

Understanding the Legal Identity of Tibetan Refugees in Kalimpong

Abstract:

Tibetans have been living in Kalimpong before the Chinese occupation of Tibet but the mass influx began in 1959 with the flight of the Dalai Lama from Tibet to India. After living in Kalimpong for about three or more generations, Tibetans have been discarding their Registration Certificate and began to opt for Indian citizenship for various reasons, in order to get better future opportunities and political gains. At one hand they advocate for the freedom of Tibet and on the other they retain the citizenship card which is both confusing and vague.

Keywords: Tibetan refugees, Legal Status, Indian citizenship, identity.

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Constructing political and legal identity of an individual in the nation-state is fundamental in distinguishing the national community from the others. Political identity is an important marker to denote the membership of any national political entity. The membership of any polity makes the person liable to certain reservations and rights granted to them by the state. It also shapes the legal commitments of a citizen binding the state. So it is imperative for any individual to get associated with it. Tibetans in exile are categorized as '*refugees*'. The term '*Refugee*' is used to identify them as different from the rest of the native population. It justifies their '*identity*': identity of a person in exile. It becomes very important for the host country to categorize them for security reasons.

Tibetans have been living in India as refugees particularly after the year 1959. In case of Tibetan refugees, negotiating political identity is a process of constructed practices. To quote Dibyesh Anand; It involves the conscious deployment of language, culture and traditional religious practices. Here, identity can be perceived as something that is constructed politically. It is a discourse which is practiced as "Tibetans" outside of their homeland. There are several factors that influence and shape '*Tibetanness*', which include their refugee status, space-time projections of homeland, the overriding need of the preservation of their culture, the western audience's preconceived notions of Tibet and the Tibetans, the community's self

perception, the personality of the Dalai Lama, the attitude of the host government and most importantly- the desire to project a sense of continuity in a changing external environment. (Anand, 2010)

Tibetan refugees have been living in India for about three or four generations now. They had abandoned their homeland 'Tibet' prior to 1959 and entered India to seek refuge. The Tibetan spiritual leader His Holiness, the Dalai Lama followed by hundreds of his fellow Tibetans were granted asylum by the Indian government. Within a short period of time, the Indian government rehabilitated them by providing land on lease to establish settlements in different parts of the Indian states. The Indian government also permitted them to establish an autonomous Tibetan government, also known as the Central Tibetan Administration in Himachal Pradesh which till date functions as the representative government of Tibetans all over the globe. It works with the sole aim of preserving Tibetan identity, culture and religion. It runs on democratic norms which is significant in maintaining their nationalism in exile. The Dalai Lama is considered as a symbolic head of the community in exile after his decision to step down as the political head of Tibet. After living in a foreign land for about sixty years, maintaining their national identity without any dilution is beyond their control and obligation. The influences of the host population, modernity and the assimilation with the mainstream politics and culture having lived outside their own country for decades cannot be overlooked.

Tibetan refugees in India are in an indeterminate state and their existence is in a great limbo. This is because India is not party to the 1951 UNHCR Convention relating to the Status of Refugees nor its 1967 Protocol regarding the same. It has not adopted the national legislation for the protection of the refugees. Therefore, Tibetan refugees do not qualify as '*refugees*' in the legal sense so the government treats its refugee population on an *ad hoc* basis. Two legal statutes rule the legal status of the undocumented Tibetans: the Foreigners Act of 1946 and the Registration of Foreigners Act of 1939. This means that Tibetans are simply foreigners, which means that the government will regulate the movement of all foreigners and they are required to report to the Indian authorities. It is also bound by customary international legal principle of non- refoulement which prohibits the return of a refugee to any place where his or her life or freedom would be in peril. To reside legally in India, it is mandatory for the Tibetans to maintain a Registration Certificate (RC) which is required to be renewed every six months or at least once in a year. This RC authorizes them to reside in a particular locality or settlement camps without any harassment from the government administration and also permits them to travel domestically. Besides this, it is mandatory for the Tibetans to retain their RC to work and own property in India. It also makes them eligible to enjoy other basic civil liberties. For them this registration card is the identity certificate which has multiple uses. They should have this Identity Certificates (IC) to travel to a few foreign countries like the United States, Switzerland and other states of Europe which is used in lieu of a passport. Meanwhile, Tibetans have to present this certificate bearing "No objection to return to India" (NORI) to re-enter India. (Centre T. j., 2011)

There is also a Special Entry Permit (SEP) which is a joint initiative of the Indian government and the Central Tibetan Administration which was started in 2003. This SEP enables Tibetans to enter India via Nepal. It ensures their safe transit from Nepal to India and permits them to stay in India only for stipulated period of time after their arrival. There are different criteria for the Tibetans on the basis of which this permit is issued. The time permit is allotted depending upon the reason of their visit i.e. pilgrimage, education and other specified affairs. For a pilgrimage the SEP allows the bearer to remain in India for three months and could be extended further, and are restricted to acquire an RC or any other unambiguous document in India which may prolong their stay here. Tibetans entering India for education and other reasons may remain for a longer period of time and are permissible to obtain an RC. While the 'other' category SEP are reserved for special cases like former political prisoners of particular significance to the CTA. (Centre T. j., 2011)

The debate over citizenship is important when we discuss about the legal regime for Tibetan refugees, because the law determines who is to be considered an Indian citizen, and on what basis. In part III of The Indian Constitution, there are certain criteria which are required of every person to be fulfilled in order to be eligible for Indian citizenship, applicable both for its citizens and as well as for foreigners. However, an Indian citizenship can be acquired through birth, registration, naturalization and incorporation of territory. The citizenship encompasses the relevant articles in the constitution and the conditions under which refugees may be eligible for applying for Indian citizenship.

The Indian Constitution on The Citizenship Act, Part II, deals with the citizenship of India at the commencement of the constitution. Section 3 (amended) governs citizenship by birth; every person born in India-

- (a) Between January 26 1950, and July 1st 1987, or
- (b) After July 1st 1987, but before the entry into force of the citizenship Act of 2003, if one of the individual's parent is a citizen of India at the time of his or her birth; or
- (c) On and after the entry into force of the citizenship Act of 2003, if both the parents are citizens of India, if one parent is a citizen of India and other is not an illegal migrant, shall be a citizen of India by birth.

Section 4, as amended, governs citizenship by descent; it provides that every person born outside of India

- (a) Between January 26, 1950, and December 10, 1992, if their father is an Indian citizen at the time of their birth, or
- (b) On and after December 10, 1992, if either parent is a citizen of India.

A person is not entitled to citizenship unless his or her birth had been registered at an Indian consulate or unless either parents which is available to:

- (a) persons of Indian origin,
- (b) person married to citizens of India

(c) holds the government service at the time of the birth. Section 5, provided citizenship by registration, minor children of citizens

(d) adult citizens of India, and

(e) persons registered as overseas citizens of India for five years who have resided in India for the previous two years.

Section 6, provides citizenship by naturalization. It requires that the applicant:

(a) not an illegal migrant, which is defined as a foreigner who entered into India without valid travel documents,

(b) denounce the citizenship of any other country.

(c) Reside in India for the preceding twelve months,

(d) have resided in India for nine of the twelve years preceding that twelve month period,

(e) have a good character.

(f) Speaks one language listed in Scheduled 8 of the constitution, and

(g) Intend to reside in India.

So, by going through all the conditions under which a person could qualify to be Indian citizens, a Tibetan refugee qualifies to acquire Indian citizenship under section 3 by birth and section 6 by naturalization. However, there is a great dilemma or confusion regarding the citizenship regime of Tibetan refugees in India. According to CTA reports, Tibetans are required to obtain and submit a “no objection” certificate from CTA as the custodian and representative of Tibetans in exile and the CTA’s official position is that it will not withhold its approval if a Tibetan wishes to pursue Indian citizenship (Centre T. j., 2011). The adaptations of Indian citizenship ultimately depend upon individual choice. Thus, majority of Tibetans wish to remain refugees and many others acquire Indian citizenship depending upon their situation and the need.

Tibetan Refugees in Kalimpong:

Kalimpong is a small town situated in the northern part of West Bengal. In the mid 19th century, Kalimpong was ruled in succession by the Sikkimese and the Bhutanese kingdoms. Later in 1865, it became a part of Darjeeling district; originally being a part of Sikkim. Following the treaty of Sinchula, Kalimpong became a part of The British East India Company and then it was finally incorporated into Darjeeling (Placeholder1). Meanwhile Kalimpong became one of the two districts of Darjeeling. Kalimpong had proximity to Nathula and Jeleppla pass, offshoots of the ancient Silk route which was an important trading out spot in the trade of fur, wool, borax, salt, musk and food grains between India and Tibet. This trade relation between the two countries continued till 1962. Following the Indo-China War the border was sealed. The Tibetans had started coming up to Kalimpong along with the ancient trade between India and Tibet (Datta, Heritage of Tibetans Culture among the people of Darjeeling, 2006) Tibetans are one of the oldest migrants in

Kalimpong. Tibetans have shared their cultural, religious and trade relation with Kalimpong since time immemorial. It is because of this reason Kalimpong had an immense impact on the religious and culture practices of the local people and also due to the presence of a profound number of Tibetans there.

In Kalimpong, there are a few families who had migrated to Kalimpong much before the Tibetan occupation by China. Others have settled after the 1960s. Almost every Tibetan there possesses Indian citizenship. They consider themselves Indians because they were born and brought up there. They regard themselves as citizens of India as much as others. During my field survey, I discovered that they had given up their refugee status and taken up the Indian citizenship so that they could obtain every facility allotted by the Indian government to its citizens. They cast their votes in The Indian electoral polls and participate in local politics too. They are active members of regional parties and support the Gorkhaland movements. At the same time, they also cast their vote for the CTA being a Tibetan national. Tibetans in Kalimpong are aware of the political gains associated with being an Indian national. It was learned that discarding their refugee status and taking up citizenship is a gain for them both politically and socially. Being Indians, they do not have to deal with unnecessary harassment from the administration like renewing their refugee registration card and unnecessary hassles while travelling to other places. Otherwise, they have to go through several rules and regulations. So in order to escape such trouble, people opt for Indian citizenship. In fact, Tibetans in Kalimpong are highly mobilized politically.

If they retain The Tibetan Registration Card (RC) card they are required to renew the card every six months. Besides that, they are not allowed to travel freely. They constantly have to report to Indian government offices about their whereabouts and that is the main reason why they basically opt for Indian citizenship card. For them, being an Indian citizen means leading a hassle-free life. Besides, their children get major government provided facilities and reservations in their education and employment sectors like any other citizen of the country, so Tibetan refugees nowadays prefer Indian citizenship. Besides this, they are liable to many other government facilities in their daily lives which make their life easy.

Even if they hardly pass the tenth standard, they will be eligible for The Tibetan border police or can get work in private sectors in big cities. Basically it is an easy way to avoid dealing with unemployment problems among the youth. The better future prospect for their children is the most important factor for them at the moment.

There are many Tibetans in Kalimpong belonging to the second generation of Tibetan refugees who have become respected professionals like doctors, teachers and engineers and a few in Indian army and other governmental jobs. This has been possible because of the citizenship card and government benefits. It is to be noted that in Darjeeling there are many Scheduled Tribes, Bhutias being the one of them. So in Darjeeling, it is difficult to distinguish between the Bhutias and Tibetans. Both the community coincides

with the same surname- “Bhutia”. They fall under the schedule tribes category in the government schemes of reservation. When Tibetans get enrolled in schools, they automatically come under the schedule tribe category becoming legally eligible for all the government facilities guaranteed to them by the reservation schemes of the government. Not only in schools, they benefit from the quota system relating to all government schemes right from education to employment. So it is natural for them to get tempted in obtaining The Indian citizenship.

Tibetans in Kalimpong are of the opinion that possessing the Indian citizenship card means to be at home. They have been living in the place since their birth so naturally this is their first home. Tibet as their original homeland is an oblivion. Tibetans in Kalimpong belong to the third generation now. The memoirs of their ancestors are just horrific accounts of oppression. They have been hearing about their homeland and the bitter experiences of the Tibetan flight to India from their grandparents. They do have curiosity and questions regarding the political and social conditions of Tibet but at the same time they feel at home here. They have assimilated in every manner in the local societies and life in exile. So it does not make any difference to them living in a foreign land. It is the older generation that has yet to give up hope to return back to Tibet. There are few individuals in Kalimpong who escaped the Chinese prosecution. They still have bitter memories of their place and the circumstances under which they were compelled to flee from their homeland leaving back their family members and properties. Still they dream of going back to their place once before they die.

It is note-worthy that the old Tibetans have been successful in transferring their religious-cultural lineage to their succeeding generation. Tibetan life revolves around religion and in exile, practicing it is also presumed as their way of expressing their nationalism. Though Tibetans have been negotiating with their political identity in the place of their refuge, yet it cannot be denied that they have strong faith in their religion and culture. They are very keen in preserving it. There are few Tibetans among the youth who aspire to visit and see their motherland but they are not sure whether they will stay there permanently or not. It would not be easy to start a new life in a new place. They have to start their life from the beginning which would not be simple, as yet again, the place would be a foreign land to them.

In spite of being Indian citizens legally, Tibetans in Kalimpong have well functioning organizations like Tibetan Women Organization while the males have three organizations named as U-Tsang organization, Do- Toe and other one is Amdo. All these organization perform social work among all communities and also they take active part in Tibet’s independence programmes and organizes protest marches in the town against human rights violation movements or organizes rallies occasionally for the autonomy of Tibet and the atrocities rendered upon Tibetans in Tibet. But in recent years, these activities have become rare. The reason for this is because everyone nowadays is busy in their own life struggles and they do not have time for such activities. The Tibetans feel that The Government of India could do much in negotiating with China

for Tibet's autonomy. They have lots of expectations from the government. But at the same time they feel that they are leading a happy and content life in India. They are not sure about the future about the Tibet or what will happen after the passing way of The Dalai Lama, but they are deeply thankful to the Indian government for their warm hospitality and peaceful life in India.

Here we can observe that at in one hand, Tibetans claim that they are refugees and they dream of going back to Tibet. They wanted China to grant them autonomy of their homeland and for this they look upon The Indian government for settlement. On the other hand, they hold The Indian Citizenship card for better opportunities. This makes their struggle for autonomy of Tibet confusing. Survival has become their primary goal as they see no hope in The freedom struggle of Tibet.

It has been noted that Tibetans have been offered chance to participate in electoral process by the state government of their residing place but this created a confusion and contradiction among the Tibetans in India. The Central Tibetan Administration has been encouraging the exiled Tibetans to maintain their Tibetan nationalism and citizenship at any cost. It has been keen in preserving its culture and tradition intact from the very beginning. But at the same time, it is left upon the people for self appraisal. It is a matter of choice for them to decide their future. Tibetans can decide to forgo the political benefits granted to them by the Indian government or remain as genuine citizens of Tibet. While the Tibetan government highly encourages them to remain as "Tibetan Refugee" it is as "affirmed as patriotism in order to emphasis the desire of returning to Tibet. The CTA vows to get autonomy of its homeland and hopes to return back to Tibet. So it strongly recommends it citizens to maintain its 'Refugee Identity' as it a key mechanism to determine the Tibetan attribute. It affirms to return back to its original country if and when it gets autonomy.

In summarizing, the issue of political and legal identities of Tibetans involves a complex nexus of relationship between the Central Tibetan Administration and it fellow Tibetans. Political identities are central to the CTA for unifying its citizens and creating nationalism with a hope of returning home. Well, at the same time it is also impetus for the Tibetans to negotiate with their legal status for defining their life security till they return back home which is indecisive.

References:

- Anand, D. (2000). (Re)Imagining Nationalism: Tibetan Diaspora: identities, nationalism and diaspora: some conceptual clarification. *Contemporary South Asia* , 271-278.
- Ananthachari. (2001). Refugees in India: Legal Framework, law enforcement and security. *ISIL Yearbook of International Humanitarian and Refugee law*.
- Basu, Sudeep. (2018). *In Diasporic Land: Tibetan Refugees and Their Transformation since the Exods*. Orient Blackswan pvt. Delhi.

Centre, T. J. (2001). *Tibet's Stateless Nationals II Tibetans Refugees in India*. Oakland, USA: 440 Grand Avenue, Suite 425.

Centre, T. J. (2011). *Tibet's Stateless Nationals II. Tibetans Refugees in India*. oakland.USA: Tibet Justice Centre.

Centre, T. J. (2016). *Tibets's Stateless Nationals III. The Status of Tibetans Refugees in India*.
www.tibetjustice.org

Chimmi, B.S. (2003) 'Status of refugees in India: Strategic ambiguity' in (Samaddar, Ranbir (ed), *Refugees and the State: Practices of asylum and care in India, 1947-2000*)

Datta, K. (june 2006). Heritage of Tibetan Culture among the people of Darjeeling Hills. *Social Change Vol.36 no.2* , 160-172.

Datta, K. and Chakraborty, R. (2001) Freedom in exile: the Tibetan refugees of India in pursuit of rights and identity; Roy, Sanjay(Ed) *Refugees and Human Rights*. Jaipur: Rawat publication. 2001

Forbes., Ann., Armbrecht., (1989) Settlement in Hope,;An account of Tibetan Refugee in Nepal, Transcript printing company, Peterborough, Cambridge.

Saklani, G. (1984) *The Uprooted Tibetans in India, A sociological study of Continuity and Change*. New Delhi: Cosmo Publication.

Subba, T.B,(1990) *Flight and Adaptation; Tibetan Refugees in Darjeeling- Sikkim Himalaya*, Library and Archives, Dharamsala, New Delhi.

Schwartz, R. D, (1996) *Circle of Protest: Political Ritual in the Tibetan Uprising*. Delhi; Motilal Banarasidass.

Stephine., Roemer., (2008) *The Tibetan Government in Exile- Politics at Large*, Routledge, Park square Milton Oxam.