

Refugee Law in India: An Analytical Study on Tibetan Refugees

G. Sanjay Bashiam

Student,

Saveetha School of Law, Chennai, Tamil Nadu.

Received Sept. 30, 2017

Accepted Nov. 12, 2017

ABSTRACT

There is a high rise in the influx of Refugees in India. Tibetan Refugees fled from Tibet in fear of prosecution from the Chinese. Tibet's population consist of a majority of Buddhist priests. The history of Tibet proves Tibet never belonging to China in reality. But today China claims Tibet as their territory which has been recognized by the British. Due to the revolt of these Tibetans against the Chinese accusations many fled Tibet where today these Tibetans who fled Tibet has formed a Government in Exile in the Indian Territory known as the Central Tibetan Administration. These Tibetans are considered as guests in India and are provided with a lot of help by the Indian Government. Indian not being under the signatory of the 1951 convention on Refugees and its 1967 protocol does not have much international significance of Tibetan Refugees settled in India. The problems faced by these Tibetans would be observed and discussed in a short manner.

KEYWORDS: *Refugees, Tibetans, Non-refoulment, A.D., Status, Protocol.*

INTRODUCTION:

There are a high number of Refugees influxes in India. India consists of Chakma Refugees from Bangladesh, Nepal Refugees, Tibetan Refugees, Chins and Rohingya Refugees from Malaysia, Sri Lankan Refugees. India is not in signatory to the 1951 convention on Refugee and its 1967 protocol. In this paper we will be concentrating on Tibetan Refugees. Why the Tibetan Refugees have fled their country. Their status in India will be discussed as well. Tibetan Refugees are considered as guests in India and are treated as foreigners. These Tibetans are provided with documents such as Registration Certificates, Identification Certificates and Birth Certificates. How far they have benefited by these is still yet to be known. India without a Refugee convention is being a great problem, India needs a Refugee Law in order to control the activities of refugees in India. Ignorance of this matter is not a positive way to deal with things in India. We are observing many cases where the rights of these refugees are being violated and are facing hardship living their lives. Tibetan refugees have fled due to fear from prosecution and if they are arrested and deported back to Tibet they will be considered as criminals in China which can lead to the loss of their life. Due to lack in proper employment Tibetans find it hard to survive. The Indian Government has provided the Tibetan people to acquire Indian Citizenship but the people of Tibet have rejected this offer as they believe that their motto to form an exile Government and fight for Independence would be valueless.

HISTORY OF TIBET IN RELATION WITH CHINA AND MONGOLIA:

Tibet's relation with China:

It is difficult for India to decide on what exactly to do with the Tibetan Refugees in India. Whether to turn them into Indian Citizens or deport them back to their nation. Either one has to be decided as keeping them as a Refugee in India is violating their Human Rights. Before the decision is made it is important to know the history of Tibet. As China claims that Tibet was under the rule of China since the 8th century and in the 12th Century under the Yuan Dynasty. In order to analyse the truth behind these questions the History of Tibet has to be studied along with its relation with the Mongolian and the Chinese empire.¹¹

During 641 A.D. the Tibetan emperor Songtsen Gampo was married to the Chinese Tang Imperial Princess Wen Cheng in order to make an alliance with the Chinese. China claims that since the wedding Tibet had remained a part of China. Before the alliance with China, Songtsen Gampo made a similar alliance with Nepal and in order to form the alliance the Tibetan emperor married Princess Bhrikuti Devi of Nepal during 639 A.D. Both the Foreign consorts played a crucial role in bringing in the spiritual practise of Buddhism in Tibet. Similarly, Songtsen Gampo had native wives or consorts namely, Pogong Mongza Tricham from Mong clan, Minayakza from Western Xia, a noble woman from Zhangzung.¹² Amongst all the consorts or wives the superior or the highest ranked was Pogong Mongza Tricham also known as 'Mongza'.

¹¹Emblems of Empire: Selections from the Mactaggart Art Collection, by John E. Vollmer, Jacqueline Simcox, p154

¹²Beckwith 1987, p. 17

According to the norms during that period a senior bride was considered with greater respect than the junior brides. If China has all the rights to claim Tibet under their rule regarding the status of marriage of the Tibetan emperor, even Nepal can claim Tibet as the alliance and the marriage of the Tibetan emperor had occurred first with the Nepal Princess who is considered more superior to the Chinese Princess. Similarly we cannot ignore the native consorts of Songtsen Gampo where amongst all his wives, he considered Mongza to be the most Superior or the senior one.¹³

Songtsen Gampo died in 650 A.D. and so did the alliance with China. The relation between Tibet and China were not at good terms where lots of war was fought between them. Until 821 A.D. under the reign of Ralpacan, Tibet and China agreed to make a peace treaty known as 'the Sino-Tibetan treaty'. A bilingual account of this treaty was marked on a stone pillar which was placed standing outside the Jokhang temple in Lhasa as well as in the capital of China.¹⁴

The treaty solemnly pledges as:

"Tibet and China shall guard the present border and the territory over which they each hold sway. All to the east of the present boundary is the domain of Great China. All to the west is totally the domain of Great Tibet. Tibetans shall be happy in the land of Tibet, Chinese shall be happy in the land of China."¹⁵

The rise of the Mongolian Empire and its relation with Tibet:

China also claims that Tibet became a part of China during the 13th Century during the rise of the Yuan Dynasty under the leadership of the Great Khublai Khan. The Chinese claim that they have the right to inherit Tibet from the Yuans. In order to understand what the status of Tibet with the Yuans was we have to study the history of the rise of the Mongolian Empire.¹⁶

Before the Yuan dynasty came into existence the Mongolian Empire was under the leadership of the Great 'Chinggis Khan' or 'Genghis Khan'. Before the appearance of Genghis Khan they had no chief or ruler. Each tribe or two tribes lived separately, they were not united with one another, and there was constant fighting and hostility between them. Some of them regarded robbery and violence, immorality and debauchery as deeds of manliness and excellence. The Khan of Khitai used to demand and seize goods from them. Their clothing was of the skins of dogs and mice, and their food was the flesh of those animals and other dead things. Their wine was mare's milk. The rise of the Mongols and the beginnings of the Mongol conquests arose out of a dramatic shift from such disunity to unity, and it was achieved through the personality and military skills of one man.¹⁷ In all probability he was born in 1167. He was given the name of Temuchin. The Mongolian Empire was an ambitious empire which conquered several parts of Asia and Europe. Many nations feared the Mongolians as they were fierce and barbaric to other nations. The Great Genghis Khan started his conquest by defeating Western Xia during 1210 which had ruled Northwest China and parts of Tibet. Further they conquered Zhongdu which was the capital of Jin Dynasty in Northern China during 1215, Kwarezmid empire during 1221 and Kingdom of Georgia during 1223. The Great Genghis Khan died in the year 1227 and was succeeded by Ogedai. Under the leadership of Ogedai the Mongolians conquered Korea in 1236. From 1237 to 1242 they invaded Keivan Rus, Armenia, Hungary and Bulgaria. Ogedai dies in the year 1241. The Next Great Khan was Mongke Khan who succeeded in 1251. The Mongols invaded Vietnam during 1257.

In 1260 both the Great grandsons of Genghis Khan known as Ariq Boke and Khubilai Khan were declared as the Great Khan. This led to a Civil war between both of them where Kublai Khan defeats his brother Ariz Boke and becomes the next Great Khan. The Yuan Dynasty was established by Kublai Khan. As believed under the Buddhist culture the word Yuan has several meanings, among which are 'reason' or 'cause', other meanings are 'affinity' and 'predestined relationships'. The concept of Yuan is rooted in the beliefs of predestination and fatalism. Before Kublai came into power the Mongolians and Tibetans had a

¹³Forbes, Andrew ; Henley, David (2011). 'The First Tibetan Empire' in: China's Ancient Tea Horse Road. Chiang Mai: Cognoscenti Books. ASIN: B005DQV7Q2

¹⁴Petech, L. The Kingdom of Ladakh, (Serie Orientale Roma 51) Rome: Instituto Italiano per il Medio ed Estremo Oriente, 1977: 14–16

¹⁵Richardson, Hugh E. (1984). Tibet and its History. Second Edition, Revised and Updated, pp. 48-9. Shambhala. Boston & London. ISBN 0-87773-376-7 (pbk)

¹⁶Paul D. Buell, 'Tibetans, Mongols and the Fusion of Eurasian Cultures,' in Anna Akasoy, Charles Burnett, Ronit Yoeli-Tlalim (eds.) Islam and Tibet: Interactions Along the Musk Routes, Ashgate Publishing, 2011, pp.188-208, p193-4.

¹⁷Rolf A. Stein, Tibetan Civilization, Faber, London 1972 pp.48f. Samuel, ibid p.441

unique feature in their relation. In 1240 the Chieftans of Central Tibet aligned themselves with mongol princes. Prince Koton searched for a spiritual teacher to lead his people in a spiritual way not as nomads. Koton invited Sakya Pandita Gyaltsen who was a well known spiritual leader and Buddhist scholar from Tibet during 1244.¹⁸

After the death of Sakya Pandita Gyaltsen, Kublai Khan invited Drogon Choegyal Phagpa to his capital Shangdu in Inner Mongolia to learn more on the spiritual beliefs. Phagpa argued with Genghis Khan in regarding the matter where Mongolia suppose to collect tax from Tibet stating that Tibet is a small spiritual nation which pose no threat to another and does not hold any treasures to pay tributes to the Great Khans. Further as the Queen had advised Genghis not to send back Phagpa and learn his spiritual teachings. Queen Chubu received his teachings and later Kublai also received the great spiritual teachings of the Hevajra Tantra. Since then from 1253 Tibet had once again began to be ruled independently by its own leaders. Kublai as the new Great Khan in 1264 shifted the capital from Shangdu to Dadu (Beijing). Seven years later, he adopted the dynastic title of Yuan. The Mongolians had tried several times to conquer China but was unsuccessful as they had a fortified wall protecting their cities. This time Marco Polo gaining the trust of the Great Khan engineered the Trebuchet which looked like a giant catapult firing huge rocks lit with fire breaking through the Fortified walls of the Song Dynasty in 1279 known as the battle of Yamen. The Chinese for the first time used firearms in battles but was unmatched by the Mongolian army. The last Emperor of The Song Dynasty was killed which marked the success of Kublai Khan ruling the whole of China and becoming the New Emperor of China as well as the Great Khan of Mongolia. Mongolia invaded Japan during 1274 but was driven away by the fierce Samurais in 1281. Similarly ambitions to invade the Egyptian mamluks, Burma and Java was implied but lead to an unsuccessful raid by the Mongolian army. The Ming Dynasty came into power and recaptured all the Chinese territories from the Mongols in 1368. The Great Mongolian empire had come into a stage further in extinction in its power, the ancient Mongol dynasty was passed on to the new Turkic conqueror 'Timur the Lame' during 1397. A new era had begun.

STATUS OF TIBETAN REFUGEES IN INDIA:

India towards the Tibetan Refugees has been very generous and consider his holiness Dalai Lama and his followers as a guest in India. The status of these Tibetan refugees is not as refugees but they are considered as a guest in India. India is not in signatory to the 1951 convention relating to the status of refugees and its 1967 protocol. These refugees are treated as foreigners in India and them possess every right a foreigner gets. India without signing the convention has no international recognition of refugees in India which poses a great threat to these refugees at times. Many of the Refugees have also been expelled from India. Non-Refoulement should be practised in India as sending these Tibetan refugees back to Tibet which is in rule of China can lead them to death as they may be considered as criminals in China. Tibetans in India has created a Government in Exile is known as Central Tibetan Administration. The Tibetans residing in India are guided by the government in Exile. Tibetans residing in India are provided with certain documentations which we will be stating below.

1. Registration Certificates (RCs):

Tibetans are considered as foreigners in India which allows them to acquire a Registration Certificate. They must have a valid Registration certificate in order to live in India. And also these registration certificates should be carried along with them wherever they go. Having an invalid RC can lead them to be refouled back to Tibet. A lot of problems have been observed by the hard process in acquiring an RC and the renewal methods.¹⁹

2. Identification Certificates (ICs):

Identification Certificates of International certificates are allowed to be acquired as they are considered as foreigners and holds the Registration Certificates (RCs). Without an Identification Certificate a Tibetan cannot travel around the nation.²⁰

3. Special entry Permits (SEPs):

Special Entry Permits are permits given to Tibetans entering India from Nepal. It is compulsory for them to acquire this permit in order to enter via Nepal to India. This permit allows them to reside in India for a period of time.²¹

¹⁸ Haahr, The Yarluñ Dynasty. Copenhagen: 1969

¹⁹ Tibet Justice Centre, Tibet's Stateless nationals II: Tibetan Refugees in India, 2011, p.44-47

²⁰ Ibid, p.48

4. Birth Certificates:

Birth certificates are issued by the Central Tibetan Administration in order to acquire the Registration Certificates. The Indian Government were supposed to provide their birth certificate to those who have the right to acquire citizenship by birth but due to complications by the Central Tibetan Administration the people have decided not to take Indian Citizenship.

PROBLEMS FACED BY TIBETAN REFUGEES IN INDIA:

Tibetan refugees in India have faced certain problems. There are many cases of deportation and arrests due to invalid RCs. Tibetans Freedom of movement have been restricted. Without a Identification Certificate they cannot travel around the states of India as they are considered as foreigners. These Tibetans as well face property ownership and land issues where they cannot purchase land for their own use as they are considered as foreigners. They face certain land disputes and various other conflicts of vacating their land provided by the Indian Government. Employment issues are a big problem. As they cannot acquire the required certificates needed to publish before a company in order to be employed in the company they lack in proper employment and much work is restaurants and labour works. Agricultural lands are less for the Tibetans to feed an increasing population. Most of the Tibetans have their sweater business where they make sweaters and sell but are not a business which can earn alot for their living. They also have handicraft jobs but similar to the sweater business it is not reliable. Unemployment has been a reason for poverty leading to many Tibetans to get into criminal activities in order to survive. Their Freedom of speech and expression is restricted when they are in India. They cannot start a riot against the Chinese in India which will be a punishable offence in India. Relation with local Indian have also faced a problem at times where in Arunachal Pradesh there was a conflict between the locals and the Tibetan refugees where they were asked to surrender all their certificates and return back to where they belong. Due to poverty lack in Health and education facilities are also a problem for the Tibetan Refugees.

CONCLUSION:

Tibetan Refugees according to history proves that Tibet does not belong to China. China does not have any claims over Tibet, they have taken advantage of Tibet's Holiness and have forcefully conquered it. Tibet is a Holy city belonging to Buddhist monks which was gifted by the Mongolian Emperor. Many Tibetans out of disagreement with the Chinese has been forced to flee their country and create a Government of Exile in India. India is not in signatory to the 1951 convention relating to Refugees and its 1967 protocol which does not recognize International refugee bodies. India out of its generosity have considered Tibetans as a guest in India and have provided them food and shelter. Being provided much documentation by the Indian Government has also brought in a number of problems such as being deported and arrested due to no proper validated documents.

REFERENCE:

1. Tibet's Stateless nationals II: Tibetan Refugees in India, 2011
2. Emblems of Empire: Selections from the Mactaggart Art Collection, 1987
3. 'The First Tibetan Empire' in: China's Ancient Tea Horse Road, 2011
4. The Kingdom of Ladakh, 1977
5. Tibet and its History. Second Edition, 1984
6. Tibetans, Mongols and the Fusion of Eurasian Cultures, 2011
7. Tibetan Civilization, 1972
8. The Yarluñ Dynasty. Copenhagen, 1969.

²¹ Ibid, p.49