

Legality, Illegality and Accountability: the case of the Lhotshampa Refugees from Bhutan

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Violence and coercion are the prime causes behind the creation of footloose humanity in South Asia, which in turn have led to the ethical dilemmas of exclusion, discrimination, hospitality, responsibility and accountability. The Bhutanese refugees or Lhotshampas of ethnic Nepali descent are victims of ethno-nationalism under the 'One Nation, One People' policy instituted by the Drukpa government of Bhutan. The ethnic cleansing and exclusive nationalism disenfranchised and forced the Lhotshampas to migrate and seek refuge in Nepal, their country of origin. The exodus of the Lhotshampas from Bhutan since the 1990's is another case of forced migration in South Asia. After over 20 years in the refugee camps and failed negotiations between the UNHCR, Government of Nepal and Government of Bhutan, for repatriation or host country settlement, third country resettlement became the only solution. The U.S. and other countries offered to resettle therefugees, and since 2008, from a total of 105,000, about 60,000 refugees have been resettled in different countries till date. The 1951 Refugee Convention protects refugee rights and contains the provision of non-refoulement that prevents host countries from sending refugees back to their home country if the fear of persecution still persists. But Bhutan, Nepal and also India, who became involved in this crisis are not signatories to the 1951 convention or the 1967 Protocol. This paper seeks to examine the implications of the 1951 refugee convention in situations of protracted refugee crisis and where the countries involved are not signatories to the convention. Not being a signatory 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. The paper will examine the issue of accountability and responsibility of the home and the host country and also its effects on other countries of south Asia. The issues at stake in the case of the Lhotshampas was 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 raises 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 is the deliberate policy of Nepal at 'warehousing' the refugees and finally refusing local integration and insisting on repatriation as the only solution. Where states are the perpetrators of the crime, the only solution to a refugee crisis is the reliance and protection under the 1951 convention and thus increases its relevance. The failure of south Asian countries to ratify the convention, raises questions of accountability and responsibility as seen in the case of the Lhotshampas, leading to a gross human rights violation and refugee crisis of the 21st century.