

# Population, Law and Dharma

## Franco-Bhutanese comparative overview

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### INTRODUCTION

Colonization impacted the notions of citizenship and nationality in a new way during the XIXth and the first part of the XXth century. The middle of the past century saw the phenomenon of decolonization and the emergence of new nationality and citizenship issues. Globalization increased the migrations. Consequently the phenomenon of immigration has become complex and each State brings its own response to this phenomenon.

#### *Immigration in France*

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France is traditionally a country of immigration, with various migratory waves. After the World War II, the country's rebuilding and the intense economic growth lead the authorities to give an impulse to the organization of immigration. From the 70's, with the economic growth's decline, the government hugely restricted possibilities of immigration. The family reasons have become the first grounds for legally accepted immigration.

#### *Immigration in Europe*

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Europe has abolished borders between Member States. Therefore it was felt necessary to introduce an immigration policy for the external borders of Europe. Immigration in Europe has two sources: political immigration and economic immigration. The national laws' divergences, regarding foreigners, remain an obstacle towards an harmonization of the legislations.

#### *Immigration in Bhutan*

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Since nearly 19th century, Bhutan experienced a Nepalese immigration which appeared particularly in the south of the country. Initially it was due to the shortage of farmlands and the famines which affected Nepal Nowadays these migrations seem to be caused more by unemployment.

## *The legal systems*

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Most of the existing studies are focused on the political, economical or sociological consequences. This study aims to give an insight to the legal aspects, from a comparative point of view.

The characteristic of the law of a specified country is its system of law, and not the legal provisions themselves. The system of law itself takes its roots in fundamental principles, whether religious or philosophic or both.

French law, like the other modern laws, is made of several layers of legal principles which have been prevailing during the course of its history. The most important layers constituting the French system of law are: Roman law, the “barbarian customs”, Canon law and modern principles. The French revolution has brought up the concept the rights of the man and the citizen. In the matter of lawmaking the leaders of the Revolution entertained two ideas somewhat contradictory: the law exists by nature and law is the expression of the will of the people. The notion that the political power, and the political power alone, is competent to legislate has become accepted. However, French law is not separable from the philosophy of life, the way of life and the mentality of the French people.

Bhutanese legal system is based on the principles of Dharma. Buddhism is the official religion. Dharma, in the Buddhist approach, is one of the three jewels (Buddha, Dharma and Sangha). As such it is often referred to as the teaching and methods of Buddha. In a broader definition, it is a reference – as for Hindus – to the Universal Law. These Universal laws have been received through enlightenment and transmitted by the masters and spiritual guides. The rules issued from Dharma are considered as sacred, and are imperative for all without exception. Man is considered as a part of the Universe and the rules of dharma are as rigorous as those that govern the Universe. Therefore, any act contrary to the dharma creates a perturbation to the Universe itself and needs to be repaired.

If the Christian teaching is taken in its strict sense, there is no room for law in a Christian community, as St Paul and St Augustin have taught that relations between Christians should be governed by charity and not by justice.

Similarly, Buddhism is based on love and compassion. The main difference lays in the focus: anthropocentric in legal systems in Europe and centered on the universal harmony in Bhutan or ancient Indian law.

This study is restricted to the legal impacts of population fluctuation on immigration, nationality and citizenship.

### *Difference between nationality and citizenship*

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**Nationality** is the link between one person and a State with specific and mutual rights and obligations. **Citizenship** is the right of a person to participate to the country's government through elections.

At first sight, it seems that there should be no difference between the two. It is not so. For example, all the nationals of a country are not necessarily citizens. This is true for instance for children and certain adults if the right of vote is not universal, or if they are deprived of their rights, or in a country like France before 1944 when women did not yet have the right of vote. Similarly, we can observe some countries, as the United States, where foreigners have a right of vote for local elections.

## THE IMMIGRATION AND NATIONALITY ISSUES IN FRANCE

### I. NATIONALITY

#### *Historical review*

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When France was a monarchy, the issue of nationality was not really discussed. The populations were not linked to a State but were subjects of the King of France. And yet, given that it was a monarchy of divine right, one had to be catholic to be subject of the King. The latter was the only person allowed to deliver the « *lettres de naturalité* ». When the French Revolution marked the end of the monarchy, the notions of State and nationality emerged.

Citizenship is granted to the foreigners, living in France, who help the Republic, providing that they have taken an oath, and the blood right is lessened for the children of French people living abroad, so that those who have escaped from France to avoid the Revolution are denied the French nationality.

The Civil Code, in **1804**, presents only 14 articles about nationality. Step by step, the issue of nationality becomes a great subject and the legislator uses, for the very first time the term *nationality* in the law of the 7<sup>th</sup> of February 1897. It eases the acquisition of the French nationality, giving the emigrants and their children the opportunity to come back to France and instituting the possibility for any foreigner born in France to be granted the French nationality when he reaches the majority.

In the **mid 19<sup>th</sup> century**, the legislator establishes the double ground right: the French nationality is automatically granted to someone who is born in France from one French progenitor.

After **World War I**, the issue of depopulation in France and the need for foreign manpower lead the legislator to encourage integration for the foreigners. Access to the French nationality is made easier, notably for children born from a French mother and a foreign father

During **World War II**, the “government of Vichy” suspends the naturalizations, but also decides to reassess all the naturalizations granted since 1927. 15 000 people were deprived from the nationality.

After the **liberation** of France, the law concerning nationality becomes more complex, more voluminous, and then adopts the appellation of *Code de la nationalité*.

In **1973**, the code is modified so that it takes into account the fact that most French colonies have become independent. It finally sanctions the total equality between men and women, as far as acquisition of nationality is concerned. But from then on, marriage does not lead automatically the acquisition of the French nationality. **In the 90's**, the legislator wants to make the law of nationality more meaningful. A reform is undertaken, restricting and suppressing some ways to get the French nationality.

**Very recently**, the French government has expressed a wish to add restrictions in nationality and immigration laws. It was proposed to extend the possibility of depriving a naturalized person from the French nationality in two cases: established polygamy and / or sentenced for having attempted to the life of an agent of the State authority. After discussion, the ground of polygamy has been put aside. Similarly, it is proposed to reduce the rights of immigrants in the process of being expelled.

If a person is born French, he does not need to acquire the nationality. He (or she) is French by law.

Today, there are two ways to acquire the French nationality:

- Acquisition by way of declaration to the ministry of Justice
- Acquisition by decree of the ministry of immigration, integration, national identity and development in solidarity, following the voluntary approach of the request of the person concerned.

- **The acquisition by registration:**

The main hypothesis concerns the acquisition of the French nationality by decree for the children born in France, from foreign parents, and for the spouses of French persons. This represents 95% of the cases of declaration.

### ***1. Children and French nationality***

The children born in France from foreign parents get, being within their right and automatically, the French nationality when they reach majority, on condition that they live in France where that they have lived continuously for a period of, at least, 5 years, since the age of 11.

The method of acquisition has opened since September 1<sup>st</sup> 1998, the former legal regime. In addition, it is possible for the underaged person to obtain the anticipatory French nationality. The latter can, if he or she fulfills the necessary conditions, take steps to obtain the nationality on his own from his/her sixteenth birthday and, otherwise, his/her parents can, with the assent of the underaged – being between 13 and 16 years old, proceed with the declaration in his/her name. Even though the attribution of the nationality is automatic, the young foreigner can decline, giving proofs that he/she belongs to another nationality. To do so, the latter has to do the declarations between 17 and a half and 19 years old. But the admission as a French is also possible for:

- adopted children,
- children under care,
- children taken in and brought up by French people, or by French public or private organization,
- children born in France without nationality, either their parents being unknown, stateless, or the parents' nationality not being passed on to the children.

## ***2. The French nationality acquired by marriage***

In France, marriage does not anymore provide automatically the French nationality. The foreign spouse or stateless has to fulfill certain conditions, notably to be able to prove that the community of affective and material life has not ceased since the wedding. Further, the foreign spouse can make the declaration to obtain the French nationality only after a lap of time of marriage not inferior to 4 years after the marriage. In some cases, the delay is raised to 5 years. Moreover, the foreign spouse has to be able to prove that he/she has a sufficient knowledge of the French language.

There are, nevertheless, some obstacles to the attribution of the French nationality. The case, for instance, of a foreigner who would have been sentenced to more than six years of prison without suspension of the sentence, whatever the nature of the infraction, or in the case in which the foreigner lives illegally in France, or if he/she has more than one spouse.

The collectorate or the consulate usually orders an investigation to ascertain the fulfillment of the necessary conditions. The ministry of immigration, after taking into account the results of the investigation can, if necessary, ask for an additional investigation.

The ministry of immigration can proceed to the recording of the declaration or just reject it. In this hypothesis, an appeal is open to the person who has made the declaration. The public prosecutor is allowed to raise objections faced to the recording of the declaration in such appeal.

- **The acquisition by decree :**

Any foreign person over 18 years old, having a resident permit can ask for the French nationality. It can be an application form for:

- naturalization
- reinstatement in the French nationality

The minister in charge of naturalization pays attention to the conditions of admissibility (residence, assimilation – linguistic for instance – and morality) and enjoys, otherwise, a great discretionary power to decide to grant the French nationality or not.

## ***1. Naturalization***

Naturalization is not a right granted to the foreigners; it is made by decree and comes under the discretionary decision of the administration.

The foreigner willing to get it has to fill an application form of naturalization. Some conditions are required to be naturalized in France. The applicant has to:

- live in France for 5 years, before submitting the application form ( in some cases, the delay is reduced to 2 years or cancelled)
- be legally in France
- fulfill moral conditions (good life and habits, no criminality preventing the applicant from getting the French nationality)
- give proof of the assimilation to the French community (language, rights and duties implied by the nationality),
- not to have been declared obliged to stay away from France.

The minister in charge of the naturalizations enjoys an equal discretionary power if the legal necessary conditions are fulfilled. He can refuse the application form. The foreigner is allowed to proceed to an appeal. When a decree of naturalization is pronounced, it can be withdrawn, on certain conditions.

## ***2. The reinstatement in the French nationality***

The reinstatement makes it possible for someone who has lost the French nationality to recover it. It can be done in two ways, by decree or by registration.

### ***2.1 Reinstatement by registration***

It is implied by law when the relevant legal conditions are fulfilled. Can apply, those who:

- have lost the French nationality because of a marriage with a foreigner,
- have voluntarily acquired a foreign nationality.

To do so, they have to have kept or acquired links to France (of a cultural, professional, economical, or family nature). However, there are some cases in which the applicant is automatically refused the reinstatement: for instance, an illegal stay in France, a sentence of at least 6 months of prison, whatever the nature of the offence...

### ***2.1 Reinstatement by decree***

The other foreigners, having had the french nationality by the past, can any time (even before 18 years old) apply for reinstatement. It is not a right but a discretionary decision of the administration. The applicant must live in France legally when he/she applies but also fulfill morality conditions. When the administration refuses the application for reinstatement, the foreigner can appeal. Otherwise, if reinstatement is granted, it can be withdrawn in a certain delay.

## *The effects of the acquisition of French nationality*

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The attribution of the French nationality implies some effects, in particular for the underaged children of the person who benefit from it.

### *The effects concerning the grantee's children*

When a parent is granted the French nationality, the underaged children also become French, if the legal conditions are fulfilled.

### *The francization of the names*

When the application form for naturalization of in the year following the acquisition, it is possible to proceed to an application for the francization of the names and surnames if they sound from abroad.

### *The French citizenship welcoming ceremony*

The public power decided to generalize the welcome ceremonies aiming at celebrating the acquisition of the French nationality. They are organized by the prefectures or the town councils and aim at sanctioning the «living together» on the basis of the fundamental principles of the republic liberty, equality, fraternity, secularism and democracy.

The ceremony is solemn. The administrative departments of the prefecture or the city hall proceed to the individual welcome of the participants and the collective presentation of the procedure. Then a welcoming speech is pronounced by the authority in charge of the ceremony possibly followed speeches by local elected officials to remind the symbolism of the ceremony and its significance in the legal process of naturalization. New citizens are called by name to submit their naturalization decree and, eventually, their ID card. The French ceremonial plans no declaration from the new citizens.

It is expected that certain number of symbols appears in the room, such Marianne's bust and the French flag. Listening of the national anthem, during which it is asked the audience to stand up, is also part of the ceremony. Some prefectures include the screening of a film or a slideshow on the main events of French history.

Finally, once the administrative procedure completed an informal reception is organized, to introduce friendliness, and official photographs are taken.



## **II. THE RESIDENT PERMITS FOR FOREIGNERS IN FRANCE**

### *History of immigration in France*

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France is an old country of immigration which has known different migratory waves. In the period after the war, the public powers were compelled to organize and control the immigration because of the rebuilding and the significant economic growth of the country. The migrants, mainly men, essentially come from Spain, Portugal, Morocco, and Algeria. More than half of the immigrants before 1974 come to France to work, more than a third come join their spouse or family.

From 1974, with the tailback of the economic growth, the government restricts the immigration to the grouping of the family and to specific applications coming from employers. After 1974, the family reasons become the first reason of immigration. Employment, studies and finally personal or family protection come next.

Nowadays, immigration for family reasons predominates, the numeric gap between men and women tends to reduce. Conflicts or destabilization in some States keep fueling political migrations. Since 1974, the European migrants are less than those coming from Maghreb. At the same time, the part of those coming from Asia and Sub-Saharan Africa grows significantly, reflecting a diversification of the migratory flux. The migratory trend changing, the French legislation restricted the entering conditions and those of legal stays of the foreigners in France.

### *How to be legally in France*

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#### *The principle*

Any foreigner being more than 18 years old, willing to stay in France for more than 3 months, must own a residence permit. Some international agreements can infringe the principle. This is the case, for example, for the citizens from the EEE and the Swiss citizens.

#### *1. Different categories of permits*

The legal residence permits, in France, of a foreigner are numerous even though the conditions of the obtaining are extremely strict. They are:

#### *The temporary residence permits*

Available for one year for the maximum (barring exceptions), renewable, the temporary residence permit can bear different mentions, according to the situation and the reason of the stay.

The permit can contain the following mention « wage earner » for instance if the applicant has obtained the permission to work in France or the mention « private and family life », if there are proofs of family and personal links. In some cases, the permit « private and family life » is delivered automatically. The permit called « student » can be delivered in the same way. If there is a risk of public embarrassment because of the presence, in France, of the concerned person, the residence permit may be refused.

### *The different sorts of permits*

- The residence permit « private and family life » :
  - Family grouping (Family and spouses from abroad living in France, parents of French children),
  - Spouse of a French national,
  - Young foreigners,
  - Sick foreigners
  - Conjoint de français,
  - Jeunes étrangers,
  - Etranger malade,
  - Person who is not polygamous, who do not fit into the categories above or that of family grouping, but who has in France strong family and personal links (including n the framework of a PACS)
  - A foreigner who obtained the status « stateless » or benefited from the subsidiary protection with the spouse and the children under 19 years old,
  - Foreigners who is not polygamous, for humanitarian reasons or exceptional motivations.
- Residence permit « *Visitor* »,
- Residence permit « *Student*»,
- Residence permit « *Trainee* »,
- Residence permit « *Scientifique* »,
- Residence permit « *Artist* »,
- Residence permit « *wage earner and temporary worker* »,
- Residence permit « *Commerçant, industriels et manufacturers* »,
- Residence permit « *No wage earner* »,
- Residence permit « *seasonnal worker* »,
- Residence permit « *Detached wage earner* ».

### ***3. The residence permit « Ability and talent »***

Available for 3 years renewable, the permit can be granted to the foreigner, non coming from the EEE, if he/she can significantly and enduringly participate to the economic development, that of the territory or the (intellectual, scientific, cultural, humanitarian or sportive) influence of France.

### ***The residence permit « Retired »***

Available for ten years renewable, the permit can be granted to the foreigners, not coming from the EEE or Switzerland, if they fulfill the three conditions:

- having lived in France with a residence permit,
- having established his/her usual residence abroad,
- holding a contributive board for elderly people settled in the name of a French system of National Health Service.

### ***The residence permit***

Available for 10 years renewable as a permanent permit on conditions, the permit is delivered notably because of private and familiar links in France of the applicants, their help towards France, or the protection they are granted. Some categories of persons can get it automatically.

## ***2. The right of asylum***

Asylum is the protection granted by France to a foreigner who cannot, against persecution, enjoy that of his/her own country. The current legal framework of asylum results from a long evolution, marked by the adoption of universal tool: The Convention of Geneva, 28<sup>th</sup> July 1951 concerning the status of the refugees.

In the European Union, the issues concerning asylum are part of a harmonization process of the national legislations. The French legislation on this echoes the provisions of the international tools but also meets the constitutional demands, precisely defining who can and how to ask for asylum.

A specific institution was created in France, and is the only one able to instruct the asylum requests. This is the French Office for the protection of the refugees and the stateless. Its decisions are subject to the scrutiny of a special administrative jurisdiction: The national Court for the right of asylum. The admitted persons to the asylum are awarded by the French authorities, according to their case, similar rights to that of the most favored foreigners, or even the nationals.

## Figures

### The immigrants according to their birth country

	Immigrants in 1999	Immigrants on January 1 <sup>st</sup> 2006
Algeria	576 000	691 361
Marocco	521 000	633 736
Portugal	570 000	569 285
Italy	381 000	329 528
Spain	176 000	269 308
Turkey	202 000	228 530
Tunisia	317 000	226 684
United Kingdom	125 000	133 522
Germany	75 000	128 429
Belgium	93 000	102 477
Poland	54 000	90 336
Viêt-Nam	99 000	73 223
Senegal	72 000	70 867
China	30 000	68 786
Serbia	—	65 481
Ivory Coast	—	54 860
Mali	—	54 243
Cameroun	—	52 114
Cambodge	—	51 290
Switzerland	—	51 067
Other countries	—	1 095 240
<b>Together</b>	—	<b>5 040 367</b>

### Foreign populations and immigrants

%

	2006	
	Foreigners	Immigrants
Part of men	52	49
Part of the population being :		
Less than 15 years	17	5
15 à 24 years	10	9
25 à 54 years	49	55
55 years or more	24	31
<b>Number (in million)</b>	3 648	5 137
<b>Part in the whole population</b>	5,8	8,1

Champ : France.

Source : Insee, RP 2006 principal exploitation.

## THE IMMIGRATION AND NATIONALITY ISSUES IN BHUTAN

### *History*

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Bhutan is experiencing an emigration from Nepal since the early 20<sup>th</sup> century, mainly settled in the southern part of the country. Some range of Nepalese population, very mobile and for whom the notion of boundary has less meaning, migrates in the direction of Bhutan, initially due to the shortage of farmlands, then due to the famines which affected Nepal and the 19th century political instability. Nowadays these migrations seem mainly caused by unemployment.

The first Nepalese immigrants in Bhutan were workers recruited to undertake at first the deforestation and, later, the construction of the road network. With most Bhutanese working self-employed as farmers, Bhutan lacked a ready supply of workers willing to take up the major infrastructure projects. This led eventually to the large-scale import of skilled and unskilled construction workers from India. Many of them settled in Bhutan permanently. In the 1950s, the numbers of new immigrants had swollen. Gradually, a society built on the model of the Nepalese's one was established in southern Bhutan. Bhutan finds difficult to quantify its immigration because while certain Nepalese have settled in Bhutan, others continue to travel to India and Nepal.

**By the 1980s**, the government has become acutely conscious not just of widespread illegal immigration of people of Nepali origin into Bhutan, but also of the lack of integration of a range of immigrants into the cultural mainstream of the country. Most of the immigrants knew very little of the culture of Bhutan and could not understand the local languages including Dzongkha. The first nationality code was promulgated in 1958. Initially in a liberal spirit, the legislation slowly restricted the possibility to obtain the Bhutanese nationality.

**In 1985**, the government passed a new *Citizenship Act* which clarified and attempted to enforce the 1958 *Citizenship Act* to control the flood of immigration.

From 1988 the government conducted its first real census exercise. Matters reached a crisis level in 1990.

**Since late 90's**, when Bhutan introduced strict citizenship laws, a number of Nepali-speaking people have left or were forcibly removed from southern Bhutan to Nepal.

### *Acquisition of the citizenship*

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The Bhutan Citizenship Act, which came into force from the 10<sup>th</sup> June 1985, stipulates 3 ways to acquire the Bhutanese's citizenship. The provisions of this act are as follows:

**Citizenship by birth:** a person whose parents are both citizens of Bhutan shall be deemed to be a citizen of Bhutan by birth

**Citizenship by registration:** a person permanently domiciled in Bhutan on or before 31st December, 1958, and, whose name is registered in the census register maintained by the Ministry of Home Affairs shall be deemed to be a citizen of Bhutan by registration.

**Citizenship by naturalization:** to be eligible for naturalization, the person must fulfill some conditions:

- The person must have attained the age of 21 years, and 15 years in the case of a person either of whose parents is a citizen of Bhutan;
- The person must be mentally sound;
- The person must have resided in Bhutan for 15 years in the case of Government employees and also in the case of applicants, whose either of his parents are a citizen of Bhutan, and 20 years in all other cases.

This period of residence must be registered in the records of the Department of Immigration and Census;

- Conditions of language and cultural knowledge (the person must be able to speak, read and write Dzongkha proficiently, must have good knowledge of the culture, customs, traditions and history of Bhutan);
- Conditions of morality (the person must have good moral character and should not have any record of imprisonment for criminal offences in Bhutan or elsewhere, must have no record of having spoken or acted against the King, Country and People of Bhutan in any manner whatsoever).

To seek naturalization, the applicant must send an application form to the Ministry of Home Affairs. Then, the Ministry will take necessary steps to check all the particulars contained in the application. It will also conduct written and oral tests to assess proficiency in Dzongkha and knowledge of the culture, customs, traditions and history of Bhutan.

The decision of the Ministry of Home Affairs on the question of eligibility for naturalization shall be final and binding. The Royal Government of Bhutan also reserves the right to reject any application for naturalization without assigning any reason. When the citizenship is allowed, the person must take a solemn Oath of Allegiance to the King, Country and People of Bhutan according to the prescribed Form.

### *Termination of Citizenship*

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The Bhutan legislation contains a number of provisions whereby a person is deemed to have voluntarily surrendered his nationality:

- Any citizen of Bhutan who acquires the citizenship of another country shall cease to be a citizen of Bhutan. The wife/husband and children of that person if they were Bhutanese citizens shall have the right to remain as citizens of Bhutan provided they are permanently domiciled in Bhutan and are registered annually in the Citizenship Register maintained by the Ministry of Home Affairs.
- Any citizen of Bhutan who has acquired citizenship by naturalization may be deprived of citizenship at any time if it is found that naturalization had been obtained by means of fraud, false representation or the concealment of any material fact.
- Any citizen of Bhutan who has acquired citizenship by naturalization may be deprived of citizenship at any time if that person has shown by act or speech to be disloyal in any manner whatsoever to the King, Country and People of Bhutan.
- If both the parents are Bhutanese and in case of the children leaving the Country of their own accord, without the knowledge of the Royal government of Bhutan and their names are also not recorded in the Citizenship register maintained in the Ministry of Home Affairs, then they are not considered as citizens of Bhutan.
- Any citizen of Bhutan who has been deprived of Bhutanese citizenship must dispose of all immovable property in Bhutan within one year, failing which, the immovable property shall be confiscated by the Ministry of Home Affairs on payment of fair and reasonable compensation.

The question of expulsion and the right to return are keys to the situation of the people in the refugee camps in eastern Nepal and intimately linked to the issues of nationality. In the case of the Nepali-speaking population of southern Bhutan currently residing in the refugee camps in Nepal, deprivation of nationality has been held to be a consequence of their having left the country and therefore a possible justification for denying their right to return.

### *Consequences of the marriage with a Bhutanese*

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The marriage with a Bhutanese does not provide the Bhutanese citizenship. To acquire citizenship a non-Bhutanese spouse must abide by the traditional customs and the citizenship Act. But the Marriage Act stipulates some consequences for the Bhutanese who get married with a non-Bhutanese person. For example:

- Promotions shall not be granted to a Bhutanese citizen, working under the Government of Bhutan, married to a non-Bhutanese
- A Bhutanese citizen married to a non-Bhutanese shall not be employed in the national defense department or in the Ministry of Foreign Affairs
- A Bhutanese married to a non-Bhutanese shall not be entitled to education and training abroad under the government funding

### *Resident permits*

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Resident permits are allowed by the *Naturalization and Resident Permit Division* of the *Department of immigration*.

**Work permit:** a work permit is issued to all foreigner employed in Bhutan under Government, corporate, private and international organizations.

**Residence Permit (non-Bhutanese) identity card/Stay permit:** this permit is issued to all foreigners legally married to Bhutanese after 10th June 1985 and their legitimate children.

**Entry/Endorsement Permit:** the entry/endorsement permits are issued at the entry points in Phuentsholing, Gelephu, S/Jongkhkar, Samtse and Paro airport to foreign nationals while entering Bhutan, especially Indian nationals.

#### **Restricted Area Permit**

A restricted area permit is issued to those foreigners wishing to visit the restricted areas of the country and also those foreign workers posted in such areas to enable them work there.

**Down/Return Permit:** this permit is issued to all foreign nationals holding work permit when they leave for home town after completion of work or under urgent circumstances. The concerned employer, Government/Corporate or private sectors in Thimphu needs to surrender the original work permit issued to foreign workers employed under each to the immigration headquarter for issuance of down/return permit. While the work permit in respect of foreign workers in other dzongkhags will have to be surrendered at the point of exit as and when the workers leaves for home town after the completion of work or under urgent circumstances.



## DHARMA AND LAW: A SPECIAL INSIGHT

### *Dharma as the teaching and methods of Buddha*

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The teaching is based on four fundamentals known as the Four Noble Truths:

1. **Suffering:** being in contact with what causes aversion and / or being separated from what causes a desire,
2. **The cause of suffering:** ignorance is the first cause from which ensue eleven other causes
3. **The cessation of suffering:** destruction of ignorance ( which removes the desire and so on )
4. **The path to the cessation of suffering:** eight paths have been identified, known as the noble eightfold path: the right view, the right intention, right speech, right action, right livelihood, right effort, right mindfulness and right concentration.

### *Dharma and Law: some practical applications*

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The four first paths (view, intention, speech and action) can concern our study.

#### *1. The right view*

The right view implies a perfect understanding of the three following elements:

- Impermanence of all aggregates,
- The suffering inherent to all aggregates
- The absence of *ego* in all aggregates.

The issue of population fluctuation is socially a sensitive one. If well managed it is factor of social peace. Otherwise, all the ingredients of social instability are gathered: fear of those perceived as different, or susceptible to deprive one from his welfare (economical, or social), suspicion nourished by this fear, and so on. This is why the legal issues are crucial

Law, as the expression of the political will of a country should, according to dharma teaching, be an instrument against ignorance. As such, **it should not be the mere expression of the reactions of aversion or desire** of a part of the population or of the governing body.

Legal provisions resulting from such mere reactions are deemed to provoke more suffering, although those who promote them believe – or try to make others believe – that they are aimed to suppress suffering.

**An example** of such law can be found in France during World War II. The government called “of Vichy”, to please the German Nazi invader, voted discriminatory and racist laws depriving a segment of the population of its nationality and / or citizen’s rights. However, these laws were depicted as a mean to suppress the supposed suffering of the majority of the people described as Aryans who were supposedly experiencing an aversion towards the excluded minority.

These laws were obviously contrary to dharma as anyone would now agree. However, nowadays in France, some legal propositions of the government about deprivation of the French nationality or the forcible expulsion of some minorities are put forward in the political debate with a focus on the supposed reactions of aversions of the majority.

The contribution of dharma could be to replace the social and political debate under the light of the right view and consequently, fight ignorance, the real cause of suffering. Dharma teachings put in evidence that a perfect understanding of impermanence is necessary to acquire **the right view, first of the noble eightfold path.**

## ***2. The right intention***

First of all, a quick review of the legal provisions in the two considered countries shows us the obvious impermanence of law itself. Should a country need manpower? All are welcome. Should it experience economical recession? Go back to your country. It is a fact. Up to what point is it contrary to dharma?

Here comes **the second of the noble eightfold path: the right intention.**

To ensure the stability of the country, governance should take the necessary steps in harmony with dharma principles. The intention must be right. It should not be based on ignorance and guided by aversion / desire reactions.

Therefore the exclusion of a part of the population should not be the intention. Restrictions if necessary should only result from an intention of preservation.

**For instance**, the legal provisions issued from the 1973 laws in France specifying that a foreigner marrying a French national would no more acquire the French nationality automatically was based on noting the fact that the cultural identity of the country had massively changed during the past decade and the government wished that those who acquired the French nationality expressed the clear intention of becoming French and get more integrated to the country as for example the ability of speaking the French language.

The same law for example provided also that equality between men and women should be ensured and that nationality can be transmitted to children equally.

### *3. The right speech*

**The third of the noble eightfold path is the right speech.** This point is as important as the previous one. Whatever new law is prepared, proposed to the citizens or voted, the official and public speech about this law is crucial. This is even truer in our modern society where Medias act as an amplifier. They can amplify the best or the worse. If the speech of the leaders is not respectful of dharma, the social impact of the coming or past legal provisions can be disastrous.

Social peace should remain in mind at each and every word pronounced in this ultra sensitive field.

**A practical application** is being experienced in France. Approximately 1000 migrants called “Roms”, coming mainly from Romania and Bulgaria have been forcibly expelled in August 2010. It has created a major reaction in the society as a whole. The question of a violation of the principles of the Constitution and the European Convention of Human Rights has been put forward. The debate is still pending.

In fact the starting point of the official communication about this decision is an act of violence attributed to persons belonging to this community. Therefore, confusion has been created in public opinion between acts of violence, and presence of Roms in the country. The Committee for the elimination of the racial discrimination of the UNO stigmatized French government for generating xenophobic thoughts by doing so.

The real legal debate could be examined with proper serenity if the speech had been right.

#### *4. The right action*

**The fourth of the noble eightfold path is the right action.** Whatever good – or fairly good - legal disposition are adopted, the practical enforcing dispositions should be carefully shaped by the legislators. The concrete actions should not create more suffering.

To illustrate this point, we could look at the policy of eviction of illegal immigrants in France. Legal provisions provide that, under certain rules, illegal immigrants can be expelled from France. When it comes to the action: we can note that instructions are given by the executive body to achieve a quota of evictions each year, for example a target of a minimum of 25.000 has been fixed in 2008. From this supplementary requirement, a deviance is introduced in the action. The intention of the executing police services is from then on, biased. Instead of considering himself as a servant implementing legal provisions, the policeman is personally put under a professional pressure of productivity as if he was in an economical field.

#### **CONCLUSION**

Though the absence of *ego* in all aggregates is a too enlightened view to be transcribed in a legal frame...

The interesting experience since the creation of Europe is the progressive disappearance of the boundaries. Today, Europe is composed of 27 different states. The total number of Europeans is estimated around 500 millions. There are 736 Member of Parliament. All the major religions coexist. Various committees prepare the directives that will be implemented in all the States. It is a real common political, economical and social power.

It is a real effort for the population of the different countries to slowly accept to experience a wider, yet inclusive, conscience of the boundaries, whether cultural or religious. In consideration of the major conflicts that Europe experienced in the past century, and of the deep cultural differences between States, the intention of common livelihood and free movement of persons and goods within Europe is worth being studied, as it is one of the main challenges of our multicultural, multi-ethnic, multi-religious modern fore coming world.

The dharma teaching tells us that the intention is the second path, the first one being the right view reminding us to always remember the impermanence of all aggregates. With this wisdom in mind, let us try to apply the simple – though difficult - method of love and compassion for all sensitive living beings.