

A Daughter Married, a Daughter Lost? The impact of resettlement on Bhutanese refugee marriages

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Introduction

As one of UNHCR's three 'durable solutions' for refugee situations,¹ resettlement has received a great deal of academic attention. The majority of these studies have studied the resettlement process after it has been carried out—in the country of resettlement—focusing on such aspects of the programme as post-arrival service provision (Wright 1981), new settlement patterns of resettled refugees (Ott 2011, Singer and Wilson 2006), or the ease (or difficulty) with which refugees secure employment, integrate, or establish new social networks (Hume and Hardwick 2005).

As other studies show, however, the resettlement process begins to affect individuals, families and societies long before they physically move from a country of asylum to a resettlement country (Banki 2008, Guragain 2013, Horst 2006). This paper illustrates some of the impacts of the resettlement process on marriages and refugee families in the camps in Nepal. In particular, it highlights a rising trend in minor marriages in the camps. Unlike the arranged minor marriages of the past, however, these new underage marriages are organised by youths themselves to avoid separation from their sweethearts, and are challenged by parents to avoid the loss of their daughters.²

Minor marriage in context

In 2011, the Washington-based Population Reference Bureau ranked Nepal eighth in its list of top ten countries for child marriage, with 51.4 per cent of the country's population reportedly married before the age of 18 (Hervish and Feldman-Jacobs 2011). Ancient Hindu scriptures encourage marriage at a young age; influential religious texts such as the *Bishnu Sutra* and *Gautam Sutra* enjoin fathers to marry off their daughters within three weeks of their attaining puberty. In the *Manusmriti*, the sage

1 The other two durable solutions are voluntary repatriation and local integration.

2 This article is based on fourteen months of ethnographic field research conducted in Nepal between 2009 and 2011.

Manu declares that if a girl remains unmarried after reaching puberty, her father has failed in his duty towards her (Maharjan et al. 2012, UNICEF 2008: 24). These texts were not without effect on Hindu populations. Social perceptions of women and girls and poverty also contributed to the practice. In the twentieth century, child marriage was firmly established in both India and Nepal, with cross-sectional differences in ages of first marriage when factoring for religion, caste, region of residence, and education completed (Agarwala 1957, Bajracharya and Amin 2010, Choe, Thapa, and Mishra 2005).

Among the Bhutanese in exile in Nepal, parental attitudes toward early marriage slowly shifted and the frequency of arranged child marriages greatly declined. Education is often correlated to the age at which girls first marry; the more education girls complete, the higher the average age at which they are first married (Eruikar and Muthengi 2009, Singh and Samara 1996). In Bhutan, most girls had limited access to education. Schools were often long distances away, and parents often preferred to send their sons, keeping their daughters at home to help with the housework. This changed dramatically in the refugee camps in Nepal, where humanitarian agencies aimed at universal primary school enrolment. In coordination with UNHCR, Caritas Nepal established schools that were free of charge and located in each camp, generally at short distances from refugees' houses. They also advocated gender equality and the importance of education for all children, including girls.

By the time I visited the camps in 2010 and 2011, many adults expressed the preference that children should wait to marry (and have sexual intercourse) until after attaining at least the age of eighteen. One Counselling Board chief even explained that he was against marriage before twenty-five, because he felt it was too great a risk to the life of a girl to have children at a young age. In the sector of the camp where he lived and also worked as Sector Head, two girls who married as minors had died during childbirth: one was sixteen, the other only fourteen. Their bodies, he told me, were not mature enough to be able to cope with birth.³

A similar trend was observable among the host population in Nepal at large. In 1854, the marriage of a five-year old was permissible under the Nepali *Muluki Ain* (Country Code). By 1934, the age was raised to eleven for

3 Interview with Counselling Board mediator, Beldangi-2, 5 March 2011.

Brahman and Chhetri castes. By 1976, the minimum legal age for marriage was set at sixteen years of age for girls (of all castes) with parental consent, and eighteen without consent. For boys, these ages were fixed at eighteen and twenty-one, respectively (Onta-Bhatta 2001). Those found legally responsible for arranging the marriage of a minor, whether parents or *pandit* (Hindu priest), were punishable by law and could be fined and/or sentenced to prison. The 11th amendment to the *Muluki Ain* (2002) raised the legal age of marriage for both girls and boys to eighteen with parental consent, or twenty without consent.⁴ As prescribed by Article 4c of the Marriage Registration Act, 2028 (1971),⁵ a marriage can be registered when both parties have reached the age of twenty.

Although child marriages are still common in Nepal, particularly among girls, the practice is declining (Choe, Thapa, and Mishra 2005). In 1981, nation-wide, 14.3 per cent of women between the ages of ten and fourteen were already married. Twenty years later, this figure was only 1.8 per cent (UN Population Fund 2007: 22). The mean age of marriage for women in Nepal increased from 17.4 to 19.6 between 1981 and 2001. This change has been even more marked among inhabitants of the Tarai, the region where the Bhutanese refugee camps are located. In the Tarai, the mean age of marriage increased from 15.8 years in 1981, to 18.9 in 2001 (UN Population Fund 2007: 21).

The prevalence of arranged marriages in general has also declined among the Bhutanese, and by 2008, it had become so common for men and women to select their own spouses that the International Organization for Migration (IOM) referred to it as a 'cultural habit' of the refugees (IOM 2008). Again, the same trend can be observed in wider Nepal (Choe, Thapa, and Mishra 2005).

Since the advent of resettlement, however, evidence suggests that the trend of a declining minor marriage rate has begun to reverse in the Bhutanese refugee camps, and that underage marriages are once more on the rise. The new type of minor marriage, however, is markedly different from that of the past. For one, UNHCR's Resettlement Officer observed

4 *Muluki Ain* (General Code) 2020, Chapter 17 'On Marriage'. Translation by the Nepal Law Commission, <http://www.lawcommission.gov.np/en/documents/func-startdown/605/>, accessed in August 2013.

5 As amended by the Administration of Justice Act, 2048 (1991) and the Amending Some Nepal Acts Relating to Maintain Gender Equality Act, 2063 (2006).

that ‘in most cases, “underage” marriage does not involve a huge age difference. For example, the guy may be twenty-three, and the girl seventeen.’⁶ Unlike previous minor marriages, these marriages were no longer arranged by parents, but by youths themselves, who were eloping with their sweethearts so as not to be separated from them during the resettlement process.⁷ Some have observed that this is an indirect effect of counselling provided by staff of the IOM—referred to jokingly by some as the ‘International Organization for Marriage’⁸—who allegedly advised youths to marry before, rather than after resettlement (Adhikari 2008).

These underage marriages have led to new types of legal disputes in the refugee camps, which centred on the validity of marriage and invoked rules from different legal systems to try to secure a given end. The following section will describe the legal regimes that govern these marriages.

Resettlement, family unity and the law

Marriages among Bhutanese refugees in Nepal are governed by several overlapping legal regimes. These include traditions and customary norms (many of which are derived from the Hindu religion), Nepali law, and foreign migration policy. UNHCR’s resettlement policy also constitutes an important set of rules. Although these policies and rules are not ‘law’ in a strict sense, their impact on refugee applicants for resettlement is largely the same. A determination by UNHCR that a given refugee is ineligible for resettlement constitutes a migration bar as hard and decisive as a State decision not to allow entry. In fact, it may be even more far reaching, as it limits not just that refugee’s access to one, but to all resettlement states.

UNHCR’s Resettlement Handbook (ibid: 209) describes child marriage as a harmful traditional practice, and explicitly states that ‘UNHCR does not normally submit cases of married children for resettlement unless there are compelling protection risks that warrant resettlement, and

6 Interview with UNHCR Resettlement Officer, Damak, 9 February 2011

7 One Damak-based journalist, who visits the camps on a regular basis and has written many articles on the Bhutanese, alleges that this has been accompanied by an increasing number of parents seeking formal legal annulment of the marriages of their children. Adhikari, C. September 19, 2008. ‘Refugee Youths Become Eligible Life Partners,’ Ekantipur, accessed from: <https://www.ekantipur.com/2008/09/19/related-article/refugee-youths-become-eligible-life-partners/161127.html> in May 2013.

8 Discussion with a former volunteer for the Bhutanese Refugee Children’s Forum, London, 22 May 2013

resettlement is in the best interest of the child' (ibid: 211). For its operations on Nepali territory, UNHCR is required to work within the Nepali legal context. With respect to minor marriages, this has several consequences. As UNHCR's Resettlement Officer explained:

In Nepal, the law does not permit marriage below eighteen years. For those under twenty, parental consent is needed. UNHCR can't recognise marriages that don't fulfill these criteria, but it can recognise relationships. A new policy on underage marriage has just been finalised. So far, UNHCR has kept cases on hold involving married minors until they reach the age of eighteen, after which the wife can be transferred to her husband's hut. But so many people were put on hold that the need arose to approach the issue differently.⁹

Fearing that the information would be used to commit resettlement fraud if leaked, the Resettlement Officer would not give me any details about the new policy. He did explain, however, that the previous policy dictated that, as long as either party to a marriage was under age, the resettlement processes of both the minor and his/her family members—as well as those of the other partner and his/her family members—were put on hold. Ration card transfers were only effected in the event that a couple was legally married, and thus above the legal age limit. As a consequence, even if an underage girl had married and physically moved to the hut of her husband and his family, administratively the transfer could not be effected until she was eighteen (assuming that she had parental consent). Until this administrative transfer takes place, a girl is still on her maternal family's ration card, and thus tied to their file, also for resettlement purposes—meaning that she cannot be separated from her parents, even if she has already been living with her husband for years. Her parents will not be resettled without her until the transfer takes place, which can delay the entire case and creates frustration among her relatives, who consider her as having effectively transferred to her husband's household.

The maintenance of administrative links between a girl and her parents does not imply that UNHCR does not, at the same time, recognise her new relationship with her husband. As UNHCR (2011a: 178) defines it,

9 Interview with UNHCR Resettlement Officer, Damak, 9 February 2011.

[a] nuclear family is generally accepted as consisting of spouses and, their minor or dependent, unmarried children and minor siblings. UNHCR considers not only legally-recognized spouses (including same-sex spouses), but also individuals who are engaged to be married, who have entered a customary marriage (also known as ‘common-law’ marriages), or who have established long-term partnerships (including same-sex partners), as spouses within the nuclear family.

Assuming that the girl is the one who is underage (which is more common in the camps than the reverse), if she and her husband are recognised under this definition as being either engaged, or having entered into a customary marriage, they are also entitled to preservation of the unity of their (new) family. However, because she cannot be transferred to his file until she is 18, he has to wait too—as do any dependent family members he may have, or any family members upon whom he is dependent.

If UNHCR determines that a couple is eligible for resettlement, an assessment is made of whether they also meet the criteria in place in different resettlement countries. Migration to the United States, the largest resettlement country for Bhutanese refugees, is governed by the Immigration and Nationality Act (INA). In addition to describing who qualifies for migration in a general sense, the act spells out what is regarded as a valid ‘family’ for the purpose of immigration to the U.S., what types of marriages are considered valid, and what constitutes a child or dependant (UNHCR 2011b: 4-5).

UNHCR’s Resettlement Handbook specifies that ‘for U.S. migration purposes, the validity of a marriage is generally determined by the law in place in the country of asylum’ (UNHCR 2011b: 11). A marriage that is considered legally valid in the country where the marriage took place, under this principle, is generally valid for the purpose of migration. However, in recognition of the fact that many people enter into marriages through cohabitation without the involvement of local courts, registrars or even as much as a religious ceremony, common law marriages may also be accepted as valid if lawful in the place of celebration and not contrary to federal public policy (UNHCR 2011b: 11). For Bhutanese refugees transacting a common law marriage in Nepal, this means that if the conditions of the marriage in question are valid under Nepali law, its validity is also established under U.S. migration law (Titshaw 2010).

The fact that Nepali law requires an age of eighteen for marriage with parental consent (or twenty without parental consent), however, suggests that it would be contrary to federal policy to recognise a minor marriage that is transacted ‘illegally’ in Nepal. According to UNHCR’s resettlement officer, in practice parents generally did not refuse consent after their children turned eighteen, because this would delay their procedure even further, although sometimes there were exceptions. Should parental consent be refused, UNHCR has several tools at its disposal. Through dependency assessments, vulnerability assessments, and best interest determinations, staff members try to determine what is in the best interests of children and other family members. Nevertheless, UNHCR is silent on how exactly it deals with the law in this situation, or what (legal) steps it requires if parental consent is refused, and parties are over eighteen but under twenty.

The following sections present two marriage disputes that took place in the camps. Both were mediated by the Counselling Board, which is the top tier of three levels of the camp-based dispute resolution system. The system is centred on mediation, and is run independently by refugees themselves in each of the Bhutanese camps. The first case is a struggle between a daughter, her husband and her parents over the validity of her marriage. The second illustrates the creative solutions through which people tried to maintain family unity, the consequences this can have for their resettlement processes, and the new types of resettlement-centered legal cases that have emerged as a result.

A ‘modern’ minor marriage

In March 2011, a minor marriage dispute was mediated by the Counselling Board in Beldangi-2 refugee camp. The case bears resemblance to other minor marriage disputes I observed over the course of 2010 and 2011, and is a typical example of the type of adolescent marriage that is on the rise in the camps today, through which youths choose their own partners and elope (frequently without the consent of their parents) to avoid being separated from each other by the resettlement process.

In March 2011, Man Kumar¹⁰ and Pabitra fell in love and eloped.

10 To protect the identities of those involved, the names of participants to these disputes have been changed.

Pabitra was sixteen, Man Kumar was twenty. Before they were married, Man Kumar brought Pabitra's family wine and flowers, in line with the traditional wedding customs of his ethnic group. Pabitra's parents were concerned that the marriage would affect their resettlement process, and tried to convince their daughter to wait until after resettlement to marry. Pabitra refused and married Man Kumar without the presence of her parents.

When Pabitra's parents found out, they tried once more to convince their daughter to separate from her husband. This strategy proved unsuccessful, so Pabitra's father filed an application against Man Kumar, demanding that he and Pabitra separate until after Pabitra and her family's resettlement. In the application, Pabitra's father stated that he did not have a problem with Man Kumar as a potential husband for his daughter, and that he would agree to the marriage after his family had resettled to the United States, if both Man Kumar and Pabitra still wished to marry at that time.

Later that month, the case reached the Counselling Board. For the duration of the mediation session, the Counselling Board room was full of youths who were watching with great interest. Some of them were Pabitra's friends, who studied at Pancha-oti English School in the camp. Many were likely to be wondering not just how this case would turn out, but also how the ruling might affect them, and the way they looked at marriage.

Like most of the other youths, Man Kumar and Pabitra were dressed in modern garb, not in the traditional *sari*, *daura suruwal* and *kurta suruwal* worn by most of the older people in the room. Man Kumar's jeans were ripped, Pabitra's tight. A row of rubber bangles adorned her wrist, more similar to the glow-in-the-dark bracelets often seen in raves and house music parties than the customary bangles worn by Bhutanese and Nepali married women.

Two major discussions took place during the mediation session. The first addressed the validity of the marriage and the consequences of the law. Different parties pointed to legal provisions and norms that not only differed, but originated from different bodies of law. In order to convince the youths to separate, for instance, the mediator urged Man Kumar to wait to marry Pabitra until she is eighteen, 'as per the law'. To give this statement more force, he later threatened that if Pabitra did not return

to her parents, he would send the couple to the Gender Focal Point—the party in the camp responsible for dealing with cases of sexual and gender-based violence, thus insinuating that the case would be turned into a rape case. A bystander made this insinuation explicit, warning the group that Man Kumar could get a prison sentence ranging from six months to as much as twenty years if he was convicted of rape. Their claims were based on interpretations of Nepali law and UNHCR policy. Pabitra, in turn, tried to counter these arguments by referring to the Hindu ideal of marriage and the traditional norm that ‘once a girl is with a husband, she should not separate from him.’

The second major point of contention concerned the consequences Pabitra’s marriage would have for her family’s resettlement process. Pabitra’s parents were afraid that if their daughter married at sixteen, they would have to wait two years to be resettled. Their understanding of UNHCR’s policy was fairly accurate—at the time, prevailing policy dictated that Pabitra would not be separated from her parents’ file until she turned eighteen.

To resolve this problem, both the mediator and the members of the community present at the mediation session decided that Pabitra should return to her parents’ house, where they should come to a compromise together at home. The issue, the Counselling Board determined, should be resolved at family level. Pabitra’s wish to stay at her husband’s house was overruled. Because she did not appear at all happy with the judgment, the mediator sent her parents home with a warning: to prevent their daughter from getting depressed (and risking suicide, which was a visible phenomenon in the camps), they should allow her and Man Kumar to continue to see each other, although the two were not to live together.

Suspended! The consequences of strategising for family unity

Less than a month after Pabitra’s minor marriage case was concluded, another case was heard by the Counselling Board. Plaintiff Prakash Chhetri’s daughter Sita had eloped with a young man called Anup Khadka shortly before Prakash’s brother’s funeral. At the funeral, Sita and Anup revealed that they had married. As both families were present, they discussed the matter during the funeral. When the boy’s parents asked Prakash whether they should organise wedding formalities, he asked them not to, but rather to wait to hold the cultural ceremony until they reached

the U.S. The elders decided that the youths should wait to be officially married until after Prakash's family had completed his resettlement process, which was at its final stages.

Little did Prakash know that Anup Khadka's parents proceeded to organise the marriage in secret despite Prakash's wishes, and held a wedding ceremony at a local *mandir* (temple). After the ceremony, a letter was drawn up that testified to the marriage, signed by different witnesses, including some of the Sub-Sector Heads and Sector Heads from the camp. Shortly afterwards, Prakash's daughter was resettled to the U.S. along with Prakash's first wife, who travelled ahead of him for health reasons. Prakash claimed that he did not find out that his daughter had formalised the marriage ceremony until after she was already resettled. He lamented that the wedding was not conducted properly; his culture dictated that he should have been present, but Anup's parents had held the ceremony without inviting him. What he also did not know is that the letter testifying that Anup and Sita were married, signed by those present, said something else, too. It accused Prakash of sending off his daughter for resettlement in full knowledge that she was married, and without her husband's permission.

Initially, Anup and Sita agreed that, to avoid adverse consequences for Prakash's family, Anup would wait to show the letter to UNHCR until the rest of the family had also been resettled. Unfortunately for Prakash, the boy grew impatient. Hoping that it would lead to the expedition of his resettlement process so that he could join his wife, he showed the letter to UNHCR early—while Prakash and the rest of his family were still in the camp.

In April 2011, Prakash was pulled out of one of the last stages of the resettlement process. He was given the message that his case would be put on hold for two years as punishment for misrepresenting his family's composition—a form of resettlement fraud. The suspension had a big impact on his family. In preparation for their imminent departure, they had already sold most of their belongings, done the shopping needed for their journey, and pulled one of their remaining daughters out of school, as a result of which she missed that year's SLC exams.¹¹ As a result of the delay, it would be at least two years before Prakash would be reunited with his first wife, or his daughter.

¹¹ The SLC examination marks the end of the 10th grade in Nepal.

As I tried to understand how Prakash was held responsible for a marriage he states he was not aware was ever formalised, I asked him on what laws that decision was based. He answered that his daughter, during her interview with UNHCR, had said that she was unmarried—which, at that stage in the resettlement process, she was. Then he added:

The different countries have their own laws. Some of the INGOs and NGOs, they have their own law. As per UNHCR's law, my daughter married that boy, and as per the rules and regulations of UNHCR, I had to go and tell them that my daughter married. I did not do that, so I went against the law of UNHCR. UNHCR, later on, found out about this. For that reason, my process was stopped by UNHCR. But during the marriage, the girl's parents should also have been called: I should also have been called...

During the mediation session, the parties present tried to solve two problems. Prakash wanted to undo the damage done to his family as a result of the suspension of his resettlement process. The Khadka family wished to ensure that their son would still be reunited with his wife. No one knew for sure how to achieve either end. As Prakash understood it, his failing lay in not informing UNHCR of his daughter's marriage, which was his duty as head of household. His only defence was that he could not have known, because he was not invited and the ceremony took place at the *mandir* without his knowledge. An elderly bystander suggested that Prakash's problem could be solved if Anup and Sita arranged a divorce, she from the U.S., and he from Nepal, but Prakash was afraid that if it was not 'official' and 'legal', the action would have no impact. Nobody knew the rules with any certainty, and the case was not resolved before my departure from Nepal.

Transformations in family disputes

As the cases above have shown, tensions between parents and children resulted largely from the consequences—for both parties—of recognising these marriages. For teenagers, the unions were important because they prevented them from being separated from their boyfriends or girlfriends. Parents, on the other hand, were wary of eloping children, and often went to considerable effort to try to have these marriages annulled. They

wanted to avoid delays to their resettlement processes, which could be lengthy when legal issues were involved. They also sought to avoid further separation of their families during the resettlement process, which was fraught with enough uncertainty as it was. The resettlement process and its promise of a future in an unknown foreign country are challenging, and family separation represents an additional source of anxiety. Worry about family separation is a key source of stress among resettled refugees, with some studies showing that unresolved family reunion issues serve as a contributor to long-term trauma, and compound post-traumatic stress reactions and bereavement (McDonald-Wilmsen 2009: 4).

Nepali Bhutanese society is virilocal; after marriage, a Bhutanese woman leaves her *maiti ghar* (birth home) to join her husband's household. The Bhutanese refugee camps in Nepal were at manageable distances from each other, and families dispersed over different camps could see each other without inordinate difficulty. This is not so in the case of resettlement, where people can end up in different states or countries. All of a sudden, families faced the prospect of separation not only by the vast territory of the U.S., but by oceans, continents, and a range of migration laws that deterred them from traveling for specified lengths of time.

Resettlement was both the main reason for these new minor marriages, and the reason they constituted a problem for the families involved. These new consequences—the possibly irreconcilable separation between a girl and her parents, as well as lengthy delays in resettlement procedures, led to a transformation in minor marriage disputes in the refugee camps in Nepal.

By law, the responsibility for a minor marriage is placed on the guardians of the minor. Nepali criminal law dealing with child marriages regards the child as the injured party, and the parents and *pandit* (priest) responsible for arranging the marriage and conducting the ceremony as the perpetrators. Reflecting this expectation, which was mirrored by reality not long ago, the law prescribes punishment for those who arrange the marriage, not for the minor him- or herself. Criminal law did not address this new genre of minor marriages, in which youths were eloping themselves. The new minor marriages that were the subject of mediation discussions in the camps shifted traditional understandings about the roles and responsibilities of parents and their children. Instead of the child-as-victim, parents saw themselves as the injured parties, suffering

delays, difficulties and family separation as a result of the actions of their children.

Conclusion

This paper has presented two examples of new marriage disputes resulting from the resettlement process. In the first, a young couple attempted to use the mediation system to convince the community to recognise their marriage so as not to allow the resettlement process to separate them from each other, in opposition to the girl's parents, who wished to convince them to wait to marry until after resettlement. In the second, the father of a girl who had married in secret tried to undo the damage done to his resettlement case, which had been put on hold because of his 'misrepresenting' his daughter as single.

In the absence of alternative venues through which refugees could effectively challenge UNHCR's and resettlement countries' approaches to marriage and family unity, the camp mediation system became a venue that they used to try to interpret and negotiate understandings of conflicting legal rules, and through which they tried to undo, avoid, or seek compensation for adverse impacts on their families or their resettlement processes. Even though the Counselling Board had no jurisdiction over any resettlement-related decisions made by UNHCR, it became the site of a generational tug of war. Children married and chose their new husbands or wives, while parents tried at all costs to keep their children in line, and their families together.

As people made decisions about their lives and tried to solve problems relating both to the resettlement process, and the different rules that governed it, they found themselves walking a tightrope between different bodies of law, the implications of which they did not always fully understand. At the same time, these rules were obscure, untransparent and inaccessible to most refugees. Different rules could be used to advance different arguments. References to 'external' rules were juxtaposed with references to cultural norms. Where youths like Pabitra pointed to elements of tradition to argue for the validity of their marriage, parents did the same in arguing against it, for instance by claiming that a marriage was not valid because they had not been invited to the ceremony, or that it had not been conducted in accordance with custom.

The diverging interests of different generations in these cases are

indicative of a new intergenerational discord within the camp community, brought on in part by the resettlement process. When youths were informed that they should marry before resettlement, they were in essence presented with the possibility of taking their future into their own hands. By marrying and arguing for the validity of their marriages, they exercised independent choice, challenging their parents' authority in a strongly hierarchical society.

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