THE TIBETAN PARLIAMENT IN EXILE

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Introduction –
After the defeat of the Tibetan army at the Battle of Chamdo in March 1959 and the failure of the 17 point agreement of May 1951 between China and Tibet, the Chinese started occupying Tibet. There was threat of life and their Spiritual head Dalai Lama along with thousands of Tibetans fled Tibet and sought political refugee in India fearing persecution. Pt. Jawaharlal Nehru, the then Prime Minister accepted them and gave refuge to them.

According to figures available with the Tibetan Government-in-Exile, there are around 1,30,000 Tibetans living in exile around the world. Nearly 95,000 live in India, and over 13,500 in Nepal. The Government of India has given autonomous power to the government-in-exile to manage Tibetan settlements and schools in India.

With the generous support and assistance of India and international aid agencies, the Tibetan refugees in India have not only attained self-sustenance but also successfully reconstructed their social, political and religious institutions in exile.1

Legal status of India –
India is neither a signatory to the 1951 Refugees’ Convention nor the 1967 protocol, which has 140 signatories, the country has still served as a home to the largest refugee population in South Asia. Tibetan refugees were granted asylum by the Government of India under the International Principle of non-refoulement (i.e. protection against compulsion to return to home country) has been strictly adhered to.

As India has no separate refugee’s legislation, the law governing the entry, stay and exit of refugees is subsumed under the laws governing all foreigners.

By laws, Tibetans can be detained or arrested for contravening any part of the foreigners Act or Orders and may be subject to further penalty. Although the general practice of India is not to exercise its control to this extent in regards to Tibetan refugees,

Two national statutes govern the legal status and rights of Tibetans in India: the Foreigners Act of 1946 and the Registration of Foreigners Act of 1939. These statutes characterize Tibetans simply as “foreigners,” a broad legal rubric that refers to everyone except Indian citizens

Central Tibetan administration –
The Central Tibetan Administration, CTA, is an organisation based in India. The CTA is also referred to as the Tibetan Government in Exile which has never been recognized by China.

Political advocacy, it administers a network of schools and other cultural activities for Tibetans in India.

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1Department of Home, Central Tibetan Administration, (http://centraltibetanreliefcommittee.org/doh/tibetan-settlements.html) last visited 10/03/2019
Dalai Lama is the head of the CTA, he is the sole authority in deciding all matters related to the Tibetans in exile. The Assembly of Tibetan People's Deputies consists of 46 elected members representing the three provincial regions and five major religious sects of Tibet. The Kashag is the Cabinet of the Tibetan administration-in-exile. The day-to-day functioning of the CTA is supervised by the Kashag (Cabinet) which is the highest executive body of the exile administration. They hold the office for a period of 5 years. The Kalons (Ministers) are nominated by the people from the provinces and 5 religious sects accordingly, every department is represented by a nominated Kalons.

Constitutional commission –
The Tibetan Supreme Justice Commission - the settlement of cases and controversies of a purely civil nature and which are internal to the Tibetan Refugee Community. The Commission is also responsible for framing a judicial code and civil procedures appropriate to the situation of the Tibetan Refugee Community in exile. The Commission also establishes Local Justice Commissions in each settlement.

Statutory commission –
The parliament in exile also consists of statutory commissions appointed to each department and they manage the functions and duties.
- The Election Commission
- The Public Service Commission
- The office of the Auditor General
- Department of Religion and Culture
- Department of Home
- Department of Education

Tibetan refugee settlement in India
Tibetan refugee community in India has been rehabilitated mainly in three sectors in order to make them self-sufficient during their period of exile, namely,
- a) Land based agricultural sector i.e. the resettlement in agriculture, horticulture or animal husbandry;
- b) Agro-industry based sector i.e. the creation of small industries to be run by Tibetans, and
- c) Handicraft based sector i.e. establishment of centers for training refugees in the production and Sale of Tibetan handicrafts and carpet weaving.

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2 The office of Tibet – Pretoria
www.officeoftibet.com/index.php/2014-08-21-17-03-06/tibetan-settlements, last visited on 13/03/2019
The Eleventh Assembly of Tibetan People’s Deputies promulgated and legalized the ‘Charter of the Tibetans-in-Exile’ as their fundamental guide. Adopted on June 14, 1991. Charter of the Tibetans in Exile 1991 is the official document that acts as a constitution for them.3

“Article 6 - Recognition of International and Local Law All laws, ordinances, regulations, administrative and executive orders of the Tibetan Administration-in-Exile shall conform to the generally accepted principles of international law and in particular comply with the local laws of the host countries.”

“Article 66 - Jurisdiction of the Tibetan Supreme Justice Commission –

(2) As all Tibetans-in-Exile are required to adhere to the laws of the respective host countries, the Tibetan Supreme Justice Commission shall have no authority over civil and criminal proceedings while in exile.”

Chatrel / green book –
Chatrel is a concept of paying taxes by the citizens of the Tibetans in exile towards their exile government. It is one of the important sources of income for the government. Tibetans contributing Chatrel are issued a Green Book. This book has over the years in effect become the passport of the exiled Tibetans to claim their rights from the CTA. Also in future it will become a base to claim Tibetan citizenship. The existence of Chatrel symbolizes the Tibetan people's recognition of CTA as their legitimate representative. Chatrel funds is an important source of revenue for CTA and it goes towards supporting various projects and activities benefiting the exiled Tibetan community.

Issue of Indian citizenship –4
The enactment of the Indian Citizenship Act (Amendment) of 1986 allows for the acquiring of Indian citizenship by anyone born in India between January 26, 1950, and July 1, 1987. The amendment has made a large section of the second and third generations of Tibetan refugees eligible for Indian citizenship. Although there are no formal restrictions imposed by the Tibetan government-in-exile on Tibetan refugees seeking Indian citizenship, it has actively discouraged them from taking this step.

In 2010, when an India-born Tibetan woman challenged India's Ministry of External Affairs in the Delhi High Court for denying her an Indian passport, the court ruled in her favour. When there was no change in the Government of India’s stand despite the court ruling, another case was filed in the court by a Tibetan man in September 2016. Once again, the court ruled in his favour. This time, the court directed the Ministry of External Affairs to treat all Tibetans who meet the criteria for citizenship by birth as Indians and issue them Indian passports. This became the Government of India's policy from March 2017.

Registration certificates and identity cards –
Tibetans who reside in India are issued Certificate of Registration by the Ministry of Home affairs as an identity document to prove their legal status as a Tibetan in exile. Tibetans without RCs have no legal status and they are ineligible for any benefits. They are vulnerable to harassment by the police and arrest, detention, extortion. Registration certificates are renewed annually or semi-annually. Tibetans with RCs are eligible to acquire travel documents known as Identity Certificates (ICs), which allow them to undertake international travel. Tibetans are recognized as stateless persons by the Indian Government. Certificate of Registration and Identification Certificate is a document issued by the Indian Government to the Tibetans to act as a travel document with its own restrictions. A RC and IC are discretionary and not a right and may be taken away by the Indian government at any point of time.

Namgyal Dolkar vs Government Of India, Ministry Of External Affairs5
On 22 December 2010, the High Court of Delhi ruled in favour of petitioner Namgyal Dolkar rather than the Government of India's Ministry of External Affairs

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4 The Unintended Consequences of India’s Policy on Citizenship for Tibetan Refugees Institute for defence studies and analyses (https://idsa.in/policybrief/unintended-consequences-of-india-policy-on-citizenship-for-tibetan-refugees-ychoedon-230218) last visited on 11/03/2019
5W.P(C) 12179/2009 on 22 December 2010
Indian Kanoon (https://indiankanoon.org/doc/51024250/) last visited on 13/03/2019

Research Paper
Dolkar, a Tibetan woman born in India on 13 April 1986, had petitioned to overturn the Ministry of External Affairs decision to deny her an Indian passport.

The Ministry of External Affairs purported that she did not qualify for an Indian passport because the Passport Act stipulates that "a person is eligible to hold only one passport or travel document," and she already had an identity certificate, which qualifies as a travel document.

As well, the Ministry argued that she did not consider herself to be an Indian citizen since she had listed her nationality as Tibetan.

The Ministry also stated that, in view of a policy decision made by the Ministry of Home Affairs, Tibetan nationals who entered India after March 1959 are not granted citizenship by naturalization under Section 6(1) of the Citizenship Act.

The Court found that, pursuant to the Citizenship (Amendment) Act of 1986, Dolkar is entitled to claim Indian citizenship by birth and "cannot therefore be denied a passport".

The Court subsequently ordered the Ministry of External Affairs to process Dolkar’s application for an Indian passport and pay a fine of 5,000 Indian rupees.

In the decision, the High Court of Delhi said that Section 6(1) of the Citizenship Act was not relevant to the case and that under Section 3(1)(a) of the amended Citizenship Act of 1986, Dolkar is "undoubtedly an Indian citizen by birth.”

The High Court quoted Section 3(1)(a) as follows:

3. Citizenship by birth: - (1) Except as provided in subsection (2), every born in India,

(a) on or after the 26th day of January 1950, but before the 1st day of July, 1987....

Shall be a citizen of India by birth.

Subsection (2) of the Citizenship Act prior to the amendment, was also quoted in the decision as follows:

(2) A person shall not be such a citizen by virtue of this Section if at the time of his birth-

(a) his father possess such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India; or

(b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

Following the above case which set an example in obtaining Indian Citizenship a lot of others filed for the same. In LobsangWangyal vs Union Of India &Ors7 on 22 September, 2016 – In reliance to the above judgment, the Delhi High Court in this case held the same thing.

Tenzin choepang ling Rinpoche v union of india8

A writ petition was filed Karnataka High Court under Art. 226 & 227 to quash the order by the Regional Passport Office in consultation with the MEA declaring that the petitioner is not a citizen of India and consequently refusing to issue him with a passport. The question of not a citizen of India arose and the Karnataka High Court held the same position under S.3(1)(a) Citizenship Act.

The HC directed the MEA to issue passport to all the children of the Tibetans who are recognized as citizens of India by virtue of the citizenship act, 2003.

Tenzin Tselha vs Union Of India &Ors on 23 November, 2016

The High court of Delhi in this case had the same ruling, however, the Government soon added riders to this policy in June 2017. It listed the following four conditions for Tibetans seeking Indian citizenship:

(1) They are required to get their Registration Certificate (RC) and Identity Certificate cancelled;

(2) They should not be staying in designated Tibetan refugee settlements;

(3) They should submit an undertaking that they no longer enjoy the benefits, offered by the Tibetan government-in-exile; and,

(4) they should submit a declaration that they no longer enjoy any privileges, including subsidies, by virtue of being RC holders.

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7Indian kanoon (https://indiankanoon.org/doc/949775/) last visited on 13/03/2019

8Indian Kanoon (https://indiankanoon.org/doc/90529177/ ) last visited on 13/03/2019

Research Paper IJRAR- International Journal of Research and Analytical Reviews
To improve the conditions of Tibetans in these settlements, the Government of India implemented the Tibetan Rehabilitation Policy of 2014 which it adopted in consultation with the Tibetan government-in-exile.

**Key Features of Tibetan Rehabilitation Policy, 2014**

The latest policy has given several benefits to the Tibetan refugees. The key features are as follow –

- **Land** - The state governments should sign a lease document for allocating the land for the settlement of the Tibetan refugees for a period of about 20 years, but through the Central Tibetan Relief Committee (CTRC). The land allotted for Tibetan occupation should not be disturbed by the state governments. It should also issue Rent Tenancy Certificate.

- **Benefits** - The policy advises the state governments to extend the benefits of state schemes and the Centrally sponsored schemes such as NREGA, Targeted Public Distribution System (TPDS), National Food Security Act (NFSA), Indira Awas Yojana, (IAY), National Rural Livelihood Mission (NRLM), Rajiv Awas Yojna (RAY), National Rural Health Mission (NRHM), etc.

- **Basic Amenities** - The policy mandates the states to provide infrastructural facilities and basic amenities like Roads, Electrification, Drinking Water Schemes in and around the Tibetan settlements.

- **Economic Benefits** - The policy advises the states to undertake skill up-gradation and training programmes for the Tibetan refugees. They should also permit the refugees to give permission to run Tibetan Bazaars to trade in Tibetan products like handloom, handicrafts etc.

Qualified professional among the Tibetan Refugees should be permitted to take up employment opportunities in private and non-Government Sectors. States have to permit the refugees to carry out economic activities as they desire, and to that trade licenses/permission be provided.

It does not address property ownership, getting government jobs, or travelling freely within and outside India.

The uniqueness of Tibetan refugees is that they sought refuge not only for personal safety but also for the preservation and protection of their culture and religion which was under relentless attack in their homeland under China’s rule.

The first Tibetan non-governmental human rights organization to be established in exile in India was the Tibetan Centre for Human Rights and Democracy. TCHRD investigates and reports on human rights issues in Tibet and among Tibetan minorities throughout China.

**Present scenario**

As per the present norms, foreigners who intend to visit Tibetan settlements and camps should seek prior permission of the Home Ministry and procure Protected Area Permit (PAP) as per the provision of Section 3 of the Foreigners Act, 1946 (31 of 1946).

Grant-in-aid was introduced in 2015, the NDA government for the first time sanctioned a scheme of providing grant-in-aid of ₹40 crore to the Dalai Lama’s Central Tibetan Relief Committee (CTRC) for five years. The Centre has released ₹16 crore in the past two years to meet the administrative and social welfare activity expenses of 36 Tibetan settlement offices in different States.

The Ministry of External Affairs also notified rules in 2017 followed by the Delhi high court judgment of the journalist Lobsang Wangyal that Tibetans seeking an Indian passport would need to surrender the “Registration Certificates” issued to them, leave the settlements and forfeit the privileges and benefits from the Central Tibetan Administration (CTA) — the Tibetan government-in-exile headquartered at McLeodganj in Himachal Pradesh.

Special Entry Permits (SEPs) were introduced and they represent a joint initiative of the Indian government and the CTA, which began in 2003, and regulate Tibetans entering India from Nepal. Tibetans obtain SEPs in Nepal before they depart for India from the Tibetan Reception Center in Kathmandu. SEPs ensure Tibetans safe transit from Nepal to India and then enable them to remain in India for a designated period of time after arrival.

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9 National portal of India (https://www.india.gov.in/national-policy-rehabilitation-resettlement-2014) last visited on 11/03/2019

10( dolr.gov.in/sites/default/files/National%20Rehabilitation%20%26%20Resettlement%20Policy%2C%202007.pdf) last visited on 11/03/2019
In 2003, India created four SEP designations: (i) "Refugee," (ii) "Pilgrimage," (iii) "Education," and (iv) "Other," for people to come into India from Tibet.

**Drawback –**

Tibetans in India cannot own property, travel freely in India or outside India, have government jobs, or qualify for resident rates at many colleges and universities. In some states, Tibetans also cannot obtain driving licenses, operate large businesses, or secure bank loans. The four conditions laid down by the Government of India in relation to the giving up of the Certificate of Registration for obtaining Indian passport and Indian citizenship proved to be a hindrance. It amounts to requiring them to leave their homes in the Tibetan settlements where they were born and grew up, and become homeless once again. The fact is that Tibetans desire to take Indian citizenship for the purposes of career, livelihood, and ease of travel abroad. That is, they wish to take Indian citizenship for instrumental purposes rather than because of disaffection towards the Tibetan freedom movement or any policy difference within the Tibetan community in exile.

**Conclusion –**

Unlike many other refugee-hosting countries, India did not adopt the policy of integrating Tibetans into mainstream Indian society. Rather, it facilitated the preservation and promotion of their distinctive culture, tradition and identity by setting up separate Tibetan settlements in various parts of India, established separate schools for the Tibetan children and allowed the functioning of the Tibetan government-in-exile to manage their affairs. Most of the Tibetan refugees in India are residing in 39 major and minor settlements, and are involved in either agriculture or agro-industries or handicrafts for their livelihood.