The Bhutanese Refugee Representative Repatriation Committee had appealed to Ms. Mary Robinson, the UN High Commissioner for Human rights to take initiatives "to establish an independent and impartial committee to verify the veracity of the claims of the Bhutanese Refugees as citizens of Bhutan in accordance with international law and facilitate . . . early return" of refugees to their homes. The appeal said that despite several rounds of talks between the governments of Nepal and Bhutan, no solution is in sight and that the obdurate stand of Bhutan government "not to take back any of its citizens" has blocked any substantial progress. It added that the distribution of land and properties of Bhutanese Refugees to the Northern and Eastern Bhutanese has further complicated the situation. Even names of places where the refugees had stayed before, have been changed. The refugees have been forced to form the Repatriation committee for return of refugees with safety, dignity and honour. Almost three thousand applications have so far been sent by individual refugees to the UN High Commissioner. It is learnt that more applications are on their way. The UNHCR has remained unmoved. Will more applications make any difference? It is doubtful. Even if the UNHCR takes cognizance, what use is it unless the concerned parties, Bhutan, Nepal and India agree to such an arrangement?

It is in this context that a paper "Refugees from Bhutan: Nationality, Statelessness and the right to return" by Tang Lay Lee, a practicing lawyer from Singapore in the International Journal of Refugee Law, vol. 10, no. ½ needs to be examined. The author had done some field research in the refugee camps in Nepal and brought out some interesting aspects of law relating to the nationality of Bhutanese refugees. Some of the points are-

1. The categorisation of refugees into four divisions accepted between the two governments of Bhutan and Nepal without clarifying the criteria for determining nationality and application of the nationality laws would result at best in utter chaos and at worst grave injustice.
2. The participation of India in talks about solutions is necessary because of Bhutan’s allegations that the majority of the people in the camps are illegal immigrants from Nepal and the neighbouring states of India.

3. It is a regional problem requiring a regional solution. It is also a geopolitical problem involving all the three countries India, Nepal and Bhutan.

4. The alliance between India and Bhutan exists on many fronts and with the implications of the Nepali speaking diaspora in the Himalayan region, India’s participation will not automatically result in an equitable and just settlement.

5. A fourth independent party as a mediator is therefore necessary to ensure that obligations under various international regulations and laws are met.

6. The mediator might usefully consult a panel of five representatives one each appointed by the governments of Nepal, Bhutan, India, UNHCR and the Refugees to advise and help in verification. The above arguments have many flaws. While it is justified to include India in tripartite talks, the position of India is being pre judged for being biased in favour of Bhutan. Both Bhutan and Nepal are tied to India by similar special relations. India has nothing to gain by favouring one against another. If India is to favour Bhutan why is it that Bhutan does not want India to intervene while Nepal has always held the view that the problem cannot be solved without Indian mediation. Point 4 is therefore unjustified and mischievous. More serious is the suggestion to have an independent observer and also inclusion of UNHCR representative on equal terms in the panel of representatives to decide the verification and other issues arising over the nationality question. Some leaders of the refugees had earlier opposed any such role for UN agencies on the ground that such outfits may have their own agenda to pursue. Such an arrangement or mechanism for identification of refugees will also not be acceptable either to Bhutan or India though Nepal may agree as the refugees are parked in Nepal and the UNHCR is looking after them.

There are other legal issues raised in the paper like the right to return to Bhutan of those who left and a parallel duty of the State to admit its nationals. This question is particularly relevant to those who are said to have signed ‘voluntary migration forms’ and left. Firstly there are grave doubts whether the forms were signed voluntarily. It is difficult to believe that the refugees would leave their cultivated land, dwellings and properties and voluntarily move away to Nepal to lead an uncertain future. Secondly, many instances of coercion, detention and intimidation by the Bhutanese officials prior to expulsion have been reported. Thirdly, the refugees left in a general situation of insecurity and had therefore a right to return as provided by the 1977 Act of Bhutan and other international laws. The Nepal Bar Association Jhapa has also questioned the very basis of classification of Bhutanese of Nepali origin- whether they are indigenous or foreign.

One cannot but draw a parallel to the current Kosovo crisis where refugees running away from a situation of insecurity are being looked after and the western countries are demanding their return to their home land. As one Bhutanese Refugee leader puts it-unfortunately "we remain brown (not white)-half done- half cooked and fit for foot notes only."

Other developments.

The Bhutan government continues to settle people from central and eastern regions in areas vacated by the refugees. This will lead to a dangerous situation eventually and give rise to ethnic conflicts. Frustration will turn into desperation if state sponsored settlement continues. The southern Bhutanese will not
remain a passive lot indefinitely. We have seen this happening in Sri Lanka and in the Chittagong Hill tracts of Bangladesh. The ingredients for similar ethnic conflict are present. At the same time, the presence of Bodo and ULFA camps in Southern Bhutan adds another dimension to the problem. The temptation to seek the help of these outfits by the Southern Bhutanese is present but should be resisted. This will only bring in more misery and lawlessness in an otherwise peaceful area. Instead of claiming that none of the hundred thousand and odd refugees are not Bhutanese nationals, the best option for Bhutan government would be to stop the resettlement programme until such time the verification and repatriation of genuine refugees is completed.

The King has called for the next session of the National assembly of Bhutan to begin on 29th June. Based on the 1968 law, the usual vote of confidence in the King will be tabled and passed. It is hoped that the King with the renewed trust given by the people will instead of maintaining the status quo find a solution to a genuine human problem affecting the lives of thousands of refugees.

The next session is also likely to vote for the establishment of an upper chamber with more regional representation than the present the Royal Advisory council. This is a welcome move.

Dr. S. Chandrasekharan 9-5-1999

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