

Citizenship and Marriage Laws of Bhutan

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ABSTRACT

Citizenship of a state is the right of the holder to have the same rights as any other member of the state. In contrast, categorization of citizenship creates distinct groups with different limitations, rights, and privileges and makes citizens unequal before the law. In Bhutan, there are three major and seven subcategories of citizens created by the government. The three major categories include 'natural-born citizen of Bhutan,' 'Bhutanese citizen by registration,' and 'naturalized citizen of Bhutan.' Based on marriage and presence or absence during regular and surprise censuses, there are seven sub-categories of citizens ranked F1 to F7, the abbreviations of the files (F) in which their names are listed. Marriage laws of Bhutan discourage marriages between a Bhutanese citizen and a non-Bhutanese spouse through lifelong penalties and demotion in citizenship categories. While both polyandry and polygamy are legal for up to four marriages, the encouragement is on intra-category marriages. The marriage law applies even to the crown prince, who is a successor of the throne, that he must marry only 'natural-born citizen of Bhutan' to remain eligible to the throne. This article highlights the background of promulgation of citizenship and marriage laws and their implication, so that future researchers can compare the Bhutanese and international laws and study how the outlook of the people are shaped.

Keywords: Citizenship-by-registration, nation-building, natural-born citizen, naturalized citizens, polyandry, polygamy

Introduction

Citizenship of a territory is a recognition based on national self-definition developed as the means of insulation from weathering in the politically dynamic world. Nationality is the basis of one's identity that has its roots in the peoples' ethnic, linguistic, religious, territorial, or other commonalities which temporally and spatially unite the members.

While identity, nationality, and space continuities are perceived fading at the global level (Maier, 2007); globalization, and mobility are bringing instability in practice and in perception of citizenships (Wong & Waterworth, 2005).

In Bhutan's context, the need for citizenship began to be felt after the country emerged out of the self-imposed isolation and began planned development projects that needed the count of the people living within it. After the end of the second world war, the rulers of Bhutan had resorted to self-imposed isolation (UNCTAD, 2011). After China annexed Tibet and became an adjacent neighbor, Bhutan out of fear of China had to come out of its self-imposed isolation to join the rest of the countries in the world. While the United Nations' Universal Declaration of Human Rights 1948 specified what citizens can expect from their states vis-à-vis the rights that a state should guarantee to its people (United Nations, 1948), Bhutan was ruled by a totalitarian hereditary monarchy (Pulla, 2015) with little adherence to the UN declaration.

As in other parts of the world, people in Bhutan began to pressurize their government but sporadically. The totalitarian rulers crushed the movements under boots and bayonets but was compelled to introduce reforms such as the end of slavery 1953, adoption of the First Nationality Law of Bhutan 1958 (Ministry of Foreign Affairs, 1958), written constitution, democracy, and periodic elections in 2008. Nationality acts, citizenship laws, and marriage laws of Bhutan are designed to retain the direct

descendent of Sir Ugyen Wangchuk- the first monarch of Bhutan instituted in 1907 - as the hereditary Drukpa monarch (Article 2-3 (Royal Government of Bhutan, 2008)) and a few selected families as the rulers.

The rulers declared all people belonging to the ruling tribe and those who participated in the establishment of the monarchy as natural-born citizens of Bhutan.

Bhutan had a large population of Gorkha descent who were not signatory to the 1907 proclamation that declared Sir Ugyen Wangchuk as the first hereditary monarch (Gyal Yong Düchen, 1907). For several years before the declaration of the first hereditary monarch, several Drukpa groups would fight with each other for leadership and privileges. The group led by Ugyen Wangchuk, then called Tongsa Penlop, was the most notorious among all that would lead gangs to plains to plunder, steal, and take away properties, wealth, and people with them. When the news of Tongsa Penlop becoming the king became public, people became apprehensive instead of happy. The people of the Gorkha descent living in the plain (Duars) and foothills did not participate in the installation of Sir Ugyen Wangchuk (1862-1926) as the first hereditary monarch of Bhutan on 17 December 1907, but without a choice, they accepted the King of Druk-Yul as their king. Their population was big and was the largest contributor of revenues in cash, kind, services. They had to be included in the nation-building, national security, and development works of five-year plans- as the nationals of the state. A Nationality Act of Bhutan was legislated in 1958, the people of Gorkha or Nepali descent were asked to submit allegiance to the Druk Monarch to be counted as a national of the country. They were incorporated as 'Bhutanese citizens by registration.'

Nationality Act of Bhutan 1958 was replaced by Citizenship Act of Bhutan 1977, which in turn was replaced by Citizenship Act of Bhutan 1985. All three acts had provisions for the naturalization of

foreigners, with later acts imposing stringent measures. The stringent acts were enacted as measures to prevent Sikkim episodes from repeating with Bhutan. In 1974-75, India annexed the Kingdom of Sikkim (Datta-Ray, 1984). The rulers of Bhutan had concluded that the annexation was a consequence of Sikkim's lenient immigration policies and indulgent marriage laws.

In 1980, the rulers used their intellectual armory to draft a stringent marriage act that made a marriage of a Bhutanese national with foreigner wrongdoing and to prevent it they designed dissuasive penalties with lifelong consequences (National Assembly of Bhutan, 1980).

As per the call of the United Nations Organization and with the help of the government of India, the government of Bhutan started planned development projects. It conducted the first nationwide census in 1963-64 to count the population and to compile an inventory of human resources. While the rulers and the government coerced the people to contribute labor and resources for the development, they made discriminatory laws. They categorized people into different citizenship groups and were treated differently. The population under 'citizenship by registration group' was sub-divided into seven categories F1 to F7 (SAARC Jurists Mission on Bhutan, 1992) and (Hutt, 1994) .

- F1: Bhutanese citizen who had lived in Bhutan before 1958,
- F2: Returned migrants (people who had left Bhutan and then returned),
- F3: Drop-out cases (people who were absent during some census),
- F4: A non-national woman married to a Bhutanese man and their children,
- F5: A non-national man married to a Bhutanese woman and their children,
- F6: Children adopted by Bhutanese couple, and

F7: Those who could not provide documents of their presence in Bhutan in 1958.

The government ordered the people in the F5 and F7 sub-categories to leave Bhutan, in 1988. The people in other categories were to follow them soon. By then, the Drukpa government had decided to reduce the population of Bhutanese Citizens by Registration category to less than 25 percent from the estimated 45 to 55 percent of the total population.

People took to the streets demanding democracy and a written constitution, in 1990-91 in southern districts and in 1997 in eastern districts. At first, the government neutralized the movement through eviction and imprisonment of the protesters and their relatives, then, it prepared and unveiled a structural democracy and a written constitution that institutionalized the existing system. To ensure the legacy, on the command of the Drukpa King also called Druk Gyalpo, the government drafted a constitution, categorized the Bhutanese citizens into three broad citizen categories (Royal Government of Bhutan, 2008), included the categories of people in the constitution, and the sub-categories are retained in practice. The people in the smallest of the three categories- natural-born Bhutanese- reserved for selected Drukpa families have the hereditary rights to lead organizations in the country.

Citizens of other categories have limited freedom, rights, and access to the law. Although the constitution mentions that all people are equal before the law; in practice, the categorization makes them unequal.

Methods

An extensive desk study was carried out to collect and analyze information on the citizenship and marriage laws of Bhutan. Both primary and secondary sources were used. Qualitative information was studied and triangulated to come to conclusion. Most

documents referred to here were retrieved from online sources. The contents were discussed with the experts on Bhutan issues.

Findings

Regardless of what is written in legal documents, the practice is different. The categories of citizenships vary based on the regional distinctions and ethnic-linguistic differences and their affinity to the power centers.

The first nationality law of Bhutan in 1958 envisioned two types of Bhutanese nationals. One, a person whose father is a Bhutanese national and a resident of the Kingdom of Bhutan before 1958. Second, a person accepted a Bhutanese national through petitions to the king after having lived in Bhutan for more than ten years and owning land in the kingdom. The provision of nationality by petition to the king was extended to foreigner men or women married to Bhutanese nationals; foreigners who had worked in the government service for more than five years, owned lands and lived in the kingdom for more than ten years; and returned nationals upon the approval of the king (Ministry of Foreign Affairs, 1958).

Immediately after the enactment of the Nationality Act of 1958, the national assembly of Bhutan decreed all the people of Gorkha descent living in Bhutan to accept the Druk Gyalpo as their king and in return would be granted nationality by registration.

“It was resolved that henceforth the Nepalese of Southern Bhutan should abide by the rules and regulations of the Royal Government and, pledging their allegiance to the King, should conscientiously refrain from serving any other authority (such as Gorkha). They should submit a signed agreement to this effect to the government. In addition to the above, the Southern Bhutanese themselves should shoulder the responsibility of protecting the Southern border” - (National Assembly of Bhutan, 1958)

The people of Gorkha descent were living in the southern part of the country had distinct culture, language, tradition, and ethnicity than the ruling Drukpa tribes. Belonging to Gorkha or Nepalese heritage, they spoke several dialects and the Nepali language as a *lingua franca* and followed Buddhism accommodative Hinduism. King hailed from the Drukpa ethnic group and was called Druk Gyalpo or the King of the Drukpas.

In 1959, the people of Gorkha decent submitted allegiance to the Drukpa king agreeing to refrain from following Gorkha king.

“There were two ethnic groups in the kingdom under the rule of His Majesty the King. Since the Nepalese inhabiting Southern Bhutan as bona fide citizens of this country had submitted a bond agreement affirming their allegiance to the King and Country, the Assembly resolved that from this date the Nepalese would enjoy equal rights in the National Assembly, as well as in the country, like other bona fide citizens”- (National Assembly of Bhutan, 1959)

The rulers consider this section of the population as the Bhutanese citizens by registration. This bulk of Bhutanese citizens have identities such as Southern Bhutanese, Lhotshampa people, Gorkhas of Bhutan, or Nepalese of Bhutan for the sake of their recognition within the country.

In 1963-1964 there was the first pan-national census. They retained the exact number as a secret and a hypothetical number was used as the population of the country. There were two logics behind the inflation of the statistics: Security and membership of the United Nations Organization.

In 1974-75, India annexed the neighboring kingdom of Sikkim. The Bhutanese rulers saw two major flaws in Sikkim that led to its loss of sovereignty and independence. They were weak

immigration laws and flexible marriage regulations. The Bhutanese rulers took immediate measures to prevent Sikkim episodes from repeating with Bhutan.

The parliament promulgated a strict citizenship act in 1977 (National Assembly of Bhutan, 1977) and a marriage act in 1980 (National Assembly of Bhutan, 1980).

By 1984, the Drukpa government realized the people holding Bhutanese Citizenship by Registration outnumbered the ruling Drukpas in number, economy, and administration. A day soon when they must embrace democracy and proportional representation, their calculation showed, the ruling group would be in a minority (Tshering, 1994). They wanted an immediate reduction of its southern population.

They enacted a stricter citizenship act of 1985, created subcategories of citizens, carried out phase-wise eviction of almost fifty percent of the southern population in the name of demographic balance, and implemented a series of forced acculturation for the rest. They removed more than a sixth of the population from the country thereby bringing the population of the 'Citizens by registration' category from an estimated 45 - 55 percent to 22 percent.

Even after that, they have not relaxed on the rules and implementations. In 2008, a constitution was promulgated that upheld the content and spirit of the Citizenship Act of 1985 and the Marriage Act of 1980.

Constitution and citizenship policies

The constitution of the Kingdom of Bhutan 2008 envisages three citizenship types: (1) the natural-born citizens, or the people of Drukpa ethnic group related to the ruling groups through ethnicity, language, religion, or culture; (2) citizenship by

registration, or the people who submitted allegiance to the Drukpa King in 1958-59 and their descendants; and (3) citizenship by naturalization, or the foreigners or returnee citizens who were provided citizenship after petitioning to the king. While all the three categories are regarded as Bhutanese citizens and equal before the law of the land, several clauses and policy documents supporting the constitution reserve the vital constitutional posts to the natural-born Bhutanese citizens only. Those vital constitutional positions include those of the king, the prime minister, the chairperson of the national council (upper house) and the speaker of the national assembly (the lower house), heads of the army, police and royal bodyguards, the leaders of the political parties, holders of constitutional offices, namely (a) the Chief Justice of Supreme Court, (b) Chief Judges of High Courts, (c) Chief Election Commissioner, (d) Auditor General, (e) Chairperson of the Royal Civil Service Commission, (f) Chairperson of the Anti-Corruption Commission, etc., and the head of the religious body (Je Khenpo).

The constitution of Bhutan restricts the constitutional offices to the natural-born citizen of Bhutan only.

“No person shall hold a constitutional office or post under this Constitution unless the person is: (a) A natural-born citizen of Bhutan; and (b) Not married to a person who is not a citizen of Bhutan”- (Article 31-1a and b (Royal Government of Bhutan, 2008)).

In 2008, a political party by the name Bhutan Peoples Unity Party was de-registered by the election commission of Bhutan (Wangdi, 2007) on the reason that its leader (who would be the prime minister, if elected) was not a natural-born citizen. The constitution provides explicit differences between Bhutanese citizens and natural-born citizens of Bhutan.

“A candidate for the post of Prime Minister or Minister shall be an elected member of the National Assembly and a natural-born

citizen of Bhutan”- (Article 17-4 (Royal Government of Bhutan, 2008)).

“A candidate for an elective office under this Constitution shall: (a) Be a Bhutanese citizen” (Article 23-3a (Royal Government of Bhutan, 2008)).

“A person shall have the right to vote by direct adult suffrage through secret ballot at an election if the person is: (a) A Bhutanese citizen as evidenced by a Citizenship Card” (Article 23-2a (Royal Government of Bhutan, 2008)).

The constitution mentions that only a natural-born Bhutanese citizen can be elected to the position of a minister or prime minister. However, between 2008 and the present there were ministers from the population categories other than the natural-born Bhutanese. The election system could not apply its rule on the selection of ministers. Thus, people from the citizenship by registration category have been elected as ministers in all three governments since the implementation of the constitution in 2008. This exception has provided confidence in people with the second or third type of citizenship. However, for a minister to be elected to the cabinet called Lhengye Zhungshog, the minister must have hailed from the ‘natural born Bhutanese’ citizen category. This rule is being implemented.

“A ministerial candidate for the Lhengye Zhungtshog¹ shall be: (a) a natural-born citizen of Bhutan; (b) a citizen of Bhutan not married to a foreign national” – Composition of the Lhengye Zhungtshog-3a (National Assembly of Bhutan, 1999).

The series of legal documents show that all Bhutanese citizens are equal before the law, but the population in the category of the

¹ *Lhengye Zhungtshog*: Cabinet.

natural-born citizens of Bhutan is the only group born to make the laws and to rule.

There is a large Bhutanese diaspora scattered in different countries in the world. The cause of their scatter has been the systemic expulsion on political grounds by their government. Base on the existing law, they are the denationalized former citizens of Bhutan; for their justice, they have no other options left than to struggle for dual citizenship with a legal mandate to return when the situation in Bhutan becomes favorable and safe for them.

Marriage laws

The Marriage Act of Bhutan 1980 and Marriage Amendment Act of Bhutan 2009 regulate marriages in Bhutan. The laws encourage multiple marriages, but the spouses should be Bhutanese nationals.

Bhutan's marriage acts permit both polyandry and polygamy and provides flexibility to marry up to four times (Kha 1-15 (National Assembly of Bhutan, 1980)). The first three spouses can claim alimony or a share of property upon divorce (Kha 1-16 (National Assembly of Bhutan, 1980)). In the case of a woman marrying multiple husbands, the court issues a marriage certificate to the woman with the name of one husband only (Kha 1-17 (National Assembly of Bhutan, 1980)). In the case of a man marrying multiple wives, the court issues marriage certificates to latter wives on the consent of the previous wives. The consenting wife may appear before the court in person or send signed consent if she is unable to attend the court Kha 1-19 (National Assembly of Bhutan, 1980)).

The Marriage Act of Bhutan 1980 discourages marriages of Bhutanese nationals with non-Bhutanese spouses. There are life-long penalties to the Bhutanese nationals marrying foreigners, including the following:

They have limitations in job holdings:

“Any Bhutanese national in Government service marrying a non-Bhutanese shall remain in the same rank as on the 11th of June 1977 or on the day of the marriage with a non-Bhutanese held by him or her and shall not be entitled to any further promotions. And such a person shall be restricted from holding any appointment above the rank of a Junior Rabjam (Clerk)” (Kha 2-4 (National Assembly of Bhutan, 1980).

They have restrictions on promotion:

“Any Bhutanese national marrying a non-Bhutanese shall remain in the same position in society as on 11 June 1977 or prior to his or her marriage with a non-Bhutanese; and from the date of the marriage with a non-Bhutanese or after 11 June 1977, such a person shall not be given a higher position of more importance”- (Kha 2-5 (National Assembly of Bhutan, 1980).

They cannot serve in foreign and defense services:

“If any Bhutanese national employed in the defense or foreign department of the Government of Bhutan marries a non-Bhutanese, then that Bhutanese national shall be discharged from the said departments. And any Bhutanese national married to a non-Bhutanese, shall not be offered employment in any of the two said departments” (Kha 2-6 (National Assembly of Bhutan, 1980).

They forfeit the right to access to privileges enjoyed by other citizens:

“A Bhutanese citizen, irrespective of his or her status, shall be restricted from enjoying the privileges and other benefits as mentioned herein below subsequent to a marriage with a non-Bhutanese: (A) Allotment of land (through royal decree); (B) Cash Loans; (C) Seeds for fields and lands and ploughing bulls; (D) Cattle and livestock from the Department of Animal Husbandry; (E) Medical treatment in foreign countries; and (F)

Capital for workshops, trade and industries” – (Kha 2-7; (National Assembly of Bhutan, 1980).

They forfeit the right to studies and training:

“Any Bhutanese citizen receiving training or education under Government sponsorship if married to a non-Bhutanese shall be restricted from enjoying the privileges and benefits as mentioned herein below: (A) Restriction from receiving any aid from the government to pursue or undergo training in foreign countries; (B) From the date of contracting such a marriage, the Government aided expenses given for studies and training shall be withdrawn forthwith; (C) The expenditure given by the government for pursuing studies or undergoing training up till date of such a marriage shall have to be refunded; (D) The Government of Bhutan shall send an intimation to the country sponsoring the student to withdraw all the expenses provided for studies or training to a Bhutanese national whose marriage is contracted with a non-Bhutanese” -Kha 2-8 (National Assembly of Bhutan, 1980).

They cannot contest for elective offices:

“A person shall be disqualified as a candidate or a member holding an elective office under this Constitution, if the person: (A) Is married to a person who is not a citizen of Bhutan” (Article 23-4a: (Royal Government of Bhutan, 2008)).

A member of the parliament who marries a non -Bhutanese spouse becomes disqualified to hold the position:

“A member of the National Assembly shall be disqualified if the member: (A) Is married to a person who is not a citizen of Bhutan” (Chapter 3-14a (National Assembly of Bhutan, 2008)

While these laws are aimed at the commoners, there is no consideration to the members of the royal families, especially to those in the line to the throne:

“The title to the Golden Throne of Bhutan shall... Not pass to a person entitled to succeed to the Throne who enters into a marriage with a person other than a natural-born citizen of Bhutan” (Article 3f (Royal Government of Bhutan, 2008)).

The king must choose his bride not just within Bhutan or Bhutanese citizens- the to-be queen must hail from the category of natural-born citizens.

An opposition leader who quit politics

In the election after the promulgation of the Constitution of the Kingdom of Bhutan 2008, Dr. Pema Gyamtsho elected to the National Assembly of Bhutan was selected by his Druk Phunsum Tshokpa party as the agriculture minister. In 2013, his party lost the election, owing to the acquisition of tilting towards China against the traditional practices of siding with India. The party cadres accused the government of India, the palace in Thimphu of campaigning against their party leading to their loss in the election. The party members took to anti-king sloganeering for the first time in the country. The party president, the vanquished former prime minister, resigned from the party. The party leadership was passed to Dr. Pema Gyamtsho. Although he comes from a Drukpa lineage, he does not belong to the families of people who signed the 1907 proclamation of hereditary monarchy, and his party is perceived as anti-monarchy. He became the opposition leader by being the president of the second largest of the two parties in the parliament.

The king ignored the protocol of recognizing and honoring the opposition leader with decorations as he had done with the first opposition leader in 2008. The king had decorated the earlier opposition leader with an orange scarf and ceremonial sword on time. The king disowned the tradition with the second opposition leader (Druk National Congress, 2013).

The opposition leader was neither acknowledged nor entertained for his roles. He was made aware that he would not qualify to be a prime minister even if his party swept the majority seats in the parliament. He accepted his limitations, citizenship of a non-ruling category, prospect-less future in Bhutan's controlled democracy, and chose a safe exit from the present politics (Pem, 2020). In 2020, he joined International Centre for Integrated Mountain Development- a regional inter-governmental organization as its director-general- a position equivalent to that of a joint secretary of his country. Thus, a former minister, a serving national assembly member, the only opposition leader, and a candidate for a prime minister's position of a country landed up leading a regional organization with the position equivalent to a joint secretary.

Discussion

Three categories of citizens are envisioned by the constitution of the Kingdom of Bhutan: the natural-born citizens of Bhutan, Bhutanese citizens by registration, and naturalized Bhutanese citizens. The constitution guarantees the vital administrative, elective, and constitutional posts to the natural-born citizens only. The other two categories of citizens are deprived of the apex positions. They have framed the constitution in such a way that the position of the present ruling tribe of a few ruling Drukpa families remains in the ruling position for good. Even the leader of a political party, if she or he comes, from a different citizenship category cannot be a prime minister.

It is not public what percentage of the Bhutanese population falls under the selected natural-born citizen categories; a rough estimate shows that one to three percent of the people fall in this category. Even the most flexible estimate shows that this category of people does not exceed five percent. Thus, less than five percent of the population are made eligible and destined to rule the country.

The Constitution of the Kingdom of Bhutan-2008 was a calculated attempt of the rulers to retain their hold on the power for good. They have been successful to crush and neutralize every resistance from the people. With the written constitution the government of less than five percent of the population has been holding the grip on power firmly and with determination.

As the apex positions of all the institutions are held by the selected few families through a systemic constitutional way, everything looks peaceful and controlled from the surface. Yet, many citizens have no rights and means to proportional representation in policy-making bodies.

The international community is satisfied with the finding that all constitutional bodies are established and there are periodic elections, but there are no academicians, researchers, or activists to study how the system is controlled.

The much-hyped democracy of Bhutan is the legalization of the autocratic system of the past through a written constitution and premediated elections. There has been no proportional representation, no fair promotion, and no access to vital positions by the people from non-ruling tribes.

The people of Bhutan have been raising their voices for democracy, and a written constitution since 1950. They formed political parties to represent peoples' concerns. However, the government crushed the political activities at an early stage. After 1990, the international community began to join the Bhutanese people in pressuring the Drukpa government of Bhutan to accept democracy and promulgate a written constitution. The dissidents and forerunners limited the demands to the words and terms but not the contents. The government yielded to the words and terms of demands but added contents of its convenience. The political leaders, and international pressure groups seldom explained to the

people what comes with democracy and a constitution. Today, people are contented that they have been given what they have asked for (i.e., democracy) and do not know if the democracy they have received is of the correct type and use.

Conclusion

Citizenship of a country is the right of the citizens to have rights. In Bhutan, the ruling few have categorized the citizens into categories and kept one small group under the name 'natural-born citizen of Bhutan' as the sole rulers of the country. The categorization and restrictions have made over ninety-five percent of the population without or limited rights. International law has almost no role in citizenship practices of individual states and taking advantage of the lack of international directions, petty rulers in small states use citizenship as a tool to divide citizens and use one against the other, the method by which they secure their rules, positions, and privileges. Though Bhutan is now a democracy by words and structural makeup, the citizens of Bhutan are both unaware of their rights and live-in constant fear of being denationalized should their actions be perceived as reformative or revolutionary. A small group of people associated with the monarchy link the system as a means of their survival and coerce the people to follow the compartmentalization of citizens without a question.

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