with recognized expertise and competence in this field so that it could done in a more neutral and less controversial manner. Nepal is also known to have emphasized that whenever laws or policies of the two countries are at variance international standards and norms should be taken into account.

The seventh round of talk was held at the Foreign Ministers' level in Kathmandu in April 1994. Dr. Prakash Chandra Lohani, the foreign minister of Nepal admitted that there was a "stalemate" in the talks. However, his Bhutanese counterpart, Mr. Dawa Tsering stated, "there was no deadlock. The talks are continuing"[14]. This is an indication that the Bhutanese side now is more compelled to continue the bilateral dialogue though it is inconclusive. It is also a strategy of Bhutan to neutralize the international pressure that has increased significantly in recent years.

**Human Rights and the Issue of Bhutanese Refugees**

During last six years, there has been much debate on the issue of human rights in Bhutan. The presence of Bhutanese refugees sheltered in the camps of eastern Nepal and in some places of neighbouring India has been the central concern of this debate. Various human rights organizations including the London-based Amnesty International have explored in depth the status of human rights in Bhutan and come out with the fact that "Nepali-speaking people from southern Bhutan... have been systematically driven out because of their ethnic origin or political beliefs". Its August 1994 report concluded that "in keeping with international law, Bhutan should be recognized as their "own country" and they should have the right to return to live in safety from human rights violations."[15]

Already a SAARC Jurist Mission had visited Bhutan in 1992 and compiled a long list of human rights abuses in different measures such as the citizenship provisions of 1985, the Marriage Act of 1980, Driglam Namzha (1979), mode of punishment, the Green Belt Policy, voluntary leaving certificate, and no objection certificate (1992).

The problems of Bhutanese refugees in Nepal and India are genuinely a human right issue. It is the product of human rights abuses that accelerated since in the late 1980s in Bhutan particularly with regard to the Nepali community in the south. The repatriation of the refugees is directly linked with human rights situation and democracy in Bhutan. However, the Bhutanese government is not willing to accept it and accusing Nepal for provoking the Lhotsampas in Bhutan. It understands well that so long as India is kept neutral it would not be liable to any other pressure to seek a genuine solutions of the current problems.

The present crisis in Bhutan is of an ethno-political nature. Firstly in the name of census, a vast number of Nepali-speaking people have been deprived of their citizenship and then forced to leave the country under the pretext of "voluntary leaving". This is the violation of the Article 15 of the Universal Declaration of Human Right by the UN in 1948. Secondly, the imposition of Drukpa values as contained in the policy of Driglam Namzha and "one nation one people" stand out as the gross violation of the minority rights as stipulated in the International Covenant on Civil, and Political Rights (1966). Such a policy of the Royal Bhutanese Government, in the views of Bhutanese dissident is allegedly a manifestation of "Drukpa communalism over the concept of nationalism (Chhetri 1992:7-8).

In the words of another dissident, "The present face of the Bhutanese crisis, the government created Drukpa-Nepalis divide, hides a more potent force of change in the value structure of the Bhutanese people. It is time for the leadership to understand that the heart of the problem lies not so much

in the "southern Bhutanese problem", but in their inability, or unwillingness, to adjust to changing circumstances that have both political as well as cultural dimensions" (Subba 1992:9-11).

Since the late 1995, the Bhutanese political activists reinvigorated their activities for the attainment of democracy in Bhutan. Appeal Movement Coordination Council (AMCC), an organization of human right activists, had organized a series peace-march from the Nepal border to Thimpu appealing the king of Bhutan to consider their demands. Bhutanese Coalition for Democratic Movement (BCDM), an alliance of three political parties namely Bhutan Peoples Party, Bhutan National Democratic Party and Druk National Congress, had also been formed to launch a concerted campaign for democracy. However, the Indian government did not allow them to pass through and arrested them soon after they entered into the Indian territory. But a small group of 50 peace marchers were ultimately allowed to reach the Indo-Bhutanese border only to be deported in police vans by the government of Bhutan the other day. This is a clear violation of the Article 13(2) of the Declaration and Article 12(4) of the 1966 International Covenant of Civil and Political Rights. India also failed to respect these rights of the Bhutanese people.

Human Rights violation by the Bhutanese government is no more a concealed fact. Aside from the nongovernmental agencies and human rights organization, the governments of the world had also taken note of it. The Parliament of the European Union which represents 17 countries of Europe, had unanimously adopted a resolution admitting that there had been human rights violations, the people being tortured, persecuted and forced to leave the country and take refuge in Nepal. The resolution also called for the government of Bhutan and Nepal, in cooperation with an other parties involved, to reach an agreement which will allow the voluntary repatriation of the refugees to their countries of origin.[16]

There is also a growing pressure within India to seek an early solution of the problem, particularly in the neighbouring Indian state of West Bengal. Eversince, the AMCC sponsored peace-march of the refugees to Thimpu, India is getting involved in the refugee problems in one way or the other. The AMCC had appealed to the Indian government to allow the peace-marchers to pass through the Indian territory to Bhutan as per the 1949 Indo-Bhutanese Treaty. Rallies and demonstrations by the India public had been organized in support of the Bhutanese refugee and their struggle for democracy in West Bengal adjacent to Nepal.

The Bhutanese issue had thus been able to draw the attention of concerned authorities considerably. The West Bengal chief minister, Mr. Jyoti Basu wrote a letter to the Indian prime minister, Narasimha Rao,

urging him to intervene in the matter urgently before the situation goes out of hand. His letter, for the first time, officially acknowledged the existence of the Bhutanese refugees in India. In his letter, he also stressed, "since West Bengal is sandwitched between Nepal and Bhutan and would have to face the consequences of any agitation directly, the Government of India should take up with the Government of two countries so that the problems of persons of Nepali origin displaced from Bhutan are settled bilaterally"[17]

Nepal has consistently sought the cooperation of India to resolve the Bhutanese problem. The foreign minister, Dr. Lohani had emphasised on the "trilateral" nature of this problem. In an interview with a national daily in Kathmandu, Dr. Lohani said, "We did ask for India's assistance in the matter because we think the refugees issue is not a bilateral problem between Nepal and Bhutan, but trilateral issue since the refugees travelled through Indian territory to reach Nepal. Thousands of Bhutanese refugees also reside in India.[18]

**Future Prospects**

Human rights violations and refugee crisis are a global phenomenon. Permanent solution of this problem therefore lies on concerted efforts of the international community as a whole. There are instances that international mediation and negotiation being successful in creating an atmosphere underwhich refugees have been able to return their home. However, such a situation has yet to be evolved with regard to the Bhutanese refugees residing in the camps of Nepal. So far, Nepal is concerned, it has done within its capacity to respect the humanitarian needs of the refugees seeking asylum. However, it cannot afford to resettle them within the country. The permanent solution of this problem should be sought in Bhutan from where they have come. Much of the solution to this problem therefore lies in the improvement of situation within Bhutan.

Refugee problem is inextricably linked with human rights and democracy in the country of origin. The country of asylum can only provide a temporary relief to the refugees. The right of people to remain in their own country is the key element. The development of a country therefore should address the people "to realize their human potential, to retain their self-respect, to enjoy physical security, to meet their material needs, to participate in decisions which affect their lives and to be governed fairly, under the rule of law"[19]

However, the Bhutanese refugee issue has also another but very crucial dimension. A large number of refugee were forced to sign the "voluntary leaving certificate" which automatically relinquishes them the Bhutanese citizenship and deny the right to return. Such a situation is likely to make

them stateless persons. This is the very crux of the issue that has created stalemate in the negotiation process between Nepal and Bhutan. In fact, eversince the fourth round of talk in June 1994, there had been no progress in the negotiation. The successive rounds of talks had ended with the repetition of a note that the next round of meeting will be held either in Thimpu or Kathmandu.

Given the nature of the Bhutanese refugee problem, it is least likely to be resolved through bilateral negotiation. Even if it succeeds, a third party involvement is desirable in order to guarantee the safe repatriation of the refugees and their resettlement. There are two options with regard to a third party mediation: India or the international agency like the UN. India is intrinsically linked with the Bhutanese refugee issue. In fact, India's non-committal role in this issue had hardened the possibility of exploring a durable solution to the problem. But in view of the growing international concern, India can no longer remain indifferent in this issue of Bhutanese refugees. Its positive concern and involvement can greatly contribute to the speedy solution to the problem.

The international connection of refugee problem cannot be ruled out. The UNHCR's humanitarian assistance and involvement in the Bhutanese refugee camps itself is a factor to create an international concern to the condition of refugees and human rights abuses which Bhutan cannot afford to ignore. Bhutan is increasingly being under international scrutiny and pressure to resolve the refugee issue. Its propaganda ploys seem to have exhausted and the issue of human rights has come to the fore. The delay in reaching at the solution is likely to be more costly for Bhutan's image and development programmes.

In view of the persistent stalemate in the bilateral negotiation between Nepal and Bhutan over last two years, the time has come to have a third party mediation, either by India or the international agency. This seems to be the ultimate method to find solution. Failure to reach at an amicable solution the Bhutanese issue is likely to have spillover on other aspects of bilateral and regional relationship.

## Notes

0. This is a revised version of the paper presented at the seminar on "Ethno-Sectarian Conflicts and Internal Dynamics of Regional Security in South Asia" organized by the School of International Studies, Jawaharlal Nehru University, New Delhi on September 2-4, 1996.
1. *The Universal Declaration of Human Rights,* UN, 1948.
2. Article 27, *International Covenant on Civil and Political Right,* UN, 1966.
3. UNHCR, *Convention and Protocol Relating to the Status of Refugees.*
4. *The Status of World's Refugees,* pp. 19 - 20.

5. *The State of World's Refugees,* 1995, p. 251.
6. See *General Assembly Resolutions* 319(IV) of December 3, 1949 and 248 (V) of 14 December 1950.
7. *The Times of India,* December 18, 1994.
8. UNHCR/NEPAL Doc. 06/96.
9 A parliamentary delegation visiting the refugee camps under the coordination of Foreign Affair and Human Rights Committee of the House of Representatives, the Lower House of the Nepalese parliament, was reported to have notice it. *The Gorkhapatra,* May 27, 1996.
10. *The Rising Nepal,* June 17, 1991.
11. *The Rising Nepal,* November 24, 1992.
12. *Joint Communique,* July 18, 1993.
13. *The Kathmandu Post,* April 9, 1996.
14. *The Kathmandu Post,* April 9,1996.
15. *Amnesty International Report 1993.*
16. *The Rising Nepal,* March 28, 1996.
17. *The Kathmandu Post,* February 6,1996.
18. *The Kathmandu Post,* March 8,1996.
19. *The State of World's Refugees 1995,* p. 241.

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