

TIBET'S STATELESS NATIONALS II: TIBETAN REFUGEES IN INDIA

A report by
TIBET JUSTICE CENTER
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TABLE OF CONTENTS

I. Executive Summary	5
II. Methodology	19
III. Background: Sino-Indian Relations.....	20
IV. Indian Policy Toward Tibetan Refugees: Continuity and Change	25
A. The First Wave (1959-1979): Tibetan Refugees Entering India After the Lhasa Uprising, and the First Tibetan Settlements in India	25
1. Humanitarian Aid and Early Settlements	27
2. Status Issues	31
B. The Second Wave of Arrivals (1980-1993)	33
C. The Third Wave of Arrivals (1994-1999).....	35
D. Refugees Arriving Between 2000 and the Present	37
V. Legal Overview	40
A. Indian and International Legal Framework.....	40
B. Documentation.....	44
1. Registration Certificates (RCs)	44
2. Identity Certificates (ICs): International Travel.....	48
3. Special Entry Permits.....	49
C. Citizenship	51
1. The Formal State of Indian Law	51
2. Application in Practice to Tibetans.....	52
VI. The Status of Tibetan Refugees Residing in or Transiting through India	58
A. Introduction	58
B. Current Population of Tibetans in India	59
C. Settlements	60
D. Health	62
E. Education	63
F. Property Ownership.....	64
G. Employment	65
H. Freedom of Speech, Expression, and Assembly.....	68
I. Relations Between Tibetan and Indian Communities.....	71
VII. Conclusion.....	73
VIII. Acknowledgements	73
IX. Appendix: Table of Contents	75
I. Indian Constitution and Statutes.....	76
1. The Citizenship Act, 1955.....	76
2. The Foreigners Act, 1946	95
3. Indian Bare Acts: The Registration of Foreigners Act, 1939.....	105
4. Selections from the Constitution of India:	108
II. Documents Issued by the Government of India:.....	113

5. Identity Certificate:	113
6. Registration Certificate:	118
III. Laws of the People's Republic of China	122
7. Nationality Law of the People's Republic of China:	122
IV. US State Department Documents.....	125
8. Unclassified Cables:	125
V. Canadian Documents	128
VI. Tibetan Government in Exile Documents	132
9. Kashag Circular:	132
10. Tibetan Birth Certificate	134
11. Tibetan Green Book and Translation.....	135

Nota Bene

Tibet Justice Center (TJC) began research for this report in 2003 and carried out additional research, through 2011, in order to reflect new developments and further clarify the issues. We owe thanks to the many TJC volunteers, staff, and board members who contributed to the report and whose efforts we acknowledge below, pages 73-74.

At the outset, however, we must acknowledge with gratitude the generous *pro bono* work carried out for TJC by Eileen Kaufman, Professor of Law, Touro College. With TJC's permission, Professor Kaufman published some of her field research and legal conclusions in *Shelter From the Storm: An Analysis of U.S. Refugee Law as Applied to Tibetans Formerly Residing in India*, 23 GEO. IMMIGR. L.J. 497 (2009). TJC and the *Georgetown Immigration Law Journal* agreed to this arrangement. Much of this report therefore overlaps with, and at times reproduces verbatim, parts of Professor Kaufman's article.

But insofar as discrepancies may exist, this report represents TJC's most current research. TJC alone bears responsibility for any errors or omissions.

I. Executive Summary

For more than two decades, as part of its immigration work, Tibet Justice Center (TJC) has sought to provide lawyers, immigration officials, judges, and other government decision-makers with clear and accurate information about the legal status and circumstances of undocumented Tibetans abroad. Some of these Tibetans eventually petition for asylum, withholding of removal, or other relief in the United States, Canada, Switzerland, and elsewhere. In this context, their legal status *vel non* in a third state may emerge as an issue that potentially affects their eligibility for asylum or other relief.

In 2002, after carrying out an extensive fact-finding mission to Nepal, TJC published a report setting forth the legal status and circumstances of undocumented Tibetans residing in or transiting through Nepal.¹ Since then, we have sent fact-finding missions to India and conducted secondary research to clarify the analogous—but, as it turns out, even more complex—legal issues that frequently arise for undocumented Tibetans residing in or transiting through India.

This report, *Tibet's Stateless Nationals II: Tibetan Refugees in India*, is thus the product of research by TJC that took place over the course of nearly a decade. Like our report on undocumented Tibetans in Nepal, the principal objective of this report is to explain the legal status of and circumstances of life for Tibetan “refugees”² residing in or transiting through India—whether in flight from persecution or otherwise.

For centuries before Tibet’s military occupation and subsequent annexation by China in 1951, the peoples of India and Tibet enjoyed mutually beneficial cultural, economic, and religious ties by virtue of extensive commerce, cultural exchange, and diplomatic communication across what is now the Sino-Indian border. This amicable relationship continued during the era of British rule in India and into the first few years of India’s independence. But less than five years later, the Chinese People’s Liberation Army (PLA) of Mao Zedong occupied Tibet and

¹ TIBET JUSTICE CENTER, *TIBET’S STATELESS NATIONALS: TIBETAN REFUGEES IN NEPAL* (2002) [hereinafter *TIBET’S STATELESS NATIONALS I*].

² N.B. For purposes of this report, “Tibetan refugee” refers to any Tibetan residing in India without Indian citizenship or transiting through India without the documents India ordinarily requires of foreigners. As we explain below, however, India does not consider these Tibetans to be refugees in any legal sense—national or international. India is not a party to the Convention Relating to the Status of Refugees, July 28, 1951, 1989 U.N.T.S. 150, or the Protocol Relating to the Status of Refugees, Jan 31, 1967, 606 U.N.T.S. 267. Nor has India enacted national laws that enable Tibetans living in India to petition for legal refugee status. Accordingly, throughout this report, we use the phrase “Tibetan refugee” only in the colloquial sense. Except where otherwise noted, we do not intend by the use of this phrase to express or imply anything about their legal status under either Indian or international law.

coerced representatives of the Tibetan government to sign the 17-Point Agreement.³ India did not interfere. But neither did it recognize China's claim—memorialized in the 17-Point Agreement—that Tibet is (and always has been) “part of” the Chinese “Motherland.”⁴

In 1959, however, India could no longer remain neutral, for on March 10 of that year the PLA brutally crushed a popular Tibetan uprising against Chinese rule, an event known as the Lhasa Uprising. At that time, fearing for his life, the Fourteenth Dalai Lama and many of his advisers, friends, and family members fled Tibet, arriving shortly thereafter in northern India. In part because of its strong historic and religious ties to the Dalai Lama and Tibet, India welcomed the Dalai Lama and generously offered him and his immediate retinue protection and refuge. But contrary to a common misperception, India did not grant the Dalai Lama refugee status or any other type of permanent status. To this day, the Indian government refers to the Dalai Lama simply as an “honored guest” and cultivates a studied ambiguity relative to his legal status in India. Nonetheless, since 1959, thousands of Tibetans have followed the Dalai Lama into exile in India. According to current estimates, somewhere between 110,000 and 130,000 ethnic Tibetans reside in India today.

This report describes the legal status and circumstances of life for these Tibetans; the Indian laws and informal policies that govern them; the relationship between these Tibetan refugees and local Indians living in proximity to them; and, in general, the social, economic, political, and other circumstances for Tibetan refugees in India. These factors may be especially relevant for Tibetan asylum seekers facing the legal bar of firm resettlement in the United States,⁵ or an analogous doctrine in another country. The balance of this executive summary provides a brief description and road map of the remainder of the report.

³ Agreement of the Central People's Government and the Local Government of Tibet on Measures for the Peaceful Liberation of Tibet, May 23, 1951, P.R.C.-Tibet [hereinafter 17-Point Agreement], reprinted in MICHAEL C. VAN WALT VAN PRAAG, *THE STATUS OF TIBET: HISTORY, RIGHTS AND PROSPECTS IN INTERNATIONAL LAW* 337 (1987).

⁴ *Id.* p.mbl. In 2003, India and China signed a “Declaration of Principles of Relation and Comprehensive Cooperation.” In it, India for the first time formally recognized Tibet as a “part of the territory of the People's Republic of China” and prohibited what the Declaration describes as “anti-China political activities” by ethnic Tibetans living in India. Declaration on Principles for Relations and Comprehensive Cooperation Between the People's Republic of China and the Republic of India, China-India, June 25, 2003 (emphasis added) [hereinafter Cooperation Declaration].

⁵ For analysis of firm resettlement, with particular attention to the situation for Tibetan refugees in India and Nepal, respectively, see Eileen Kaufman, *Shelter From the Storm: An Analysis of U.S. Refugee Law as Applied to Tibetans Formerly Residing in India*, 23 GEO. IMMIGR. L.J. 497 (2009); and Robert D. Sloane, *An Offer of Firm Resettlement*, 36 GEO. WASH. INT'L L. REV. 47 (2004).

Indian Policy Toward Tibetan Refugees

India's policy toward Tibetan refugees has changed over time and differs as it has been applied to the first wave of refugees who fled with or shortly after the Dalai Lama in 1959, entrants today, and every group in between. In general, however, it is possible and analytically helpful to identify *roughly* four approaches taken by India toward *roughly* four different groups of Tibetans, viz., those who arrived in India between (1) 1959 and 1979; (2) 1980 and 1993; (3) 1994 and 1999; and (4) 2000 and the present.

Tibetans Entering India Between 1959 and 1979. After the Dalai Lama's flight into exile following the 1959 Lhasa Uprising, thousands of Tibetans followed him into India. To cope with the massive influx of Tibetans and a potential humanitarian crisis, the Indian government set up transit camps for the new arrivals and provided them with basic assistance, such as shelter, medical treatment, and rations. As it became clear that their exile would be long term, India also created programs to provide temporary work for some of the Tibetans. India limited its assistance to humanitarian support. It avoided providing overt political support to the Dalai Lama or to the Tibetan government-in-exile (TGIE) that he established soon after his arrival



His Holiness the Dalai Lama (center-front) rests with Tibetan bodyguards during his flight into exile, March 1959.

By November 1959, approximately 30,000 Tibetans had arrived in India. They were received and sheltered in temporary camps, which had been designed to house far fewer people than those who eventually ended up residing in them. At the time, India sought to avoid allowing large concentrations of unsettled refugees to develop, in part out of fear

that they might attract undesired international attention. In 1960, India relocated the Dalai Lama and the fledgling TGIE from Mussoorie to McLeod Ganj, Dharamsala. The TGIE, which later became known as the Central Tibetan Administration (CTA),⁶ remains based in McLeod Ganj to this day. The CTA sought to relocate Tibetan refugees arriving during this early period to agricultural and other settlements on lands that were made available to them by the Indian government. It also sought to preserve, perpetuate, and develop Tibet's language, culture, history, religious traditions, and educational system. India's first Prime Minister, Jawaharlal Nehru, established a range of programs designed to help the new arrivals, including, for example, the Society for Tibetan Education and several Tibetan refugee handicraft centers. To keep track of new arrivals, the Indian government, with the cooperation of the CTA, issued Registration Certificates (RCs) to the majority of Tibetans arriving during this time. While RCs did not—and do not—indicate that their bearers enjoy any formal legal status, the Indian government has, to date, allowed Tibetans holding RCs to reside in designated areas of India as a matter of discretion and executive policy.

This first wave of Tibetan refugees thus benefited from logistical, financial, and other aid programs sponsored by India and various non-governmental organizations (NGOs), at times aided by international assistance. However, despite their informal identification as “refugees,” none of these Tibetans, including the Dalai Lama, received refugee—or any other—legal status. Tibetans who fall within this group, despite being, for the most part, informally resettled in remote regions of India, do not qualify as refugees under Indian law. Nor, in practice, can they become Indian citizens. They remain, legally, stateless.

Tibetans Entering India Between 1980 and 1993. Soon after the 1959 Lhasa Uprising, Chinese authorities strictly curtailed Tibetans' freedom of movement, staunching the flow of Tibetans into Nepal and India. The PLA and Chinese border police thus prevented Tibetans from fleeing to India to escape persecution during precisely the period when Chinese authorities perpetrated the most widespread, systematic, and

⁶ For many years, the Tibetan government-in-exile referred to itself, as did others, by this name or its common acronym, viz., TGIE. As noted in the text, however, the TGIE subsequently changed its name to the Central Tibetan Administration (CTA). More recently, in June 2011, the CTA adopted another new name in connection with the political processes by which the Dalai Lama devolved his remaining political authority to the elected Tibetan leadership in exile, and Tibetans elected a new Kalon Tripa (Prime Minister). For the sake of brevity and consistency, throughout most of this report we will refer to the exile Tibetan administration as the CTA. But it should be clear that these two acronyms, TGIE and CTA, refer to the same political entity, which represents the continuation of the Tibetan government that governed Tibet before China's occupation and military annexation of Tibet.

severe human rights abuses against Tibetans, viz., from the early 1960s until the late 1970s, roughly the years of the notoriously brutal Cultural Revolution. Because relatively few Tibetans managed to escape during this time, India's policies toward undocumented Tibetans remained relatively stable for two decades. But with the death of Chairman Mao Zedong, the end of the Cultural Revolution, and Deng Xiaoping's subsequent rise to power in 1979, a period of comparative liberalization in China began.



Ganden Monastery, east of Lhasa, destroyed during Communist China's Cultural Revolution.

For the first time, many Tibetans could acquire travel documents. Many left their homeland to join their families and brethren in India, where, although they lacked formal legal status, they could, in practice, enjoy much greater freedom, security, and human rights. In the decade between 1986 and 1996, for example, about 25,000 new Tibetan refugees arrived in India, mostly by way of Nepal, increasing India's aggregate ethnic Tibetan population by about 25%. For the most part, India tacitly allowed the entry of Tibetans by way of Nepal. Tibetans who tried to enter India by way of the Sino-India border, however, were repatriated because of the sensitive security situation at this disputed border. But apart from the comparatively few Tibetan refugees who sought entry by way of the Sino-Indian border, Indian officials tended to turn a blind eye to Tibetans entering India via Nepal in the 1980s and early 1990s. The Indian government did not offer them any form of legal status. But it also largely ignored common practices by which new arrivals were

able to obtain RCs or other documentation fraudulently and thus reside in or near the previously established “formal” Tibetan settlements, blending in with the post-1959 population and keeping a low profile.

In the early 1990s, this informal arrangement came under increasing strain because of both (i) the growth in the size of the Tibetan exile community and (ii) periodic tension between local Indian and Tibetan communities. As a result, the Indian government and the CTA began to curtail the illegal but (until then) widespread practice of distributing RCs to new arrivals through informal channels. The CTA also began to encourage new Tibetan arrivals to return to Tibet after receiving an education at one of the Tibetan schools it had established or studying at one of the monasteries or nunneries established by Tibetan Buddhists in India.

Tibetans Entering India Between 1994 and 1999. In 1994, the Indian government and the CTA formalized this *de facto* policy of “voluntary repatriation.” New arrivals continued to receive some assistance from the TGIE. But they were strongly encouraged to return voluntarily to Tibet, typically after about three months, although somewhat more lenient policies were applied to children who had come to India to get a Tibetan education and to monks and nuns who had come for religious training that China restricted or prohibited in Tibet.

In January 1995, the CTA issued regulations for the treatment of new arrivals, which, among other things, effectively ended the ability of new arrivals to acquire RCs. Young monks and nuns between the ages of sixteen and twenty-five were allowed to remain for six months. After that, they would be required to sit for and pass certain examinations; if they failed, they would be asked to return to Tibet. Tibetan children between the ages of six and thirteen could remain in India to complete their education, while older children between the ages of fourteen and seventeen would be referred to one of the Tibetan Children’s Village (TCV) transit schools. (Transit schools offer limited, intensive language and skills training to these comparatively older Tibetans.) Finally, new arrivals between the ages of eighteen and thirty would be allowed to remain for one year, after which they, too, would be asked to return to Tibet. In 1996, for example, of 2843 new arrivals, the CTA asked 1200, about half, to return to Tibet.

After 1994, because of these changes in policy, new arrivals faced an increasingly insecure environment in India. Some interviewees, for example, told TJC about incidents in which Indian officials threatened new arrivals with forced repatriation to China – a clear violation of *non-refoulement*, the bedrock principle of customary international law that prohibits returning persons to states where they will face persecution.⁷

⁷ See, e.g., Gretchen Borchelt, *The Safe Third Country Practice in the European Union: A*

Tibetans without RCs were also detained from time to time, and Indian authorities often held them under threat of deportation until the CTA or Tibetan community paid a “fine” for their release (a *de facto* form of extortion).

Tibetans Entering India Between 2000 and the Present. As the political relationship between India and China has improved in recent years, India has done more both to prevent new arrivals from entering India in the first place and to limit Tibetans’ freedom of assembly and speech. In June 2003, in a jointly issued “Declaration of Principles of Relation and Comprehensive Cooperation” and annexed memorandum of understanding, India for the first time expressly recognized Tibet as “part of” China. India also agreed to prevent “anti-China activities” in India. In addition to external pressure exerted on India by China, some Indian domestic constituencies have also put pressure on the Indian government to slow or halt the influx of undocumented Tibetans into India.⁸ In sum, internal and external pressures on India to take steps to staunch the flow of new arrivals has increasingly led India to crack down on Tibetan residents (and especially to limit their right to speak and hold non-violent demonstrations).

Yet a new practice, which could facilitate the ability of Tibetans to enter India, emerged almost simultaneously. In 2003, the CTA and the Indian government began to issue Special Entry Permits (SEPs) to Tibetans seeking to enter India by way of Nepal, as most must, the Sino-Indian border being both more perilous and politically sensitive.

Misguided Approach to Asylum Law and a Violation of International Human Rights Standards, 33 COLUM. HUM. RTS. L. REV. 473, 480-90 (2002) (canvassing authorities indicating that *non-refoulement* has acquired the status of a binding norm of customary international law, which therefore binds even those states, India included, that have not ratified the 1951 Refugee Convention or its 1967 Protocol); *see also* Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, Dec. 12-13, 2001, *Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, ¶ 4, U.N. Doc. HCR/MMSP/2001/09 (Jan. 16, 2002), available at <http://www.unhcr.org/refworld/docid/3d60f5557.html> (last accessed on September 5, 2011) (noting “the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of non-refoulement, whose applicability is embedded in customary international law”); Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement: Opinion*, ¶ 216, at 149 (2003), available at <http://www.unhcr.org/publ/PUBL/419c75ce4.pdf> (last accessed on September 5, 2011) (“[N]on-refoulement must be regarded as a principle of customary international law.”).

⁸ As a result, in 2002, for example, the Indian Superintendent of Police for Kangra, which includes Dharamsala, issued a statement indicating that India would seek to fine or deport not only Tibetans lacking RCs, but also Tibetans who had obtained RCs by pretending to be descendants of the first wave of Tibetan refugees—a common practice toward which India had turned a blind eye for two decades (in the 1980s and 1990s).

SEPs, which were to be issued at the border town of Sonauli and perhaps at other border towns, would authorize their bearers to cross from Nepal into India and then to remain in India for a designated period of time, which depends on the visit's purpose. Some seven years later, at the time of this writing, the actual extent to which India has been issuing SEPs and implementing this new policy remains unclear. What *is* clear is that SEPs do not provide their bearers with a right to either citizenship or permanent residence in India. TJC's research suggests that India and the CTA have been trying to establish a better system for the issuance of RCs and other documentation to Tibetans currently residing in India. From the standpoint of U.S. asylum law, however, the point of emphasis is simply that none of these programs or documents purport to give Tibetans in India anything approaching permanent legal status and rights that could be deemed tantamount to citizenship.

Legal Overview

Indian and International Law. Tibetan refugees in India live in a state of legal limbo. They do not qualify as refugees in any legal sense. India is not a party to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol.⁹ Nor has it adopted national legislation for the protection of refugees. Because of India's territorial size and the sheer number of minorities in India, the government tends to treat its diverse refugee populations on an *ad hoc* basis.

In terms of Indian law, two national statutes govern the legal status and rights of undocumented Tibetans in India: the Foreigners Act of 1946 and the Registration of Foreigners Act of 1939.¹⁰ These statutes characterize undocumented Tibetans simply as "foreigners," a broad legal rubric that refers to everyone except Indian citizens. The same two statutes allow the national government to regulate the movement of all foreigners both into and within India, as well as to require foreigners to report to Indian authorities. Penalties for violating these acts include imprisonment for two to eight years and fines of between 10,000 and 50,000 rupees. Without legal status, undocumented Tibetans, with one exception discussed below,¹¹ generally cannot become citizens; travel freely, either within India or internationally; own property in their own name; hold government or other public jobs; attend most government-

⁹ Convention Relating to the Status of Refugees, July 28, 1951, 1989 U.N.T.S. 150; Protocol Relating to the Status of Refugees, Jan 31, 1967, 606 U.N.T.S. 267.

¹⁰ The Foreigners Act, No. 31 of 1946; The Registration of Foreigners Act, No. 16 of 1939, *codified in India Code* (1993), *reprinted in Appendix, infra*.

¹¹ See *supra* note 16.

funded schools; or vote.

While India has not ratified any of the principal treaties governing the treatment of refugees, it is bound by the 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 jeopardy. The Foreigners Act, in principle, could be in conflict with *non-refoulement*, depending on how the Indian government implements the authority it vests in government officials, for some repatriations that could be carried out pursuant to the Foreigners Act would violate the principle of *non-refoulement*. But India's courts seem to have obviated this potential problem by investing the principle of *non-refoulement* with constitutional status (reading it into the Indian Constitution's guarantee of the right to life). In practice, to the best of TJC's knowledge and research, India has adhered to *non-refoulement* at least in relation to the first wave of Tibetan arrivals. Since the 1990s, however, some Tibetans have reported threats of repatriation to China, and in several instances, TJC heard multiply attested accounts of actual forced repatriations.

Documents and Related Questions

Registration Certificates. To legally reside in India, Tibetans must hold a Registration Certificate (RC), which must be renewed every six months to one year.¹² A valid RC provides its bearer with an informal status. In practice, this status amounts to the ability to reside in a particular locality of India, typically connected to a Tibetan settlement camp or locale, without being harassed by authorities and to travel domestically, although sometimes subject to the condition of preapproval by local authorities. In theory, Tibetans also must produce RCs to work legally and to own property, among other privileges. Finally, Tibetans need RCs if they want to travel internationally. With an RC, albeit subject to the discretion of Indian officials, Tibetans may be issued a document known as an Identity Certificate (IC), which enables them to travel internationally to the few countries that will accept these documents in lieu of a passport, including the United States, Switzerland, and several other states in Europe.

The first wave of Tibetan arrivals received RCs, but after 1979 the Indian government ceased issuing RCs to new arrivals. Thereafter, only the children of the first wave of Tibetans were legally able to obtain RCs. Yet for many years, Indian officials would turn a blind eye to the common practice whereby new arrivals would claim to be children of pre-1979 arrivals and receive RCs on that basis. In the 1990s, however, the CTA, after consultations with the Indian government, stopped

¹² See the model Registration Certificate in the Appendix, *infra* at p. 116.

helping new refugees to obtain RCs in this manner. Some reports since October 2008 suggest that India again began issuing RCs to new arrivals, but the criteria for their issuance and the extent to which this announced policy has been implemented remains unclear. At any rate, Tibetans who reside in India without RCs may face police harassment, detention, extortion, threats of deportation, and other abuses.

Identity Certificates. To travel internationally, Tibetans must hold an RC. If they do, they may apply for an IC, which, as noted, enables them to travel internationally to the few countries that accept these documents in lieu of a passport. According to multiple reports, the application process for an IC is plagued by delays. Approval and the issuance of the IC may take anywhere from three months to three years. The issuance of ICs is also discretionary. Officials need not provide a reason for declining to issue one. Interviews suggest that in some cases, if not most, a *de facto* bribe is required to obtain an IC.

For a Tibetan with an IC to reenter India, the IC must bear a stamp that reads “No Objection to Return to India” (often known as a “NORI stamp” for short). Interviewees told TJC that Indian officials sometimes refuse to issue NORI stamps to politically active Tibetans, and India will not allow a Tibetan refugee to reenter the country without such a stamp. ICs are generally valid for two years. They may be renewed, but only a few foreign states (the United States among them) accept them in lieu of a passport. To return to India, a Tibetan must also obtain a visa from the local Indian consulate in the country to which they travel. Recent policy changes have foreclosed other options for international travel that were previously offered to Tibetans by India, such as exit permits to be used for family reunification.¹³

Special Entry Permits. Special Entry Permits (SEPs) represent a new joint initiative of the Indian government and the CTA. These permits allow Tibetans to enter India via Nepal. The program began in 2003 and enables Tibetans to obtain SEPs in Nepal before they begin their travel to India. 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. There are three categories of SEPs: “pilgrimage,” “education,” and “other.” The pilgrimage SEP allows the bearer to remain in India for three months—with the possibility of an extension of up to six months—at which time he or she must return to Tibet. The bearers of pilgrimage SEPs are ineligible to acquire an RC or any other Indian documentation. Tibetans entering India with an “education” or “other” SEP may remain for a longer period of time and are eligible to obtain an RC. But “other” SEPs are seldom issued—perhaps only on five or six occasions to date. It appears that this category is reserved for special

¹³ See the model Identity Certificate in the Appendix, *infra* at p. 111.

cases, typically former political prisoners of particular significance to the CTA, so its use is naturally sensitive.

While the SEP program means that Tibetans must wait slightly longer in Nepal before entering India than they once did,¹⁴ it ensures them safe transit and some measure of protection and documentation while they remain in India—provided, of course, that they agree to return voluntarily after the designated period of time. China, of course, does not recognize the legality or legitimacy of the SEP program, and so Tibetans who leave China to visit relatives in India, get an education for their children, or make a religious pilgrimage will be deemed to have violated Chinese law. Tibetans who travel to Nepal or India without appropriate authorization from China may, and almost always will, be punished and questioned intensively upon their return.

Indian Citizenship. The Indian Constitution, the Citizenship Rules of 1956, as amended in 1998, and the Citizenship Act of 1955, as amended by the Citizenship (Amendment) Acts of 1986 and 2003, theoretically govern the rights of Tibetans, like any other foreigner, to seek Indian citizenship. A couple of provisions of the citizenship laws, as amended, also appear on their face to apply to Tibetans and offer a path for them to obtain citizenship in some situations. In practice, however, TJC found that it is extraordinarily difficult, if not impossible, for the vast majority of Tibetans residing in India to obtain Indian citizenship. For Tibetans, at least, the citizenship law “on the books” is emphatically not the same as the “law in action.”¹⁵

In 2009, however, the High Court of Delhi held in *Namgyal Dolkar v. Ministry of External Affairs*¹⁶ that Tibetans born on Indian soil between January 26, 1950, and July 1, 1987, automatically received Indian citizenship by operation of law; and, indeed, that this right may not be waived. (Indian citizenship can be renounced only through specific procedures specified elsewhere in the Citizenship Act.) The apparent consequence of this decision is that some 30,000 Tibetans in India (that is, those born in India within the aforementioned years) enjoy what is often called birthright citizenship. In an interview with Ms. Dolkar’s attorney, TJC learned that several other Tibetans who were born in India within the relevant period have applied for passports based on the decision, but the High Court’s decision therefore remain to be seen. The decision does not change the status of Tibetans who fled to India following the 1959 Lhasa Uprising or those born in India to Tibetan

¹⁴ See generally TIBET’S STATELESS NATIONALS I, *supra* note XX, at 89-99.

¹⁵ See Roscoe Pound, *Law in Books and Law in Action: Historical Causes of Divergence Between the Nominal and Actual Law*, 44 AM. L. REV. 12 (1910).

¹⁶ See *Namgyal Dolkar v. Ministry of External Affairs*, W.P. (C) 12179/2009 (High Court of Delhi) (India) (discussed below).

parents on or after July 1, 1987 (unless, of course, those ethnic Tibetan parents are themselves Indian citizens).

Without citizenship, Tibetans may not vote or otherwise participate in the Indian political process, hold government jobs, or, according to most interviewees, own property without the approval of the Reserve Bank of India. They also may not own business entities in their own name. Therefore, Tibetan businesses in India must typically be owned nominally by an Indian citizen who serves, in effect, as a proxy for the true (Tibetan) owner. Tibetans are also ineligible for seats in most post-secondary educational institutions.

The Circumstances for Tibetan Refugees in India

Estimates vary, but most sources state that between 1500 and 3500 new Tibetans arrive in India each year. According to the CTA, in all, 111,170 Tibetans live in exile, about 85,000 of who reside in India. Most other sources suggest a higher number, viz., somewhere between 110,000 and 125,000. The Central Tibetan Relief Committee, an Indian charitable organization, reports that, in total, 145,150 Tibetans reside in India, Nepal, and Bhutan, while comparatively smaller communities of Tibetan exiles live in the United States, Canada, Switzerland, and a few other countries. About 75% of Tibetans in India live in the 37 formal settlements and 70 or so informal settlements (or communities). About 20,000 Tibetans live in the roughly 200 Tibetan Buddhist monasteries or nunneries located in proximity to the formal or informal settlements.¹⁷

Economically, Tibetans in India rely mostly on agriculture, local industry, and various handicrafts. Most of the formal settlements have become severely overcrowded, as the birth rate increases the aggregate exile population, while the available land (which had been provided by former Prime Minister Jawaharlal Nehru), housing, arable land, and other resources have not been increased commensurately for many years. The CTA, in practice, bears responsibility for most of the internal affairs of the settlements, although India, of course, retains formal authority, and the CTA may exercise only as much power as India finds it expedient to allow.

The CTA runs healthcare services and schools, among other social-support institutions for Tibetans in the settlements. Most Tibetans in

¹⁷ In 2007, World Tibet Network News reported that about 134,000 Tibetans live in exile; of these about 100,000 reside in the Dharamsala region alone. World Tibet Network News, Sept. 23, 2007. Central Tibetan Relief Committee, *Tibet in Exile*, <http://www.tibet.net/en/index.php?id=9> (last accessed on September 5, 2011). The latter number seems high in comparison with other estimates of the population in that area. See *infra* notes 226 to 231.

India attend schools run and supervised by the CTA. These include the Tibetan Children's Village (TCV) schools and other institutions, which the CTA's Department of Education administers. New arrivals between the ages of fourteen and seventeen typically attend "transit" schools administered by the CTA, which offer instruction in the English and Tibetan languages and vocational training.



The Dalai Lama inspects agricultural production at the Tibetan settlement in Bylakuppe, south India, mid-1960s.

The growth of the Tibetan community has placed significant strain on the Tibetan educational system in recent years. Most Tibetans do not attend college. Few can afford it. Those who do receive a college degree often cannot attend post-graduate or professional schools. Nearly 45% of the Tibetans who arrived in India since the 1980s were, or have since become, monks or nuns. While some return to Tibet after completing their religious studies, most remain in the monasteries or nunneries established by the Tibetan community in India, for China continues to restrict religious freedom severely in Tibet.

As "foreigners" within the meaning of the Foreigners Act, Tibetans may not legally purchase real property in India without obtaining the approval of the Reserve Bank of India. Because the application for approval is time-intensive and burdensome, in general, only highly placed CTA officials take the time to apply. Most Tibetans cannot afford to purchase real property in any event. Even those who can afford it frequently find it easier to pay an Indian citizen to buy and nominally own the property for them. Most land "owned" by Tibetans in the Dharamsala area, for example, has been acquired in this way. Unfortunately, this system relies on trust and the good faith of the proxy owners. Tibetans lack any legal redress in the event that the nominal owners choose to assert their legal ownership rights.

Another major problem facing the Tibetan community in India today is unemployment. The unemployment rate has been high and increasing for years now. India does not, in practice, allow Tibetans to compete for certain employment opportunities, including in particular jobs related (even tangentially) to government services. A 1999 estimate put the Tibetan unemployment rate at 18.5% for those between the ages of sixteen and fifty,¹⁸ and a 2009 CTA study found that more than 17% of the total Tibetan population is unemployed or underemployed.¹⁹

Civil Rights. Tibetans lack the human rights to freedom of speech, assembly, and movement, among others. In general, and by law, India's Constitution guarantees these rights only to Indian *citizens*.²⁰ At any rate, the Constitution states that these rights must yield to "reasonable restrictions," which may be imposed by the government in the interests of sovereignty, integrity, public order, decency, and security.²¹ In practice, too, India has become increasingly intolerant of protests by the



Tibetan youth in India protest China's occupation of Tibet. A new generation of exile-born Tibetans seeks a more active engagement of basic rights of speech and assembly.

Tibetan community since the 1990s, especially since India began to seek rapprochement with China. India refused, for example, to allow Tibetans to hold peaceful demonstrations against China's human rights

¹⁸ Immigration & Refugee Board of Canada, Extended Response to Information Request, IND33125.EX (Dec. 23, 1999) [hereinafter Refugee Board IND33125], available at <http://www.unhcr.org/refworld/docid/3ae6ad4124.html> (last accessed on September 5, 2011).

¹⁹ Tibetan Demographic Study, 1999, Planning Council, Central Tibetan Admin., Dharamsala (2000).

²⁰ E.g., INDIA CONST. art. 19.

²¹ *Id.* art. 19(2).

violations in Tibet in the lead up to the Beijing Olympics of 2008.

While Indian and Tibetan communities generally coexist peacefully, the historic mutual tolerance, cultural affinity, and friendship of these communities has been challenged at times, especially in recent years, by anti-Tibetan sentiment in some areas of India. Incidents of violence between Tibetan and Indian communities during the 1990s exacerbated intercommunal tensions. In 2005, one political party in southern India staged a demonstration calling on Tibetans to “quit India.” In 2008, tensions between local Indian and Tibetan refugee communities led to an unofficial boycott of taxicabs driven by Tibetans. In 2009, however, leaders of the Indian and Tibetan communities took steps to resolve their differences.

II. METHODOLOGY

This report is based chiefly on field research carried out by TJC in India between 2003 and 2007, augmented by secondary literature and legal research, as well as subsequent interviews with key participants such as officials of the CTA.²² Among other issues, TJC investigated the issuance of RCs and ICs to Tibetans; their legal eligibility, if any, for Indian citizenship; their ability to purchase and own real property; educational and employment opportunities for Tibetans in India; travel restrictions imposed on Tibetans by the Indian government, both within India and internationally; the extent to which India protects the human rights of Tibetans, particularly the principle of *non-refoulement* and freedom of association, assembly, and expression; and the relations between Tibetan exile communities and local Indian communities in different regions of India.

TJC conducted more than 100 interviews in India, including 85 interviews with Tibetans in Delhi, Dharamsala, Darjeeling, and Bylakuppe – regions of India with significant Tibetan populations – and at four of the largest Tibetan settlements in India. Interviewees also included members of the CTA,²³ Indian government officials, staff at

²² Secondary sources on which TJC relied include, for example, official reports of the U.S. and Canadian government immigration bureaus, studies by non-governmental organizations (NGOs), and investigative journalism.

²³ The CTA officials interviewed included (1) the liaison officer between the Indian government and the CTA; (2) the Secretary and Additional Secretary of the Department of Information and International Relations; (3) the Additional Secretary for the Department of Home Affairs; (4) the Secretary of the Security Department; (5) officials at the Refugee Reception Center in Dharamsala; (6) an official of the Department of Education; (7) the Joint Secretary and Chief Planning Officer; (8) the Secretary of the Tibetan Welfare Office in Darjeeling; (9) an official of the Tibetan Welfare Office in

the office of the U.N. High Commissioner for Refugees (UNHCR) in India, NGOs, journalists, Indian citizens, and Tibetan students, monks, former political prisoners, and businessmen. TJC also interviewed CTA and Nepalese government officials in Nepal to determine how the Nepalese Tibetan Welfare Office and Refugee Reception Centre—both of which Nepal forcibly closed in 2006 (although they continue to operate informally)—handle new arrivals from Tibet seeking to transit through Nepal to India.²⁴

III. BACKGROUND: SINO-INDIAN RELATIONS

We provide the following historical summary to set out the basic context in which the policies and attitudes of India's government and people toward India's Tibetan population should be understood.

Tibet lies between India and China. Historically, it formed both a bridge and a geostrategic buffer between these two major civilizations. While China and India established cultural, economic, and religious ties at a relatively early time in recorded history, particularly following the transmission of Buddhism from India to China in the first century C.E., their political contact was limited before the twentieth century.²⁵ In the preceding two centuries, Tibet had become increasingly independent of the waning Manchu Qing dynasty. With few exceptions, Tibetans in the historical Tibetan provinces of Amdo, Kham, and U-Tsang enjoyed independence and local rule by the mid-nineteenth century, although the Manchu dynasty purported to exercise authority in Tibet right up until its demise in 1912.²⁶ In the nineteenth century, at the height of the United Kingdom's colonial power, Britain sought to establish economic, diplomatic, and political ties to Tibet.²⁷ Its interest in Tibet grew out of its imperialist expansion into South Asia and its desire to establish Tibet as a market for its goods and a safe trade route to China. At the time, Britain also feared Czarist Russia's growing influence in Tibet.²⁸

Dharamsala; and (10) the supervisor of the Oral History Project at the Tibetan Library in Dharamsala.

²⁴ For information about the Tibetan Welfare Office (the CTA's local office in Nepal) and the Tibetan Refugee Reception Centre, see *TIBET'S STATELESS NATIONALS I* supra note 1, at 110-12. Interviewees in Nepal included the Nepalese UNHCR protection officer and a Tibetan official at the Reception Centre.

²⁵ FED. RESEARCH DIV., LIBRARY OF CONG., *CHINA: A COUNTRY STUDY* § 7 (Robert L. Worden et al. eds., 4th ed. 1989) (1970) [hereinafter *COUNTRY STUDY, CHINA*]; see also JOHN KEAY, *INDIA: A HISTORY* 113-14 (2001) [hereinafter *KEAY*].

²⁶ VAN WALT VAN PRAAG, supra note 3, at 128.

²⁷ PETER HOPKIRK, *THE GREAT GAME: THE STRUGGLE FOR EMPIRE IN CENTRAL ASIA* 506-07 (1990).

²⁸ JULIE G. MARSHALL, *BRITAIN AND TIBET 1765-1947*, at xxi, 334 (2003); see KEAY,

Between 1914 and 1947, Britain sought to preserve Tibet as a buffer between India and China.²⁹ It eased travel restrictions between India and Tibet, and an increasing number of Tibetans traveled to India for education.³⁰ But Britain cultivated a studied ambiguity as to Tibet's political status during India's final 35 years as a British colony: at times, it recognized China's so-called "suzerainty" over Tibet, an ill-defined term that, in this context, denoted some form of political power short of sovereignty; at other times, Britain recognized Tibet's independence.³¹ After achieving its own independence, India inherited these "consistent ambiguities" and unresolved issues from Britain, including disputes with China over the border with the territory of Tibet.³²

For about a decade after 1947, India and China enjoyed generally warm relations. Prime Minister Nehru felt that the two states shared a "history of problems associated with colonization . . . poverty and underdevelopment."³³ Hence, on January 1, 1950, India became the first country to recognize the PRC.³⁴ Later that year, however, when the PLA invaded Tibet, India did not condone its action. Although India did not expressly condemn China for its aggression and subsequent illegal annexation of Tibet,³⁵ neither did it recognize Tibet as "part of" China in a legal sense.

Nonetheless, in 1954, India and China entered into an eight-year treaty regarding Tibet.³⁶ In it, they agreed to the "Five Principles of Peaceful Coexistence," also known as the Principles of Panchsheel.

supra note 25, at 114.

²⁹ MARSHALL, *supra* note 28, at 334.

³⁰ *Id.* at 466.

³¹ *See, e.g., id.* This report is not the place for argument about Tibet's historical and legal status, a subject that TJC has addressed previously. *See* TIBET JUSTICE CENTER, THE CASE CONCERNING TIBET: TIBET'S SOVEREIGNTY AND THE TIBETAN PEOPLE'S RIGHT TO SELF-DETERMINATION (1998); *see also* VAN WALT VAN PRAAG, *supra* note 3, at 61-62; TSERING SHAKYA, DRAGON IN THE LAND OF SNOWS: A HISTORY OF MODERN TIBET SINCE 1947 (2000); INTERNATIONAL COMMISSION OF JURISTS, TIBET: HUMAN RIGHTS AND THE RULE OF LAW (1997); Robert D. Sloane, *The Changing Face of Recognition in International Law: A Case Study of Tibet*, 16 EMORY INT'L L. REV. 107 (2002). We nonetheless emphasize that Britain recognized Tibet as an independent state on numerous occasions and in diverse ways. *See, e.g.,* MARSHALL, *supra* note 28, at 447. For example, it concluded treaties directly with Tibet's government. *E.g.,* Convention Between Great Britain and Thibet, Sept. 7, 1904.

³² MARSHALL, *supra* note 28, at xx-xxii.

³³ BIPAN CHANDRA, MRIDULA MUKHERJEE & ADITYA MUKHERJEE, INDIA AFTER INDEPENDENCE 1947-2000, at 164 (2000).

³⁴ *Id.* at 163; *see also* HERMANN KULKE & DIETMAR ROTHERMUND, A HISTORY OF INDIA 336 (1986).

³⁵ KEAY, *supra* note 25, at 515; CHANDRA, *supra* note 33, at 164.

³⁶ Agreement on Trade and Intercourse Between Tibet Region of China and India, P.R.C.-India, Apr. 29, 1954, 99 U.N.T.S. 57 (1958) [hereinafter Trade & Intercourse Agreement].

These included “respect for each other’s territorial integrity and sovereignty, non-aggression, non-interference in each other’s internal affairs, equality and mutual benefit, and peaceful coexistence.”³⁷ The Trade and Intercourse Agreement effectively repudiated all previous agreements between the Tibetan government and the erstwhile British authorities of colonial India.³⁸ Although nominally about trade alone, the Trade and Intercourse Agreement dealt with a wide range of issues beyond trade, including, for example, reciprocal rights of residence and travel for nationals of the two states.³⁹ As relevant here, the Agreement also revoked Tibetans’ rights to settle in India indefinitely; until 1954, India had authorized the free migration of Tibetans into India and vice versa.⁴⁰

After 1954, consequently, Tibetans who wanted to visit India had to acquire Chinese passports and visas from the Indian consulate in Lhasa or trade mission in Gyantse. This change did not cause much tension between China and India because few people crossed the Indo-Tibetan border at the time, and in any event, the two states did not treat failures to obtain the proper legal papers as serious infractions. Prime Minister Nehru believed that in the absence of an independent state of Tibet as a geostrategic buffer between India and China, India’s security interests would be best served by cultivating stronger ties with the China—particularly in view of the relatively weak state of India’s military at the time and its inability to defend India’s border with China.⁴¹ The phrase *Hindi-Chini bhai-bhai* (“India and China are brothers”) is indicative of India’s foreign relations attitude toward China during this period.⁴²

This situation changed in 1959. On March 10th of that year, the PLA brutally crushed a popular Tibetan revolt against China’s occupation of Tibet, generally known as the Lhasa Uprising. Fearing for his safety, the Fourteenth Dalai Lama, Tibet’s spiritual and temporal leader, together

³⁷ CHANDRA, *supra* note 33, at 150; see STANLEY WOLPERT, A NEW HISTORY OF INDIA 364 (2008); COUNTRY STUDY, CHINA, *supra* note 25, at 532.

³⁸ Aff. of Tsering Shakya, Feb. 2004, ¶ 1 (on file with TJC) [hereinafter Shakya Aff.]. Professor Tsering Shakya is Research Chair of Religion and Contemporary Society at the Institute for Asian Research, University of British Columbia, the director of *Tibet Times*, a member of the advisory board of the International Association of Tibetan Studies, the past director of research for the Tibet Information Network, and the author of highly regarded books and articles on Tibetan history and culture, including, most prominently, *THE DRAGON IN THE LAND OF SNOWS: A HISTORY OF MODERN TIBET SINCE 1947* (2000).

³⁹ See Trade & Intercourse Agreement, *supra* note 36, art. 3.

⁴⁰ Shakya Aff., *supra* note 38. Before Tibet’s invasion and occupation by the PLA, many Tibetan aristocrats would send their children to be educated in British schools in India, and merchants traveled freely between the two states.

⁴¹ COUNTRY STUDY, CHINA, *supra* note 25, at 532.

⁴² *Id.*; WOLPERT, *supra* note 37, at 364.

with his personal retinue, secretly fled the Norbulingka Palace, crossed the Indo-Tibetan border, and sought refuge in India. Because of the longstanding cultural and religious ties between the peoples of India and Tibet, Prime Minister Nehru personally offered the Dalai Lama and his personal retinue refuge and guaranteed them a safe haven in India. To this day, however, India does not consider or refer to the Dalai Lama as a refugee but simply as an "honored guest."⁴³

In the four years following the Dalai Lama's flight, approximately 40,000 Tibetans fled to India to avoid persecution and to join the Dalai Lama in exile.⁴⁴ The Indian government generously offered these early refugees shelter, medical care, and other humanitarian aid. It also let them reside and work in India, principally on road construction and other manual labor projects. Some Tibetans were also recruited into the Indian military.⁴⁵ Prime Minister Nehru did not, however, formally recognize the newly established Tibetan government-in-exile or permit

⁴³ Aff. of Dr. Robert J. Barnett, Oct. 20, 1999 ¶ 8 (on file with TJC) [hereinafter Barnett Aff.]. Dr. Barnett is an Assistant Professor of Contemporary Tibetan Studies and the Director of the Modern Tibetan Studies Program at Columbia University. His research and scholarship focus on contemporary Tibetan politics, history, and culture. He is the author of numerous books and articles about Tibet, including *TIBETAN MODERNITIES: NOTES FROM THE FIELD ON SOCIAL AND CULTURAL CHANGE* (2008); *LHASA: STREETS WITH MEMORIES* (2006); and *CUTTING OFF THE SERPENT'S HEAD: TIGHTENING CONTROL IN TIBET, 1994-1995* (1996). Between 1987 and 1998 he served as the Executive Director of the Tibet Information Network (TIN), a now defunct British NGO, which, while it operated, was widely acknowledged as perhaps the most reliable source of information about political and other contemporary developments within Tibet. It is an indicium of TIN's credibility that the U.S. State Department, which exercises extreme caution in researching and preparing its annual country reports on human rights practices, had routinely cited and relied upon TIN's publications until the NGO ceased operations in late 2005. See, e.g., BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, DEP'T STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (2000).

⁴⁴ LOUISE W. HOLBORN, *REFUGEES: A PROBLEM OF OUR TIME: THE WORK OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 1951-1972*, at 720-21 (1975). In the early 1960s, UNHCR cooperated with India to assist the Tibetan refugees. This relationship ceased in 1975, however, at which time UNHCR withdrew most of its personnel from India. Since then, UNHCR has had no formal status in India, and it officially takes the position that the CTA has primary responsibility for seeing to the needs of the Tibetan exile community in India. Interview with Mei-Meng Lim Kabaa, Deputy Chief of Mission, UNHCR, India (Oct. 3, 2003) (on file with TJC); see generally U.S. COMM. ON REFUGEES, COUNTRY REPORTS: INDIA (2003).

⁴⁵ The Indian government quickly recognized that, unlike Indian workers, Tibetans did not suffer from altitude sickness in the high Himalayan passes along the Sino-Indian border, where roads and infrastructure were desperately needed. India's Public Work Department therefore put most of the Tibetans to work as laborers on the rushed road-building projects high in the Himalayans. The Indian military also recruited some 10,000 Tibetans to serve in its special frontier forces. Even today, approximately 5000 Tibetans continue to serve in these forces. Shakya Aff., *supra* note 38, ¶¶ 1.c, 1.d.

it to undertake political activities on India soil.⁴⁶

India initially regarded the massive influx of Tibetans as temporary. It therefore housed them in makeshift refugee camps located in isolated and under-populated regions of India.⁴⁷ But the Dalai Lama's arrival in India marked the beginning of a very delicate political and diplomatic balancing act by the Indian government, which continues to this day. For while the Indian government went to great lengths to accommodate the humanitarian needs of the continuing influx of Tibetan refugees, it simultaneously sought to avoid taking an official stance on any issue even remotely related to Sino-Tibetan politics.

In 1962, war broke out between China and India, terminating, for all practical purposes, the 1954 Trade and Intercourse Agreement. Chinese troops attacked and easily overran India's northeastern border, meeting virtually no resistance from Indian forces. On November 9, 1962, Nehru appealed to the United States and Great Britain for help. The next day, China withdrew its forces from the region, but the incident left India's military humiliated and its national pride wounded. Nehru reportedly never recovered from the defeat, and he died two years later in 1964.⁴⁸

The Sino-Indian relationship remained tense throughout the 1960s and 1970s, the era of China's Cultural Revolution. Among other sources of animosity, China accused India of assisting rebels in Tibet and also supported Pakistan in its 1965 and 1971 wars with India. In August 1971, India signed a Treaty of Peace, Friendship, and Cooperation with the Soviet Union,⁴⁹ prompting China's U.N. representative to denounce India as a "tool of Soviet expansionism."⁵⁰

Beginning in December 1979, however, China and India began to take steps to improve their relations. They held eight rounds of border negotiations between 1981 and 1987. In February 1987, both states deployed troops to the border area, but, despite fears of a second border war, no major or prolonged military clashes broke out. Thereafter, Sino-Indian relations thawed. In 1988, Prime Minister Rajiv Gandhi visited China and signed bilateral agreements on cultural ties, civil aviation, and science and technology. The two states also agreed to work toward a peaceful settlement of their border dispute.⁵¹ In

⁴⁶ CHANDRA, *supra* note 33, at 168.

⁴⁷ Shakya Aff., *supra* note 38 ¶ 1.b.

⁴⁸ CHANDRA, *supra* note 33, 165-67; see DOMINIQUE LAPIERRE & LARRY COLLINS, FREEDOM AT MIDNIGHT 584 (2001).

⁴⁹ Indo-Soviet Treaty of Peace, Friendship and Cooperation, India-U.S.S.R., Aug. 9, 1971, 10 I.L.M. 904 (1971).

⁵⁰ COUNTRY STUDY, CHINA, *supra* note 25, at 533.

⁵¹ Additional talks were held between 1988 and 2003 in an effort to resolve the border dispute. Despite progress in achieving troop reductions in the region, China and India reached no final resolution.

diplomatic exchanges, China continued to insist, as it had since 1950, that Tibet constituted an inalienable part of China and that China would not tolerate “anti-Chinese” political activities by Tibetans living in India.

A final major shift in India’s relationship with China took place on June 23, 2003, when Indian Prime Minister Atal Bihari Vajpayee and Chinese Prime Minister Wen Jiabao signed the Declaration of Principles of Relation and Comprehensive Cooperation. In it, India for the first time formally recognized Tibet as a “part of the territory of the People’s Republic of China,” and also promised to prohibit “anti-China political activities” by Tibetans in India.⁵² In exchange, China agreed to allow trade across the Sino-Indian border in India’s northeastern state of Sikkim, signifying China’s acceptance of India’s claim to Sikkim.

IV. INDIAN POLICY TOWARD TIBETAN REFUGEES: CONTINUITY AND CHANGE

A. The First Wave (1959-1979): Tibetan Refugees Entering India After the Lhasa Uprising, and the First Tibetan Settlements in India

In early March 1959, popular demonstrations against Chinese rule in Tibet erupted in Lhasa, Tibet’s capital. Tensions were high, as the capital city had been filling for some time with Tibetans fleeing Kham and Amdo, Tibet’s eastern provinces. “Reforms,” which were forcibly introduced into those areas by the PRC beginning in the mid-1950s, led to armed resistance. The immediate impetus for the demonstrations was a rumor that Chinese authorities had requested the Dalai Lama’s attendance at a theatrical show inside a Chinese military base, without his typical retinue, because they planned to kidnap him.

On March 10, 1959, approximately 30,000 Tibetans took to the streets in Lhasa, guarding the gates of Norbulingka, where the Dalai Lama resided at the time, and protesting China’s occupation. Tensions mounted in the ensuing days as 40,000 Chinese troops gathered in Lhasa. The first shots were fired on March 17. That evening, as the PLA began to shell Lhasa, the Dalai Lama, his family, and a small entourage

⁵² Declaration on Principles for Relations and Comprehensive Cooperation Between the People’s Republic of China and the Republic of India (Cooperation Declaration), China-India, June 25, 2003, available at <http://www.fmprc.gov.cn/eng/wjdt/2649/t22852.htm> (last accessed on September 5, 2011). Until the Cooperation Declaration, India studiously avoided officially recognizing China’s annexation of Tibet.

of his associates fled to India.⁵³

The PLA entered Norbulingka two days later. Fighting continued in Lhasa for several days, leaving thousands of Tibetans dead, and China placed Lhasa under martial law. The Dalai Lama originally intended to stop at a point near the Indian border but still within Tibet, where he would reestablish his government and open negotiations with China. However, once he learned of the carnage in Lhasa and Zhou Enlai's dissolution of the Tibetan government, he decided to seek refuge in India. On March 31, 1959, the Dalai Lama and an entourage of about eighty other Tibetans entered India, crossing from the small town of Mangmang on the Tibetan side of the border into Assam, India.⁵⁴



Tibetans converge in Shol neighborhood of Lhasa during the March 1959 uprising.

Upon his arrival, the Dalai Lama received a telegram from Prime Minister Nehru, which read:

My colleagues and I welcome you and send greetings on your safe arrival in India. We shall be happy to afford the necessary

⁵³ See JOHN F. AVEDON, *IN EXILE FROM THE LAND OF THE SNOWS* 50-61 (1984); TENZIN GYATSO, *FREEDOM IN EXILE: THE AUTOBIOGRAPHY OF HIS HOLINESS THE DALAI LAMA OF TIBET* 131-38 (1990).

⁵⁴ AVEDON, *supra* note 53, at 58-61; GYATSO, *supra* note 53, at 141.

facilities to you, your family and entourage to reside in India. The people of India, who hold you in great veneration, will no doubt accord their traditional respect to your personage. Kind regards to you. Nehru.⁵⁵

Popular support among Indians for the Dalai Lama and the ancient and strong cultural, ethnic, and religious ties between India and Tibet left Nehru with little choice but to permit the Dalai Lama and his entourage to enter and enjoy safe haven in India. He announced the Dalai Lama's safe arrival to a standing ovation in Parliament.

Yet Nehru appreciated that China would regard India's conduct as a violation of the Panchsheel Principles. He therefore stressed, "that his support of the Dalai Lama was humanitarian only, based on a 'tremendous bond' growing out of centuries of spiritual and cultural exchange between India and Tibet."⁵⁶ He also made clear that India would offer the Dalai Lama and his followers humanitarian assistance but would not allow India to be used as a base from which to pursue Tibetan independence. By isolating the Dalai Lama and his retinue in a remote region of India, Nehru hoped that the Tibetan cause would gradually fade into obscurity.

India thus initially transported the Dalai Lama to Mussoorie, a hill station north of Delhi, where the government requisitioned Birla House for his use until long-term plans could be formulated. Three days later, on April 24, 1959, Prime Minister Nehru conferred with the Dalai Lama in Mussoorie. While cordial, he made clear that he intended to protect India's relationship with China by adhering to the 1954 Panchsheel Principles and by not questioning China's authority in Tibet.⁵⁷

1. Humanitarian Aid and Early Settlements

Shortly thereafter, thousands of Tibetans followed the Dalai Lama into exile, arriving at a rate of as many as 1,500 per week. Many died in transit or soon after arrival. Even those who managed to survive the perilous journey over the Himalayas almost always arrived in India starving, exhausted, unaccustomed to the much lower altitude and much warmer climate, and desperately in need of medical attention.⁵⁸ India's Ministry of External Affairs established two transit camps for the new arrivals, one in Missamari, near the Tibetan border with Assam, the other in Buxa Duar, near the Bhutanese border in West

⁵⁵ GYATSO, *supra* note 53, at 144.

⁵⁶ AVEDON, *supra* note 53, at 66.

⁵⁷ GYATSO, *supra* note 53, at 146-47.

⁵⁸ HOLBORN, *supra* note 44, at 718.

Bengal.⁵⁹

By June 1959, 20,000 Tibetans had arrived in India, and the number of new arrivals increased every day. In May and June, Missamari alone housed 15,000 refugees in transit.⁶⁰ Apart from the Indian government, NGOs and quasi-governmental organizations affiliated with India or other states provided humanitarian assistance. Chief among the Indian organizations supplying such aid was the Central Relief Committee, a coalition of opposition parties led by Acharya Kripalani of the Praja Socialists, who had earlier condemned the Panchsheel Principles as “born in sin to put the seal of our approval on the destruction of an ancient nation.”⁶¹ The Central Relief Committee worked to obtain food, medical supplies, and international aid for the Tibetans. Other organizations participating in the relief effort included CARE, the American Emergency Committee for Tibetan Refugees, Church World Service and Lutheran World Relief, Catholic Relief Services, and the YMCA.⁶² Together, these and other NGOs provided temporary housing, medical supplies, powdered milk, and other essential aid.



Tibetan transit camp, India, early 1960s.

⁵⁹ According to Holborn, “Three hundred bamboo huts were hastily constructed, and food, clothing, and medical supplies were rushed in, often from great distances. When the refugees arrived at the camps they were provided with rations, clothing, and cooking utensils, as well as some medical care. Serious cases were sent to hospitals in nearby towns.” HOLBORN, *supra* note 44, at 718. For a description of conditions in the two camps, see AVEDON, *supra* note 53, at 76-77.

⁶⁰ B. S. Chimni, *The Legal Conditions of Refugees in India*, 7 J. REFUGEE STUD. 378, 389 (1994); HOLBORN, *supra* note 44, at 718-19.

⁶¹ AVEDON, *supra* note 53, at 70, 73.

⁶² HOLBORN, *supra* note 44, at 719.

In June 1959, the Dalai Lama traveled to Delhi to ask Prime Minister Nehru to find alternative sites in cooler regions for the Tibetan refugees. Many were ill and some had already died because of the heat and low altitude at the two initial settlements. At this meeting, the two leaders decided that many of the Tibetans would be put to work on Himalayan road construction projects. Nehru also offered to establish a Society for Tibetan Education within the Indian Ministry of Education, which would establish and fund special schools specifically designed to provide Tibetan children with a Tibetan education. Nehru announced the creation of the Society that same day.⁶³ India also initiated the establishment of refugee handicraft centers. These centers became one sound economic model for Tibetans, especially with the assistance of international relief organizations, which also helped to establish health clinics and schools for the Tibetans. India thus supplied, or facilitated the provision of, massive humanitarian aid to the first wave of Tibetan refugees. Nehru's political position vis-à-vis China, however, remained the same.

On June 20, 1959, immediately upon returning from his discussions with Nehru, the Dalai Lama held a press conference. He repudiated the 17-Point Agreement, which characterized Tibet as part of China and Tibetans as one of China's many minority nationalities.⁶⁴ Diplomatic representatives of the Dalai Lama had signed the Agreement under duress, which included both literal threats of physical violence directed at the representatives and an ultimatum from China that in the absence of their signature the PLA would retaliate against the Tibetan people.⁶⁵ The Dalai Lama also described a litany of atrocities perpetrated by China since the PLA's invasion and occupation of Tibet in 1950. Finally, he declared, "Where I am, accompanied by my government, the Tibetan people recognize us as the government of Tibet. I will return to Lhasa when I obtain the rights and powers which Tibet enjoyed and exercised prior to 1950."⁶⁶ Nehru's government immediately issued a communiqué stating that it did not recognize the Dalai Lama's government-in-exile.⁶⁷

⁶³ GYATSO, *supra* note 53, at 149-50.

⁶⁴ 17-Point Agreement, *reprinted in* VAN WALT VAN PRAAG, *supra* note 3, at 337.

⁶⁵ AVEDON, *supra* note 53, at 90; VAN WALT VAN PRAAG, *supra* note 3, at 147 ("The Tibetans were addressed in harsh and insulting terms, threatened with violence, and virtually kept prisoners. . . . They were simply given the choice of signing or accepting responsibility for. . . [a] [m]ilitary advance on Lhasa."). Under international law, the 17-Point Agreement is void *ab initio*. See Vienna Convention on the Law of Treaties arts. 51-52, May 23, 1969, 1155 U.N.T.S 331. For more detailed legal analysis, see Sloane, *supra* note 31, at 145.

⁶⁶ AVEDON, *supra* note 53, at 72; see GYATSO, *supra* note 53, at 151.

⁶⁷ GYATSO, *supra* note 53, at 151.

By September 1959, the number of Tibetan refugees in India reached 30,000.⁶⁸ The Indian government moved many of them to road camps in northern India. Responding to the government's request for land for the refugees, Mysore, a southern district, made available 3000 acres in Bylakuppe.⁶⁹ In February 1960, 666 Tibetans moved there,⁷⁰ and about another 500 settled there in each six-month period thereafter for some time. Eventually, some 10,000 Tibetans settled on 5500 acres in Bylakuppe, although the land could reasonably house only about one-third of that number, that is, approximately 3000.⁷¹

India's policy toward the Tibetans arriving during this early period has been aptly summarized as follows:

While attempting to maintain the cultural autonomy of the Tibetan people, [India] nonetheless sought to avoid large concentrations of unsettled refugees, which might attract attention. It refrained from officially seeking help from the international community, and sought to retain control over the use made of the very considerable assistance proffered by local and overseas voluntary agencies and their personnel. It did not seek UNHCR assistance, and in the General Assembly, it abstained from voting on both the 1959 and the 1961 resolutions concerning the treatment of the Tibetan people by the Chinese People's Republic. During this period, policy was based on the hope that matters could still be arranged diplomatically so that the Tibetan refugees in India might return to their homeland.⁷²

On April 29, 1960, just over a year after the Dalai Lama fled Tibet, India relocated the Dalai Lama and his nascent government-in-exile to McLeod Ganj, Dharamsala, formerly a British hill station in the northern Indian state of Himachal Pradesh. Dharamsala, which remains the seat of the CTA to this day, is far more remote than Mussoorie. Upon his arrival there, the Dalai Lama established an extensive and comprehensive network of government departments to meet the needs of India's growing Tibetan population.⁷³ In 1960, the CTA also held its first election for government-in-exile representatives. It then drafted a constitution, which the Tibetan refugees in exile approved and formally enacted in 1963.⁷⁴

⁶⁸ *Id.* at 153.

⁶⁹ HOLBORN, *supra* note 44, at 722.

⁷⁰ GYATSO, *supra* note 53, at 155; AVEDON, *supra* note 53, at 88.

⁷¹ AVEDON, *supra* note 53, at 89.

⁷² HOLBORN, *supra* note 44, at 720.

⁷³ AVEDON, *supra* note 53, at 87.

⁷⁴ Tibet's legal system before China's occupation has been documented in REBECCA

At this time, the CTA focused its efforts on relocating the influx of Tibetan refugees to agricultural and other settlements in certain regions of India,⁷⁵ preserving Tibetan culture and religion, providing vocational training to adults, educating Tibetan children, and establishing health services for the refugees.⁷⁶ By October 1964, 40,000 Tibetans had arrived in India.⁷⁷ India established additional settlements for the new arrivals, but the government increasingly found it necessary to turn to NGOs for assistance. The Central Relief Committee developed a comprehensive plan, which included more settlements, vocational training, education, and health care,⁷⁸ but it was never fully implemented.

2. Status Issues

Some sources characterize Prime Minister Nehru's acceptance and welcome of the Dalai Lama and his companions as a formal grant of asylum.⁷⁹ This is inaccurate and misleading, particularly from a legal perspective, because India has categorically and unambiguously declared that as a matter of national law, it "does not give asylum status to refugees from *any* country."⁸⁰ Whatever the reason for this policy, its logic is clear and consistent in view of the fact that India is not a party to the major refugee conventions and has never enacted national laws for the protection of refugees. Instead, India's longstanding practice is to deal with its various refugee populations on an ad hoc, policy basis. This preserves what the government sees as indispensable flexibility.

REDWOOD FRENCH, *THE GOLDEN YOKE: THE LEGAL COSMOLOGY OF BUDDHIST TIBET* (1999).

⁷⁵ For a description of some of the efforts to create settlements in different parts of India, see HOLBORN, *supra* note 44, at 722-25.

⁷⁶ The major institutions established in Dharamsala included the Tibetan Institute of Performing Arts, which preserves music and dance traditions in Tibetan culture; Norbulingka Institute, which preserves Tibetan artwork and crafts, including Thangka painting, wood working, brass molding, and furniture design; the Library of Tibetan Works and Archives, a depository of Tibetan artifacts and manuscripts; the Tibetan Medical & Astrology Institute, which preserves the ancient system of Tibetan medicine; and the Tibetan Children's Village (TCV), which houses and educates Tibetan children.

⁷⁷ HOLBORN, *supra* note 44, at 720-21.

⁷⁸ For a detailed description of the Master Plan, see HOLBORN, *supra* note 44, at 727-36.

⁷⁹ See e.g., Refugee Board IND33125, *supra* note 18; Rahmatullah Khan, *India: India and Its Refugees*, Roundtable of Asian Experts on Current Problems in the International Protection of Refugees and Displaced Persons 106-10 (Int'l Inst. of Humanitarian L. 1980).

⁸⁰ Government of India: Ministry of Home Affairs – Lok Sabha, Unstarred Question No. 4544 to be Answered on 22.04.2003, Question "Refugee Problem," No. 4544, filed by Shri P. Mohan, <http://164.100.47.132/psearch/QResult13.aspx?qref=61070> (last accessed on Jan. 18, 2011) (emphasis added).

The Indian government nonetheless refers colloquially to Tibetans residing in India as “refugees.” However, only the Dalai Lama and about twenty members of his retinue were even recognized by India as refugees in an informal, non-legal sense. In other words, even for these individuals (and *a fortiori* for other undocumented Tibetans in India) the designation “refugee” is a political – not a legal – label. None of the Tibetan “refugees” enjoy rights comparable to those of refugees under international treaty law, still less formal refugee status or *de jure* asylum. To this day, India studiously avoids referring to the Dalai Lama as a refugee; it refers to him as an “honored guest.” He travels with a *sui generis* Indian international travel document, not a passport. Nor does the Dalai Lama possess U.N. refugee papers. He must obtain separate visas authorizing him to depart from and return to India each time he travels.⁸¹ Hence, even the Dalai Lama and the approximately twenty close associates who received Prime Minister Nehru’s personal overture granting them safe refuge in India do not enjoy the legal rights and privileges characteristic of refugee or asylum status under either Indian or international law. Other undocumented Tibetans, who fled in the aftermath of the Lhasa Uprising or later years, reside in India with an even more precarious legal status, which remains wholly subject to the discretion of India’s executive branch and reflects the government’s shifting policies toward Tibetan refugees.

In sum, in the years immediately following the Dalai Lama’s flight from Tibet into exile in 1959, and continuing throughout the 1960s (and to a lesser extent, into the 1970s), India and humanitarian NGOs offered extensive logistical, financial and practical assistance to the tens of thousands of Tibetan refugees who followed the Dalai Lama into exile. India and others often refer to these Tibetans, informally, as refugees, but they do not qualify as refugees within the meaning of Indian law. Indian law does not recognize any obligations in this regard except for the customary international law principle of *non-refoulement*, which India’s Supreme Court has affirmed. No Tibetan refugee in India enjoys formal refugee status or the full range of protections afforded by the U.N. refugee conventions. Nor, as explained further below, do they have the right to resettle in India permanently or – with one recently established exception – to become citizens. While no evidence suggests that India imminently intends to revoke the executive policies that govern undocumented Tibetans in India, even those Tibetans with RCs reside in India at the discretion of the executive branch, which, legally, may modify its policies toward Tibetans at any time.

⁸¹ Barnett Aff., *supra* note 43, ¶ 9.

B. The Second Wave of Arrivals (1980-1993)

From about the mid-1960s until about 1979 – roughly, the era of the Cultural Revolution in China – few Tibetans were able to flee to exile. China severely restricted freedom of movement in Tibet during this time.⁸² But a second wave of Tibetan refugees began to arrive in India in and after 1979. At that time, Deng Xiaoping initiated comparatively liberal reforms throughout the PRC, making travel from Tibet to India possible.⁸³ Tibetan monks and political activists, many of whom had been detained, imprisoned, and tortured, after the demonstrations that began in 1987 and continued through the declaration of martial law in March 1989, also began to arrive in greater numbers. Numbers grew after 1995 in response to China's renewed repression in Tibet at the time, known as the "Strike Hard" campaign.⁸⁴ The Strike Hard Campaign led many Tibetan political activists, monks, and nuns to escape to India via Nepal.⁸⁵ In all, about 25,000 new Tibetans arrived in India between 1986 and 1996, increasing the total Tibetan population in India by almost 25%.⁸⁶

Since 1979, Tibetans arriving directly from Tibet via the Sino-Indian border have often been immediately deported back to Tibet because of the geopolitical sensitivity of the disputed border region and suspicion that they might be Chinese spies. Apart from this exception, however, India has unofficially allowed Tibetans to enter the country via Nepal, typically by way of the border town of Sonauli. There, in what amounts to a "gentlemen's agreement," border officials allow buses of Tibetans arriving from the Tibetan Reception Centre in Kathmandu to cross the border for an "entry fee" (a de facto bribe, or form of so-called *baksheesh*) and continue to Delhi, and from there, typically, to Dharamsala.⁸⁷ The Indian government has for the most part turned a blind eye to this informal process. It does not, however, recognize its legality. Nor does the government's tacit tolerance of the process confer any legal status or rights on Tibetans entering in this way.

Consequently, most Tibetans arriving during the post-1979 period

⁸² Barnett Aff., *supra* note 43, ¶13.

⁸³ Refugee Board IND33125, *supra* note 18.

⁸⁴ A definitive account of China's policies, the rationales for them, and their effects on Tibet's population in and after the early 1990s may be found in HUMAN RIGHTS WATCH AND THE TIBET INFORMATION NETWORK, CUTTING OFF THE SERPENT'S HEAD: TIGHTENING CONTROL IN TIBET, 1994-1995, 69-75 (1996).

⁸⁵ Barnett Aff., *supra* note 43, ¶13.

⁸⁶ *Situation of Tibet and Its People: Hearing Before the S. Foreign Relations Comm.*, 105th Cong. 52-55 (1997) (testimony of Maura Moynihan, Consultant to Refugees International).

⁸⁷ For a description of this process, see TIBET'S STATELESS NATIONALS I, *supra* note 24 at 67-68.

did not receive RCs or other documents from the Indian authorities.⁸⁸ But India for the most part tolerated the relatively common practice whereby new arrivals would continue to acquire RCs, often by claiming to be the children of the first wave of Tibetans, who, like their parents, should be entitled to RCs. Still other Tibetans arriving during this time managed to remain in India without an RC by initially representing that they would only be visiting India temporarily, for example, for a pilgrimage or to visit family—but then remaining in one of India's Tibetan communities discreetly. Gradually, this second wave of arrivals became integrated into existing Tibetan settlements, monasteries, schools, and other communities in different areas of India. Again, most Indian officials, although aware of this de facto immigration, did little to stop it, and the central government did not object overtly.

This tacit absorption strategy collapsed in the early 1990s. At that time, the number of new arrivals increased dramatically. While fewer than 1,000 Tibetans, on average, arrived annually during the 1980s, that number more than doubled by the early 1990s. In 1992, for example, 3,374 Tibetans arrived in northern India.⁸⁹ Latent tensions between proximate Tibetan and Indian communities also flared up during this period because, in some regions, existing land could not accommodate the new arrivals. At times, tensions also developed within the Tibetan community, between the older generation and the newer arrivals. In response, the CTA, after consulting the Indian government, began to exercise more stringent controls in its assistance to new Tibetan arrivals towards procurement of RCs, and to reconsider its decades-old policy towards them.⁹⁰

C. The Third Wave of Arrivals (1994-1999)

In April 1994, a serious episode of violence broke out between the local Indian and Tibetan communities in an area near Dharamsala. The incident developed out of an initially minor argument between Tibetan

⁸⁸ Immigration and Refugee Board of Canada, *India/China: Whether a Tibetan whose birth in India between 1950 and 1987 was not registered with the authorities would be recognized as a citizen; whether the Indian government accepts birth certificates issued by the Tibetan government-in-exile; whether the Indian government issues birth certificates to Tibetans born in India*, 6 February 2006, ZZZ100699.E, available at <http://www.unhcr.org/refworld/docid/45f147d1a.html> (last accessed on September 5, 2011); see also Response from the UNHCR to the U.S. Dep't of Homeland Security (May 23, 2003); Unclassified Cable No. 012480 from the U.S. Embassy in New Delhi to the U.S. Sec'y of State, Wash. D.C. (Dec. 19, 1997).

⁸⁹ Kaufman *supra* note Eileen Kaufman, *Shelter From the Storm: An Analysis of U.S. Refugee Law as Applied to Tibetans Formerly Residing in India*, 23 GEO. IMMIGRA. L.J. 497, 536 (2009).

⁹⁰ Barnett Aff., *supra* note 43, ¶¶ 17-19, 22.

and Indian taxi drivers but quickly escalated. Indian citizens looted Tibetan homes and shops and destroyed Tibetan schools and government offices. Afterward, Indian politicians and editorialists criticized Tibetans for taking advantage of Indian hospitality. They also criticized the Indian government for its tolerance toward the Tibetan community.⁹¹ In May 1994, as a consequence of the incident, the Tibetan Refugee Reception Centre in McLeod Ganj temporarily closed. Once the tension passed, however, India and the CTA decided that it would be prudent to develop a new policy toward Tibetan refugees arriving in the future.

On August 16, 1994, the CTA formally adopted what came to be known as a policy of “voluntary repatriation.” Henceforth, new arrivals would no longer be absorbed *sub silentio* into existing Tibetan communities and settlements. Instead, they would be encouraged to return to Tibet voluntarily. New arrivals would continue to receive limited assistance from the CTA, but only temporarily, until they received their audiences with the Dalai Lama.⁹² In practice, this meant they could receive assistance for about three months, but the CTA no longer helped them find jobs or acquire RCs. Slightly different policies applied to children, monks, and nuns, some of who could stay in India to complete their education or join monasteries and nunneries, respectively.⁹³

Soon after, in January 1995, the CTA issued regulations specifying how long different categories of new arrivals could remain in India. Young monks between the ages of sixteen and twenty-five could remain for six months but would be required to pass certain examinations: if they failed, they would be asked to return to Tibet. Tibetan children between the ages of six and thirteen could remain in India to complete their education, while children between the ages of fourteen and seventeen would be referred to one of the TCV transit schools, which offer language and vocational training. Finally, those between the ages of eighteen and thirty could study for one year, after which they would be asked to return Tibet.⁹⁴ Consequently, in 1996, for example, of the 2843 Tibetans who arrived in India, the CTA asked 1200

⁹¹ JULIA HESS, IMMIGRANT AMBASSADORS CITIZENSHIP AND BELONGING IN THE TIBETAN DIASPORA 91-92 (2009) (“Riots ensued The most disheartening aspect of the disturbances for many Tibetans was that a prominent local Indian politician egged on fighters and hooded negative statements.”).

⁹² For many years now, the Dalai Lama has made it his practice to meet personally with every newly arriving Tibetan who has fled Tibet or come to India temporarily for religious or educational reasons.

⁹³ Barnett Aff. *supra* note 43, ¶ 21; Interview with Tashi Wangdoo, Rep. of the Dalai Lama, Delhi Office (Sept. 22, 2003) (on file with TJC).

⁹⁴ Refugee Board IND33125, *supra* note 18.

to return.⁹⁵

Because new arrivals could no longer depend on assistance from the CTA, few Tibetans entering India during this time were able to acquire RCs or find adequate work and shelter.⁹⁶ After 1994, those without RCs faced an increasingly insecure environment. TJC heard several credible reports indicating that Tibetans have been threatened with deportation to China in violation of the customary international law obligation of *non-refoulement*.⁹⁷ According to interviewees, although some Tibetans have in fact been deported, in most cases, the local Indian authorities use such threats to extort "fines."⁹⁸

Also in 1994, Indian officials began to subject Tibetan communities to so-called "spot checks" with greater frequency, demanding that they produce valid RCs and threatening, fining, or detaining those without them. Those without RCs would typically be held by local authorities until the CTA, family or friends, or an NGO paid the government a fine for their release. In 1995, Indian police detained three newly arrived Tibetans and incarcerated two of them. It accused the two of being Chinese spies or informants.⁹⁹ In January 1998, Indian officials detained twenty-one new arrivals in Dharamsala for lack of RCs, citing § 14 of the Foreigners Act.¹⁰⁰ Lobsang Lungtok,¹⁰¹ one of the twenty-one, spent more than twenty days in detention, and officials threatened to deport him. Only international publicity and diplomatic pressure prevented the threat from being carried out.

Reflecting these and similar events, a March 1999 article in an

⁹⁵ *Id.* Those returning to Tibet often face detention and interrogation by China. *Id.*

⁹⁶ *Id.* Of the approximately 12,000 Tibetans who arrived in India between 1993 and 1998, few were able to acquire RCs or other documents. Without legal status, they cannot lawfully remain in the Tibetan settlements. They depend on informal assistance from other Tibetans, and many find it difficult to survive. The same is true for the approximately 10,000 Tibetans who arrived before 1979 but did not receive RCs or find a home in one of the settlements. *Id.* One member of the Tibetan parliament, who requested anonymity, told TJC, "Once the Tibetan government stopped issuing birth certificates, it became nearly impossible for newly arriving Tibetans to obtain RCs. There are rare cases in which Tibetans are still able to bribe Indian officials in order to get birth certificates." TJC Interview with Member of Tibetan Parliament (Oct. 2003) (on file with TJC).

⁹⁷ For a discussion of the principle of *non-refoulement* as customary international law, see *supra* note 7.

⁹⁸ Barnett Aff., *supra* note 43, ¶ 24.

⁹⁹ Refugee Board IND33125, *supra* note 18.

¹⁰⁰ *Detention of 21 Tibetan Refugees in Dharamsala*, TIBET TIMES, Jan. 31, 1998; *Refugees Charged by Indian Police for Lack of Papers*, Tibet Information Network, Feb. 4, 1998; *10 Tibetan People Have Been Arrested in Dharamsala*, TIBET TIMES, Jan. 10, 1998.

¹⁰¹ China had previously imprisoned Lobsang Lungtok for 18 months because he posted a document on a school wall criticizing China's destruction of Tibetan culture. See *Refugees Charged by Indian Police for Lack of Papers*, *supra* note 100; Refugee Board IND33125, *supra* note 18.

Indian newspaper reported that some Tibetans had been deported and that, since 1994, the Indian authorities had become significantly less tolerant of newly arriving Tibetans.¹⁰² In a remark indicative of India's waning tolerance for its population of undocumented Tibetans, a CTA Security Officer stated, "The local government will arrest Tibetans and then publish the arrests in the local papers to show they are doing something about refugees."¹⁰³ He went on to explain, "When problems arise, such as a suspected spy in the area, police randomly check Tibetans for RCs."¹⁰⁴ Tibetans without RCs will generally be arrested and detained, sometimes for as long as a few months. These "spot checks" and periodic sweeps leave Tibetans without RCs in constant fear of the local police. At the national level, India does not appear to have formulated—or, at any rate, has not enforced—a uniform policy. Nonetheless, TJC heard numerous reports of local, and sometimes national, police detaining Tibetans for not possessing RCs and requiring the payment of fines for their release.

D. Refugees Arriving Between 2000 and the Present

Coincident with its major effort to improve its relations with China, India has increasingly taken proactive measures to stem the tide of Tibetan refugees permanently settling in India, and it no longer seems willing to rely on a policy of (encouraged) voluntary repatriation. The year 2003, in particular, marked a major shift in Sino-Indian relations because serious trade negotiations opened in that year and, in June, India and China signed the "Declaration of Principles of Relation and Comprehensive Cooperation." In an annexed memorandum of understanding, India for the first time formally and expressly recognized Tibet as part of the PRC.¹⁰⁵ China agreed to open an important trading post on its border with India, and India agreed that, among other measures, it would prohibit Tibetans from engaging in "anti-China" activities in India.¹⁰⁶ In the aftermath of the 2003 agreement, conservative, nationalist politicians in India called on the

¹⁰² Barnett Aff., *supra* note 43, ¶¶ 28-32.

¹⁰³ Interview with Karma Rinchen, Sec. Office, Sec. Dep't, Dharamsala (Oct. 12, 2003) (on file with TJC). An official from the Indian government confirmed that Tibetans may be and have been arrested for not having RCs. According to a District Supervisor of Police in Darjeeling, "Tibetans who are in Darjeeling illegally without RCs are arrested and deported. There is currently a Tibetan being detained for coming to India without the proper paperwork." Interview with Rai, Dist. Supervisor of Police, Government of India, Darjeeling (Oct. 30, 2003) (on file with TJC).

¹⁰⁴ Interview with Karma Rinchen, *supra* note 103.

¹⁰⁵ Cooperation Declaration, *supra* note 4.

¹⁰⁶ *Id.*; Brahma Chellaney, *Vajpayee Kowtows to China*, JAPAN TIMES, July 9, 2003; Kaufman *supra* note 89 at 538.

government to halt the influx of refugees. In response, Vidyasagar Rao, India's Minister of State in the Ministry of Home Affairs, stated in the Lok Sabha (Indian parliament) on August 21, 2001 that "as far as possible, influx of refugees are discouraged through various measures."¹⁰⁷

In short, two forces have converged to threaten India's traditional tolerance toward undocumented Tibetans. First, India does not want to jeopardize its warming relations with China. Second, internal domestic constituencies have placed pressure on the Indian government to stem the slow but steady influx of Tibetan refugees who informally (and, strictly speaking, illegally) enter India each year. In response to these forces, India has recently enforced new limits on Tibetans' ability to engage in peaceful political protests, demonstrations, assembly, and other forms of political expression, and it has started to detain Tibetans more often.

India's response to the arrival of the Karmapa Lama in January 2000 shows the tension between its new attitude toward China as well as the tensions that persist in its policies toward Tibetans. The Karmapa Lama is the traditional leader of the Kagyu school of Tibetan Buddhism, one of the four principal schools. To many Tibetans, he ranks in importance and prestige just below the Dalai Lama and the Panchen Lama. At the age of sixteen, he escaped from Tibet through Nepal and sought to resettle in India. The incident publicly embarrassed China, which thereafter communicated to India that granting asylum or refugee status to the Karmapa would interfere with India's relations with China. But India faced strong international and domestic pressure not to repatriate the young man, and so it acquiesced in a compromise: despite international appeals on behalf of the Karmapa Lama, India did not grant him or his attendants even the informal "honored guest" status granted to the Dalai Lama and his retinue following their flight from Tibet in 1959. Instead, India simply said the Karmapa Lama and his attendants would be allowed to remain in India on a "temporary" basis of unspecified length.¹⁰⁸

A series of articles that appeared in prominent Indian newspapers

¹⁰⁷ Government of India, Ministry of Home Affairs: Unstarred Question No. 4256 in the Lok Sabha, "Refugees in the Country," placed by Shri Sadashivrao Dadoba Mandlik on August 21, 2001.

¹⁰⁸ Penny MacRae, *Top Tibetan Monk Denies Chinese 'Spy' Tag*, AGENCE FRANCE PRESSE, May 2, 2011, available at <http://www.google.com/hostednews/afp/article/ALeqM5jGEk-TV94xMqr7yp7oGmgJWLZsnw?docId=CNG.4ec0d644f5638e40f182b6d39cbee4b3.2d1> (last accessed Sept. 5, 2011); *The Karmapa's Comeuppance?*, The ECONOMIST, (Jan. 31, 2011), www.economist.com/blogs/banyan/2011/01/china_india_and_karmapa_lama (last accessed September 5, 2011).

in 2002, many of which concerned new Tibetan arrivals accused of espionage, also reflects the shift in India's attitude toward its Tibetan population. Unlike charges of espionage leveled against Tibetans in the 1990s, the 2002 articles were aimed at well-respected and well-known political dissidents who had publicly spoken about China's human rights abuses and its refusal to allow the Tibetan people to exercise their right to self-determination. Given the nature of the targets of these articles, the espionage charges lacked credibility. To many, in fact, they seemed to be transparently designed to harass and intimidate Tibetans in India, particularly those without RCs.¹⁰⁹

Among those accused of spying were a nun named Ngodrup Palzom, the Karmapa Lama's sister, and Lama Tsewang, the Karmapa's principal adviser and tutor.¹¹⁰ These three had largely orchestrated the Karmapa's escape. The articles also accused Jigme Gyatso, another member of the Karmapa's entourage, of espionage, even though the sole basis for the allegation apparently consisted in the fact that he had been seen kissing a Chinese woman. Unsurprisingly, it quickly became clear that the charge had been completely fabricated.¹¹¹

Within two days of Ngodrup Palzom's detention, Indian officials also began to crack down on Tibetan refugees in the Kangra district of Himachal Pradesh (the northern Indian state that includes Dharamsala).¹¹² The Superintendent of Police announced a policy to "enforce strict checking of all foreigners, including Tibetans."¹¹³ The policy reminded local officers that only Tibetans who had arrived in India before 1979, and their children, should be entitled to the issuance or renewal of an RC.¹¹⁴ It also stressed that "no Tibetan can live in India unless he is issued a registration certificate by the local police."¹¹⁵ A newspaper quoted the Superintendent as stating further that

[m]any Tibetans who had entered India illegally recently were able to get themselves registered with the foreign office with the help of Tibetan officials. He said steps were now being taken to check all applicants and issue registration certificates to only

¹⁰⁹ Unstarred Question No 4256 *supra* note 109 at ¶¶ 7-10.

¹¹⁰ *Karmapa's Sister Interrogated*, THE TRIBUNE (India), Nov. 26, 2002. Lama Tsewang has been refused re-entry to India on the grounds that he is a Chinese spy. *Escape: Karmapa Denies China Gameplan*, THE SUNDAY TRIBUNE (India), Dec. 1, 2002; Kaufman *supra* note 89 at 539.

¹¹¹ Kaufman *supra* note 89 at 539; see also *Karmapa's Aide's 'Affair' Alerts Government*, TIMES OF INDIA, Jan. 7, 2003. Jan. 2003.

¹¹² Kaufman *supra* note 89 at 539.

¹¹³ *Police to Check Illegal Foreigners in Kangra*, THE TRIBUNE (India), Nov. 29, 2002; see *Two Foreigners Without Documents Held*, THE TRIBUNE (India), Nov. 29, 2002.

¹¹⁴ See *infra* Part V.A.

¹¹⁵ *Police to Check Illegal Foreigners in Kangra*, THE TRIBUNE (India), Nov. 29, 2002.

those who were proved to be born here [i.e., to parents who were themselves issued an RC under pre-1979 executive policy]. Instructions had been issued to sub-divisional police officers also in this regard. The police planned to start a checking drive soon so that all Tibetans and foreigners staying illegally were found out and action taken.¹¹⁶

To the best of TJC's knowledge, this is the first published statement indicating that India will now legally pursue, not only Tibetans who lack RCs, but also those who acquired RCs (with or without the CTA's assistance) by claiming to have been born in India to Tibetan refugees who had themselves arrived in India before 1979. Were India to pursue this policy, it could devastate the Tibetan exile community. The vast majority of Tibetans who arrived in India after 1979 obtained RCs in this manner – with the fully informed, even if tacit, acquiescence of the Indian government at the time.

In 2003, India implemented yet another change in its policy toward Tibetans by deciding that it would begin to conduct its own screening of Tibetan refugees in Nepal before they would be allowed to enter India. Until then, UNHCR had interviewed Tibetans arriving in Nepal and, assuming UNHCR staff found them to be “of concern to the High Commissioner,”¹¹⁷ as it typically did, India would allow them to enter at the border town of Sonauli – at least for the purpose of traveling as far as Delhi and then to Dharamsala, where they would be screened again by the CTA. In February 2003, however, the CTA and the Indian government agreed to an arrangement intended to address the increasing number of Tibetans who reside in India without RCs, leading to the creation of the Special Entry Permit (SEP) program.¹¹⁸

V. LEGAL OVERVIEW

A. Indian and International Legal Framework

India has ratified many vital international human rights treaties.¹¹⁹

¹¹⁶ *Id.*

¹¹⁷ TIBET'S STATELESS NATIONALS I, *supra* note 1 at 91-93.

¹¹⁸ *See infra* notes 181 to 189

¹¹⁹ These include the International Covenant on Economic, Social and Cultural Rights, Jan. 3, 1976, 993 U.N.T.S. 3 (ICESCR); the International Covenant on Civil and Political Rights (ICCPR), Apr. 10, 1979, 999 U.N.T.S. 171; the International Convention on the Elimination of All Forms Racial Discrimination (CERD), Dec. 3, 1968, 660 U.N.T.S. 195; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), July 30, 1980, 1249 U.N.T.S. 13; the Convention against Torture, and

But to date, it has not ratified either of the two principal treaties for the protection of refugees, viz., the 1951 Convention Relating to the Status of Refugees¹²⁰ (1951 Convention) and its 1967 Protocol.¹²¹ Nor has India enacted domestic legislation regarding the protection of refugees.¹²² Consequently, Tibetans in India do not enjoy the official status of refugees under either international or Indian law.¹²³ The local office of the UNHCR, the U.N. agency charged with the protection of refugees, operates informally on Indian soil with the Indian government's consent, but in the absence of a treaty basis for its activities, it may play only a limited role in assisting Tibetans and other refugees.

In practice, as we explain in greater depth below, despite the formal state of Indian law, undocumented Tibetans in India also cannot acquire citizenship except in very rare circumstances—although, on the basis of a recent decision of the High Court of Delhi, it appears that Tibetans who were *born in* India before July 1, 1987, must be deemed Indian citizens by operation of law.¹²⁴ To this day, however, the great majority of Tibetans in India remain “foreigners” within the meaning of the Foreigners Act of 1946 and the Registration of Foreigners Act of 1939.¹²⁵ The Foreigners Act defines foreigners in the negative, that is, as all persons *other than* citizens of India. It also authorizes the central government to “make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner”¹²⁶ The Foreigners Act empowers the government (a) to prohibit, regulate, and restrict foreigners’ entry into India or their departure from India;¹²⁷ (b) to limit their freedom of movement;¹²⁸ (c) to require them to reside in a particular place,¹²⁹ furnish proof of identity, and report to designated authorities at

Other Cruel, Inhuman or Degrading Treatment or Punishment, Oct. 14, 1997, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S 85 (CAT); and the Convention on the Rights of the Child, Dec. 11, 1992, 1577 U.N.T.S 3 (CRC).

¹²⁰ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S 137 [hereinafter 1951 Convention].

¹²¹ Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S 267 [hereinafter 1967 Protocol].

¹²² BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP’T. OF S., 2008 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: INDIA § 2(d) (2009) [hereinafter 2008 Country Report]; CHIMNI, *supra* note 60, at 378, 379.

¹²³ For a comprehensive overview of the international rights of refugees, see Guy S. Goodwin-Gill & Jane McAdam, *The Refugee in International Law* (3d ed. 2007).

¹²⁴ See *infra* at notes 206 to 211.

¹²⁵ Refugee Board ZZZ100699, *supra* note 88.

¹²⁶ The Foreigners Act, No. 31 of 1946 § 3(1); India Code (1993), v. 1.

¹²⁷ The Foreigners Act, No. 31 of 1946 § 3(1); India Code (1993), v. 1.

¹²⁸ *Id.* § 3(2)(a)-(b), (d), (e)(ii).

¹²⁹ *Id.* § 3(e)(i).

prescribed intervals;¹³⁰ (d) to submit to photographing and fingerprinting at designated times by designated authorities,¹³¹ as well as to medical examinations;¹³² and (e) to prohibit them from association with persons of a designated description,¹³³ from engaging in designated activities,¹³⁴ and from using or possessing designated articles.¹³⁵ The Foreigners (Amendment) Act prescribes the penalties for violating the Foreigners Act.¹³⁶ Section 14A provides that any foreigner who enters or stays in India without valid documentation is subject to imprisonment for a term of two to eight years and to a fine of between 10,000 and 50,000 rupees.¹³⁷

The Registration of Foreigners Act defines foreigners in the same way as the Foreigners Act, and it authorizes the national government to promulgate regulations governing foreigners' activities.¹³⁸ For example, the Act empowers the government to require foreigners to (a) report their presence to prescribed authorities at designated intervals;¹³⁹ (b) report their movements within India and internationally;¹⁴⁰ and (c) provide proof of identity to authorities and hotel managers.¹⁴¹

Because India has not signed the 1951 Convention or its 1967 Protocol, it need not, of course, abide by the treaty obligations set forth in these instruments. Nonetheless, the 1951 Convention's principle of *non-refoulement*, which prohibits the return of a refugee "in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion,"¹⁴² has become a rule of customary international law.¹⁴³ For practical purposes,

¹³⁰ *Id.* § 3(e)(iii).

¹³¹ *Id.* § 3(e)(iv).

¹³² *Id.* § 3(e)(v).

¹³³ *Id.* § 3(e)(vi).

¹³⁴ *Id.* § 3(e)(vii).

¹³⁵ *Id.* § 3(e)(viii).

¹³⁶ Foreigners (Amendment) Act, 2003.

¹³⁷ *Id.* § 14A(b).

¹³⁸ The Registration of Foreigners Act, No. 16 of 1939; India Code (1993).

¹³⁹ *Id.* § 3(1)(a).

¹⁴⁰ *Id.* § 3(1)(b)-(d).

¹⁴¹ *Id.* § 3(1)(e).

¹⁴² 1951 Convention, *supra* note 120, art. 33(1).

¹⁴³ See sources cited *supra* at note 7]. India did not persistently object to the customary rule of *non-refoulement*. Jonathan Charney, *The Persistent Objector Rule and the Development of Customary Int'l Law*, 56 BRIT. Y.B. INT'L L. 1, 1 (1985) ("[M]ost modern theories of international law do not require that express consent be found before a rule of customary international law can be held to be binding on a state. Many authorities argue that a state can be bound by a rule of customary international law even though the state neither expressly nor tacitly consented to the rule."); see also Ted L. Stein, *The Approach of a Different Drummer: The Principle of the Persistent Objector in Int'l Law*, 26

the critical question is therefore whether and, if so, how India's national law recognizes and enforces customary international legal principles. In general, the answer is that national courts of India will enforce only those principles of international custom that do not conflict with national law.¹⁴⁴ But in a case involving the persecution of members of the Chakma tribe living in Arunachal Pradesh,¹⁴⁵ the Indian Supreme Court, India's national court of last resort, held that *non-refoulement* is more than customary international law; it has *constitutional* status as a component of the Indian Constitution's guarantee of the right to life.¹⁴⁶ The High Court of Gujarat has also explicitly held that Article 21 of the Indian Constitution guarantees *non-refoulement*.¹⁴⁷

Despite the apparent clarity of the law on this point, and although in earlier years India had "scrupulously respected the principle of *non-refoulement*," recent reports indicate that some Tibetans have indeed been forcibly repatriated to China.¹⁴⁸ Beginning in the 1990s, reports emerged of threats of repatriation of unregistered Tibetans in violation of *non-refoulement*.¹⁴⁹ In 1998, Indian authorities detained a well-known, former political prisoner from Tibet, who had sought asylum, for many months simply because he lacked an RC. Officials then threatened to deport him. Only an international campaign on his behalf prevented deportation.¹⁵⁰ Although actual, as opposed to threatened, deportation to China in violation of the principle of *non-refoulement* remains comparatively rare,¹⁵¹ virtually *all* Tibetans who attempt to enter India

HARV. INT'L L.J. 457, 458 (1985).

¹⁴⁴ Cf. Jolly George Verghese V. Bank of Cochin (1980) 2 S.C.R 913, 921; ("The positive commitment of the State parties ignites legislative action at home but does not automatically make the covenant an enforceable party of the Corpus juris of India."); Civil Rights Vigilance Comm. v. Union of India, A.I.R 1983 (Kant) 85 at para. 18 ("[T]he government of India's obligations under Gleaneagles Accord and obligations attached to its Membership of United Nations cannot be enforced at the instance of citizens by Courts in India, unless such obligations are made part of the law of this country by means of appropriate legislation.").

¹⁴⁵ Nat'l Human Rights Comm. v. Arunachal Pradesh (1996) (1) S.C.C. 742.

¹⁴⁶ "No person shall be deprived of his life or personal liberty except according to procedure established by law." INDIA CONST. art. 21; see CHIMNI, *supra* note 60, at 380.

¹⁴⁷ Ktaer Abbas Habib Al Qutaifi v. Union of India, (1999) (105) C.R.L.J. 919 (Guj. H.C.).

¹⁴⁸ CHIMNI, *supra* note 60, at 381.

¹⁴⁹ TJC interviewed an NGO official who reported that the extent to which India repatriates Tibetans at risk of persecution depends, in part, on the political climate. Credible reports, including a 1999 incident documented in an Indian newspaper, indicate that India sometimes repatriates Tibetans in violation of *non-refoulement*. See Barnett Aff., *supra* note 43, ¶¶ 5 & 31. TJC interviews of CTA officials, NGOs, and residents of Dharamsala in April and May of 2009 indicate that, recently, no Tibetan has been deported to China. See Barnett Aff., *supra* note 43, ¶¶ 5, 31.

¹⁵⁰ Barnett Aff., *supra* note 43, ¶ 30.

¹⁵¹ On April 1, 2011, TibetInfoNet, relying on a Tribune News Service report from

via the Sino-India border—that is, directly from Tibet rather than via Nepal—will be repatriated upon being apprehended, without judicial or administrative process to determine, for example, the likelihood that they might face persecution were they returned to China. The Sino-Indian border remains disputed and technically qualifies as a military zone. India thus suspects that Tibetans entering via this region, despite their ethnicity, may be Chinese agents.¹⁵²

B. Documentation

The types of documents issued to undocumented Tibetans residing in India and the privileges those documents confer have evolved over time. Since 1959, India has issued three types of documents. Each serves a distinct purpose. But none of the documents are permanent, and all of them must be renewed periodically.¹⁵³

1. Registration Certificates (RCs)

With a few exceptions as set forth below, Tibetan refugees in India

Chandigarh, that the district police had threatened 300 Tibetans with deportation, after they allegedly overstayed the time limit on their Special Entry Permits. See <http://www.tibetinfonet.net/> (last visited Aug. 5, 2011).

¹⁵² Barnett Aff. *supra* note 43 at ¶ 26.

¹⁵³ In 2009, India announced that it would begin issuing “Unique Identification” (Unique ID) cards to each of India’s residents. These Unique IDs will contain biometric identification information, such as fingerprint data, and might be used for a variety of purposes, from verifying that the bearer has access to a particular bank account to the receipt of state aid. In theory, the Unique IDs will be issued on the basis of the 2011 census, which is being carried out as this report goes to press. Tibetans have been encouraged to participate and obtain Unique IDs. A high-level CTA official told TJC that, as the CTA understands it, a Unique ID will not establish legal residence in India and that Tibetans in India will still be required to obtain RCs to remain there legally. News reports indicate that the Dalai Lama has already participated in the 2011 Census and has urged other Tibetans to cooperate with the census officials. Whether any unique ID cards have been issued, as well as the nature of privileges, if any, associated with them, is still unclear. Email from Representative Tempa Tsering, Delhi Bureau, CTA, to Yodon Thonden, TJC (Oct. 8, 2010) (on file with TJC); *see also* Andrew Buncombe, *ID cards planned for India’s 1.1 billion*, THE INDEPENDENT (London), Jun. 27, 2009 at 26; Nirmala Ganapathy, *India’s Biometric ID Project Begins*, THE STRAITS TIMES (Singapore), Sep. 30, 2010; S.N.M. Abdi, *Indian Census Inclusion of Tibetans ‘Overdue’*, SOUTH CHINA MORNING POST, May 10, 2010 at 7; *Resident Tibetans to be Included in Indian Census 2011*, BBC MONITORING ASIA PACIFIC, Apr. 24, 2010; *Dalai Lama “Very Happy” to be Included in 2011 Census of India*, PHAYUL, May 8, 2010, available at <http://www.phayul.com/news/article.aspx?id=27252&t=0> (last accessed on September 5, 2011). As this report goes to press, the practical implications of the Unique ID program and 2011 census for Tibetans remain unclear. To the best of TJC’s knowledge and research, Unique IDs neither confer nor create any new status for Tibetans.

do not possess, and remain ineligible to acquire, Indian citizenship. To reside in India without citizenship, Tibetans must possess an RC, which signifies that the bearer has registered as a foreigner in India. "RC" is shorthand for registration certificate, *not* refugee certificate. Typically, RCs remain valid for a period of six months or one year. Their renewal, which is not guaranteed, must therefore be secured either annually or semiannually, depending on the place of issuance,¹⁵⁴ at a local branch of the Indian Foreigners Registration Office. In general, a valid RC gives its bearer an informal status, which, in practice, amounts to a privilege to reside in designated regions of India, some ability to travel domestically, and, subject to further conditions, potentially also to travel abroad.

Tibetans may travel domestically if they (1) possess a valid RC, (2) have obtained permission, if required, from the Indian authorities,¹⁵⁵ and (3) report back to the local police upon their return.¹⁵⁶ Tibetans must therefore be sure to carry their RCs with them whenever they travel within India.¹⁵⁷ The executive branch, as a matter of discretion, issues and establishes the policies for RCs based on the Registration of Foreigners Act of 1939 and the Foreigners Act of 1946, both of which predate the arrival of large numbers of undocumented Tibetans. The residence and travel privileges that an RC confers remain matters of executive grace and policy pursuant to these statutes, not laws in their own right. India's policies regarding RCs have changed over time, and local government authorities do not always implement federal policies consistently, either within or as between India's sub-federal government entities. This has predictably led to a great deal of confusion about what privileges RCs confer.

Whether Tibetan refugees in India can acquire RCs depends, to a large extent, on when they arrived in India. As noted earlier, India first issued RCs en masse in 1959, following the Lhasa Uprising, to the thousands of Tibetans who followed the Dalai Lama into exile. This policy continued until 1979, when India ceased issuing RCs to new arrivals—in theory, because India no longer considered these Tibetans

¹⁵⁴ Refugee Board IND33125, *supra* note 18.

¹⁵⁵ Tibetans may travel to some regions without first obtaining permission from the Indian authorities. For example, a Tibetan residing in McLeod Ganj does not need explicit permission to travel to Bir, a relatively proximate Tibetan settlement that is also within the Indian State of Himachal Pradesh. But the same Tibetan might well require permission to travel to another state.

¹⁵⁶ Refugee Board IND33125, *supra* note 18; *see* The Foreigners Act of 1946, Section 3(2)(a),(b), (d), and (e)(ii). The requirement that foreigners must report to local police both before and after traveling domestically is often not strictly enforced. Seeds Memo, *infra* note 257.

¹⁵⁷ U.S. Embassy in New Delhi Response to Request for Information from Sec'y of S. Wash. D.C. (April 1999) (on file with TJC).

to be “refugees” even in the colloquial sense.¹⁵⁸ As one CTA officer recounted, India’s national government issued strict instructions to provincial and local authorities that RCs were not to be issued to newly arriving Tibetans,¹⁵⁹ for their presence in India technically violates “the law of the land.”¹⁶⁰ The only new RCs that have been authorized by the national government are those intended for the Tibetan children born in India to parents who had themselves arrived before 1979 and hence been issued valid RCs (in most, but not all, cases). Tibetan children of this generation must register with the Foreigners Registration Office and apply for an RC before the age of eighteen.¹⁶¹

Despite Indian law and national policy, in practice, during the 1980s and early 1990s, India tended to turn a blind eye to the absorption of new arrivals into existing Tibetan communities and to the issuance of unauthorized RCs.¹⁶² The CTA, with India’s tacit acquiescence, would state that the new arrivals were only temporarily in India on pilgrimage and would be returning to Tibet—or, more frequently, that they were born in India to Tibetan parents of the 1959-1979 generation but had not yet registered. The CTA would issue birth certificates to new arrivals to facilitate their ability to acquire RCs from Indian officials.¹⁶³

Beginning in the early 1990s, however, the CTA and the Indian Government abandoned the policy of absorbing the new arrivals into the existing Tibetan communities and instead adopted a policy of voluntary repatriation. Without the CTA’s help in producing unverified birth certificates, or India’s tacit acquiescence in the practice, most new arrivals thereafter found it exceedingly difficult to acquire RCs.¹⁶⁴ They did not have Indian birth certificates and could not obtain them. De facto bribery became virtually the only way to acquire an RC, and few

¹⁵⁸ Refugee Board ZZZ100699, *supra* note 88. According to an interview conducted in 1996 with Mr. Sonam Topgyal, then the Minister of the Department of Home of the CTA, India does not recognize Tibetans who arrived after 1979 as refugees and does not provide them with RCs, rendering their presence in India formally illegal. Yet because “refugee” is not a legal term of art in India, the upshot appears to be simply that RCs should be made available to pre-1979 arrivals. (RC, it should be recalled, is shorthand for *registration*, not *refugee*, certificate.)

¹⁵⁹ Interview with Karma Rinchen, Sec. Officer, Sec. Dep’t, Dharamsala (Oct. 12, 2003) (on file with TJC).

¹⁶⁰ Refugee Board IND33125, *supra* note 18.

¹⁶¹ See Interview by the TJC with Ugyen Sonam, Tibetan resident in Dharamsala, October 17, 2003 (on file with TJC).

¹⁶² RCs and ICs may not be genuine for one of at least two reasons: on the one hand, they may be literal forgeries, that is, manufactured by someone other than authorized Indian officials; on the other, they may be genuine RCs that were issued to or intended for someone other than their bearers. The latter is by far the more common scenario.

¹⁶³ Barnett Aff., *supra* note 43, ¶ 16.

¹⁶⁴ UNHCR response to query from U.S. Dep’t of Homeland Sec’y (May 23, 2003).

Tibetans could afford to pay the amount required.¹⁶⁵

Because undocumented Tibetans may not reside in India without an RC, new arrivals or those without a valid RC have increasingly been subject to harassment by the police, including detention for as long as three months, demands for payment of fines as a condition of release, and, at times, deportation threats. Many sources testified that Tibetans have been arrested and jailed by local authorities for their failure to possess RCs.¹⁶⁶ Consequently, Tibetans residing in India without RCs live in a state of fear and insecurity. They must keep a low profile and avoid contact with the Indian authorities. Many do not travel outside their communities or remain outside after dusk. Tibetans without RCs also find it difficult to secure housing because landlords, guesthouses, and hotels alike tend to require the production of evidence of legal status. Many Tibetans without RCs therefore move in with friends or family in very overcrowded accommodations. Tibetans without RCs also cannot open bank accounts and have trouble finding employment because most businesses, including those run by the CTA, condition employment on possession of an RC. Finally, Tibetans without RCs face difficulties obtaining benefits or services, including education and medical treatment that the CTA often supplies to Tibetans with RCs.¹⁶⁷

Finally, it bears emphasizing that even those Tibetans who possess RCs have no legal right to renewal at the end of the six-month or one-year term of the RCs. Renewal is generally routine, but it remains subject to the discretion of the Indian authorities. Tibetan refugees, with or without RCs, do not enjoy a permanent legal status in India. Nor do they have the legal capacity to enforce, in court or elsewhere, the limited “rights” conferred by RCs—which, more accurately, should be described as privileges extended as a matter of executive policy and grace pursuant to the authority vested by the Foreigners Act of 1946 and the Registration of Foreigners Act of 1939. TJC found no evidence to suggest, or reason to believe, that India will change its policies in this regard anytime in the near future. The point of emphasis is simply that RCs (and the privileges their bearers may enjoy) are solely a matter of executive policy, not legal mandate. As such, they may be changed at any time if the executive branch sees fit to modify its practices.

¹⁶⁵ An exception to the current inability of new arrivals to acquire RCs may be the comparatively new Special Entry Permit (SEP) Program, which allows certain Tibetans coming to India for education, pilgrimage, or other purposes to obtain an RC, almost invariably, however, only for a *temporary* period. The SEP Program is discussed *infra* at § 5(b)(3).

¹⁶⁶ Interviews with Tibetan refugees (on file with TJC); *see also* Tibet Information Network, *Refugees Charged by Indian Police for Lack of Papers*, Feb. 4, 1998.

¹⁶⁷ Kaufman, *supra* note 89, at 545-46; *see* Refugee Board ZZZ100699, *supra* note 88.

2. Identity Certificates (ICs): International Travel

Tibetans with RCs can, in theory, acquire travel documents known as Identity Certificates (ICs). ICs resemble passports in that the cover is imprinted with the Ashoka pillar, India's national symbol, but it is yellow rather than dark blue.¹⁶⁸ IC applications may be obtained at the office of the Dalai Lama's Representative in Delhi. The application, once completed, must be forwarded to the Indian regional passport office in Delhi and then to the applicant's state of residence. State officials then check to ensure that the applicant resides at their stated address. The Passport Office of the Ministry of External Affairs is the governmental organ or office that ultimately issues the ICs.¹⁶⁹

While the decision to grant an IC is discretionary, TJC has not been informed of arbitrary, outright denials, except when the applicant does not live at the address noted on the application. At the same time, many Tibetans report inordinate delays in the issuance of ICs,¹⁷⁰ as well as, in some cases, the need for de facto bribes for their issuance, "fees" which many Tibetans cannot afford.¹⁷¹ The process should generally take one year but can take anywhere from three months to three years or more.

For a Tibetan to gain reentry into India, the IC must be stamped "No Objection to Return to India"; this is sometimes referred to as a "NORI stamp." Indian authorities occasionally decline to issue NORI stamps on ICs, particularly if an applicant is known to have been involved in political activities.¹⁷² India is not obliged to accept the return of Tibetans with expired documents,¹⁷³ nor is there any legal basis for a Tibetan who has lived in India without documentation to return to India from abroad.¹⁷⁴ That said, at times, the CTA or certain monasteries have arranged with local Indian authorities to obtain ICs and NORI stamps for Tibetans traveling for a particular purpose, for example, a group of monks traveling to a foreign state by invitation for religious purposes.

ICs are ordinarily valid for two years and may be renewed.¹⁷⁵ But only a few foreign states—to the best of TJC's knowledge, the United

¹⁶⁸ Cable 004443, *infra* note 225.

¹⁶⁹ *Id.*

¹⁷⁰ U.S. Embassy in New Delhi Response to Request for Information from Sec'y of S. Wash. D.C. (Apr. 1999).

¹⁷¹ Refugee Board IND33125, *supra* note 18; email from Ted Albers of INS HQRIC to John Shandorf at INS ZNY (Jan. 29, 1998) (on file with TJC).

¹⁷² Cable 004443, *infra* note 225; Email from Ted Albers, INS HQRIC, to John Shandorf, INS ZNY (Jan. 29, 1998) (on file with TJC).

¹⁷³ Refugee Board IND33125, *supra* note 18.

¹⁷⁴ U.S. Embassy in New Delhi Response to Request for Information from Sec'y of S. Wash. D.C. (Apr. 1999).

¹⁷⁵ *Id.*

States, Canada, and European states—accept them in lieu of passports. Tibetans traveling internationally with an IC must obtain a return visa at the Indian consulate in the state they are visiting before returning to India. There is no guarantee that the local consulate will issue such a visa, but again, TJC did not hear reports of arbitrary denials. Many Tibetans, however, report incidents or problems with airport officials who are unfamiliar with ICs.

Recent policy changes have exacerbated the difficulties that many Tibetans face when attempting to travel internationally. Previously, India issued “exit permits” to Tibetans who were invited to reunify with family members outside of India.¹⁷⁶ Obtaining an exit permit for reunification purposes required travel documents issued by either the host country or an international organization such as the International Red Cross, as well as immigration visa clearance from the host state.¹⁷⁷ But India announced that, as of December 31, 2006, it would no longer issue exit permits to Tibetans.¹⁷⁸ This policy seems to be designed to stop Tibetans from traveling to India, immediately going to the U.S. Embassy in Delhi, and requesting reunification with family members already in the United States.¹⁷⁹ Whether the United States pressured the Indian government into changing its policy, so as to not be seen as encouraging Tibetans to leave China for the United States, is unclear.¹⁸⁰

3. Special Entry Permits

In 2003, the CTA and the Indian Government began a program that would allow some Tibetans to enter India via Nepal.¹⁸¹ Under the new program, so-called Special Entry Permits (SEPs) should be issued to Tibetans in Nepal before they depart Kathmandu for India. The SEPs should ensure the Tibetans’ safe transit and enable them to stay in India on a temporary, although sometimes comparatively long-term, basis once they arrive. Originally, India created four SEP designations: (i) “Refugee,” (ii) “Pilgrimage,” (iii) “Education,” and (iv) “Other.”¹⁸² India eliminated the Refugee designation in 2005; the other SEPs, at least in theory, remain available for issuance.¹⁸³ But of the three remaining SEP

¹⁷⁶ *Kashag's Circular*, CTA.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ “[The Indian authorities] feel that some Tibetans are using India as a conduit or a passage to travel abroad and therefore, expressed its inability to issue Exit Permit to such people.” *Id.*

¹⁸⁰ Interview with Robert Barnett (Aug. 26, 2007) (on file with TJC).

¹⁸¹ *Kashag* (Tibetan Parliament) Circular 1069 (61) 2006-2007.

¹⁸² *Id.*

¹⁸³ Interview by the TJC with N. Norbu, Director, Office of Reception Centres,

types, only two (Education and Other) allow Tibetans to stay in India on a longer-term basis. Tibetans entering with a Pilgrimage SEP, in contrast, ordinarily must return to Tibet in three months, although their stay may be extended for up to six months. They do not, however, qualify for an RC (or any other document) that authorizes them to stay in India beyond six months.

Tibetans entering with an Education or an Other SEP may remain in India for longer periods of time and obtain RCs, which remain valid for that longer, though still temporary, period. It is extremely rare for the government to issue an Other SEP, however, because, in practice, it applies only to special cases such as former political prisoners.¹⁸⁴ Use of the Other category is therefore diplomatically sensitive; indeed, our research suggests that Other SEPs may have been issued as few as five or six times to date.¹⁸⁵ Education SEPs are therefore the most common and, like Other SEPs, they are stamped “long-term stay permit.”

RCs issued to the bearers of SEPs, like other RCs, must be renewed either every six months or every year, as applicable and depending on the district of issuance. While the requirement that Tibetan new arrivals stay in Nepal long enough to acquire an SEP means that they must wait longer before entering India, it ensures their safe transit from Nepal to designated regions in India.¹⁸⁶ The SEP program officially began in 2003, but delays made it difficult for early SEP holders to obtain RCs.¹⁸⁷ When the CTA and the Indian government agreed to establish the SEP program, they also reportedly agreed to a one-time offer that would allow unregistered Tibetans then residing in India to obtain RCs.¹⁸⁸ But reports differ as to how successful this latter program has been and how many Tibetans have been registered and given renewable RCs in conformity with its terms.¹⁸⁹

Dharamsala, May 1, 2009 (on file with TJC); Interview with TJC with Ngodup Dongchung, Dep't of Security, Central Tibetan Admin., Dharamsala, May 1, 2009 (on file with TJC).

¹⁸⁴ *Id. see* Kashag Circular 1069 (61), *supra* note 246.

¹⁸⁵ Interview by the TJC with N. Norbu, *supra* note 247; Interview by the TJC with Ngodup Dongchung, *supra* note 247.

¹⁸⁶ The average wait for a SEP is four to five months because the permit office has only two employees and issues only about seventy-five permits per month. Interview by the TJC with Tsering Dhondup (Dhondup I) *supra* note 183.

¹⁸⁷ Interview with Ngodup Dongchung *supra* note 183.

¹⁸⁸ Interview by the TJC with Tsering Phuntsok, head of the Tibetan Settlement Office, Central Tibetan Administration, Dharamsala, (May 3, 2009); Interview by the TJC with Ngodup Dongchung, *supra* note 183.

¹⁸⁹ Interview by the TJC with Tsering Phuntsok, *supra* note 183 Interview by the TJC with Ngodup Dongchung, *supra* note 183.

C. Citizenship

1. The Formal State of Indian Law

Part II of India's Constitution defines which persons qualified as Indian citizens on the date of the Constitution's entry into force. According to Article 5, citizens include everyone who (1) at the time, had his or her domicile in India and had either been born in India or had a parent born in India; or (2) ordinarily resided in India in the five years immediately preceding the Constitution's entry into force.¹⁹⁰ The Constitution does not, however, define citizenship or any process for acquiring citizenship subsequent to its entry into force. Rather, Article 11 of the Constitution gives Parliament the general power to regulate citizenship and naturalization.¹⁹¹ Parliament exercised this power shortly after the Constitution's entry into force by enacting the Citizenship Act of 1955,¹⁹² which, as amended by the Citizenship (Amendment) Acts of 1986 and 2003,¹⁹³ specifies how a person may acquire and lose Indian citizenship subsequent to the effective date of the Constitution.

Section 3, as amended, governs citizenship by birth. It provides that every person born in India (a) between January 26, 1950, and July 1, 1987; or (b) on or after July 1, 1987 but before the entry into force of the Citizenship Act of 2003, if one of that person's parents is a citizen of India at the time of his or her birth; or (c) on or after the entry into force of the Citizenship Act of 2003, if both parents are citizens of India, of if one parent is a citizen of India and the other is not an illegal migrant, "shall be a citizen of India by birth."¹⁹⁴

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 (2) on or after December 10, 1992, if either parent is a citizen of India at the time of their birth, shall be a citizen of India.¹⁹⁵ But if the person's parent is a citizen of India by descent only, then that person is not entitled to citizenship unless his or her birth had been registered at an Indian consulate or unless either parent had been in government service at the time of the birth. The Citizenship (Amendment) Act of 2003 provides that after its entry into force, a

¹⁹⁰ INDIA CONST. art. 5.

¹⁹¹ *Id.* art. 11.

¹⁹² The Citizenship Act, No. 57 of 1955; INDIA CODE (2003).

¹⁹³ Citizenship (Amended) Act, No. 5 of 1986; INDIA CODE (1986). Citizenship (Amended) Act, No. 6 of 2004; INDIA CODE (2003).

¹⁹⁴ *Id.* § 3.

¹⁹⁵ *Id.* § 4.

person cannot acquire citizenship by descent unless the birth is registered at an Indian consulate within one year of its occurrence or within one year from the effective date of the Citizenship (Amendment) Act, whichever is later, or with the federal government's permission.¹⁹⁶

Section 5 of the Citizenship Act, as amended, provides for citizenship by registration, which is available to (a) persons of Indian origin,¹⁹⁷ (b) persons married to citizens of India, (c) 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.¹⁹⁸

Section 6, as amended, provides for citizenship by naturalization. The qualifications for naturalization are set forth in Schedule III. They require that the applicant (a) not be an illegal migrant, which is defined as a foreigner who has entered into India without valid travel documents or has remained beyond the permitted time; (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 good character; (f) speak one language listed in Schedule 8 of the Constitution;¹⁹⁹ and (g) intend to reside in India.²⁰⁰

Finally, the Citizenship Rules of 1956, as amended in 1998, establish further requirements applicable to the registration and naturalization process. Applicants must attach affidavits from "two respectable Indian citizens testifying to the character of the applicant"; supply certificates attesting to the applicant's language proficiency; and take an oath of allegiance to India.²⁰¹

2. Application in Practice to Tibetans

The provisions of §§ 3 and 6 of the Citizenship Act of 1955, on their face, seem to offer at least a subset of the population of undocumented Tibetans in India a potential path to lawful naturalization. In practice, however, it has proved exceedingly difficult for Tibetans to acquire

¹⁹⁶ The Citizenship (Amendment) Act, No. 6 of 2004; INDIA CODE (2003).

¹⁹⁷ "A person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India." The Citizenship Act, No. 57 of 1955 § 5; INDIA CODE (2003).

¹⁹⁸ *Id.*

¹⁹⁹ The languages include: Assamese, Bengali, Bodo, Dogri, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Maithili, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu, Urdu. INDIA CONST. Eighth Schedule, at <http://lawmin.nic.in/coi/contents.htm> (last accessed September 5, 2011).

²⁰⁰ The Citizenship Act, No. 57 of 1955 § 6; INDIA CODE (2003).

²⁰¹ The Citizenship Rules, 1956 § 17(2). See Kaufman, *supra* note 89, at 550 n.343.

Indian citizenship.

As to citizenship by birth, § 3 states that every person born in India between January 26, 1950 (the date on which India's Constitution entered into force), and July 1, 1987 (one of the dates on which India's Parliament amended the Citizenship Act), is an Indian citizen. Despite the plain meaning of this provision, India has treated Tibetans born in India during this period (roughly, that is, the second generation of Tibetans in India who were born to parents who arrived in the years following the Lhasa Uprising), as foreigners subject to the Foreigners Act—not as citizens.²⁰²

In addition, pursuant to longstanding executive policy of India's national government, for a Tibetan to acquire citizenship by birth under § 3, he or she must obtain and submit a "no objection" certificate from the CTA, as the custodian and representative of Tibetans in exile.²⁰³ The CTA's official position is that it will not withhold its approval if a Tibetan wishes to pursue Indian citizenship. But many Tibetans, both within the CTA and throughout the Tibetan settlements in India, have traditionally taken the position that Tibetans in India should remain refugees. All Tibetans, in this view, should eventually be able to return to a genuinely independent, or autonomous, Tibet. Accordingly, they should not relinquish their national identity and loyalties as Tibetans in the interim.²⁰⁴ Despite the CTA's official position, many Tibetans view this as a serious obstacle, reporting that the CTA is reluctant to issue "no objection" certificates.²⁰⁵ Whatever the truth of the matter, it is clear that, in practice, few if any Tibetans have historically been able to acquire Indian citizenship under § 3.

²⁰² In April 1999, an unclassified cable from the U.S. embassy in New Delhi to the Secretary of State stated, "Tibetans born to Tibetan (non-Indian citizen) refugee parents between 1950 and 1986 do not automatically receive citizenship at birth." Unclassified Cable No. 002730., from the American embassy in New Delhi to the Sec'y of State in Washington D.C., April 1999 (on file with TJC).

²⁰³ Interviews with anonymous refugees (on file with TJC).

²⁰⁴ Interviews by the TJC with Ngodup Dongchung,, Dep't of Security, Central Tibetan Admin., Dharamsala, May 1, 2009 (on file with TJC); and with Tsering Dhondup, (Dhondup II), Deputy, Department of Security, Central Tibetan Admin., Dharamsala, May 1, 2009 (on file with TJC). Indeed, these two officials pointed out that the Tibetan Charter explicitly allows for dual citizenship and rejected the notion that citizenship in India would be inconsistent with the Tibetan struggle. Other CTA officials and NGOs viewed citizenship as sending a terrible message to those in Tibet: "it would be a huge source of disappointment for those who continue to suffer" in Tibet. Interview with Thupten Samphel, Sec'y, CTA, Dep't of Info. & Int'l Rel., Dharamsala (Oct. 7, 2003) (on file with TJC); *see also* Interview by the TJC with Tsewang Rigzin, President of the Tibetan Youth Congress, Dharamsala, May 1, 2009 (on file with TJC).

²⁰⁵ *Id.* Interviewees state that it is nearly impossible to obtain an approval letter from the CTA.

But on December 22, 2010, before this report went to press, the High Court of Delhi issued a decision, *Namgyal Dolkar v. Ministry of External Affairs*,²⁰⁶ which could substantially change the status quo for Tibetans who qualify under the prima facie terms of § 3(1)(a) of the Citizenship Act. Namgyal Dolkar Lhagyari, an ethnic Tibetan born in April 1986, in Kangra, Himachal Pradesh, India, sought an Indian passport, arguing that she qualifies as an Indian citizen by birth under § 3(1)(a). After several years of administrative and legal battles in executive agencies and courts, her claim culminated in a strongly worded judgment by the High Court of Delhi. The Court held that “[a] plain reading of [§ 3(1)(a)] shows that . . . [e]xcept as provided in subsection 3(2), ‘every person born in India on or after the 26th January 1950 but before the 1st day of July 1987’ shall be a citizen of India by birth.”²⁰⁷ The Court held, that is, that Tibetans born in India, regardless of their parentage, during the aforementioned period enjoy birthright citizenship comparable to that guaranteed by the Fourteenth Amendment to the U.S. Constitution.²⁰⁸

The Court observed that, as of July 1, 1987, Parliament deliberately cut off birthright citizenship, but the relevant amendment to the Citizenship Act did not—and, as a matter of Indian constitutional law, could not—apply retrospectively to deprive those born in India before that date and after the Constitution’s adoption on January 26, 1950, of Indian citizenship.²⁰⁹ Therefore, the court said,

[t]he policy decision of the MHA [the Ministry of Home Affairs] not to grant citizenship *by naturalisation* under Section 6(1) [of the Citizenship Act, as amended] is not relevant in the instant case. Having been born in India after 26th January 1950 and before 1st July 1987, the Petitioner is undoubtedly an Indian citizen by birth in terms of Section 3(1)(a) [of the Act.]”²¹⁰

According to the *Times of India*, “[m]ore than 35,000 Tibetans, born between 1956 and 1987, could benefit from” this decision.²¹¹ While the practical consequences of this potentially momentous decision remain to be seen, it indeed appears to mean, as the *Times of India* suggests, that the tens of thousands of Tibetans in India who were born on Indian soil within the specified period enjoy, as a matter of law, Indian citizenship.

On June 6, 2011, TJC interviewed Roxna Swamy, who represented

²⁰⁶ *Namgyal Dolkar v. Ministry of External Affairs*, W.P. (C) 12179/2009 (High Court of Delhi) (India).

²⁰⁷ *Id.* at ¶ 17.

²⁰⁸ U.S. CONST. amend. XIV, § 1.

²⁰⁹ *Supra* note 206 at ¶¶ 23-24.

²¹⁰ *Id.* at ¶ 29 (emphasis added).

²¹¹ *HC Order May Benefit Over 35,000 Tibetans*, TIMES OF INDIA, Jan. 21, 2011.

Ms. Dolkar, in an effort to understand the scope of the decision and its likely consequence in practice. Ms. Swamy explained that the judgment technically applies only within Delhi. Because Delhi is the seat of the Ministry of Home Affairs (MHA), however, it *should* bind the Ministry wherever it acts and therefore apply throughout India. Furthermore, the High Court of Delhi is a respected and significant court, making it likely that courts throughout India and beyond the jurisdiction of the Delhi High Court will find the judgment persuasive (even though it is not technically binding).

As a matter of Indian law, the judgment may be appealed either to a "Division Bench" of the High Court of Delhi, if the appeal is brought within one month of the date of the judgment, or thereafter by a Special Leave Petition to the Supreme Court of India. As of June 6, 2011, the government had not appealed, and Ms. Dolkar duly received the Indian passport for which she had applied years earlier. Ms. Swamy opined that the Home Ministry may be waiting for a better case to challenge the High Court's judgment, but she doubted that courts elsewhere in India would take a different view. Based on phone calls with colleagues in Calcutta and Mysore, she knows that some Tibetans (and, under the judgment, now Indian citizens) have filed applications for passports. But Ms. Swamy is unaware of any other case that has been decided apart from that of Namgyal Dolkar—although she has received numerous inquiries since the decision. The absence of another decision to date is unsurprising, for a case may only be initiated if and when the national government refuses to treat a Tibetan who is *prima facie* covered by the terms of the judgment as a citizen, for example, by refusing to issue him or her a passport or a ration card (for which citizens beneath a certain income level theoretically qualify).

In Namgyal Dolkar's case, according to Ms. Swamy, the Ministry of External Affairs (MEA) did not act on her client's application for a passport for more than a year and a half. At that point, she brought a petition in the High Court of Delhi, which ordered the MEA to make a decision, either granting or denying the passport application, within six weeks. The MEA did nothing for another three months. Ms. Swamy then filed a Contempt Petition on Ms. Dolkar's behalf, and the MEA finally made a decision rejecting the application on the ground that Ms. Dolkar is not an Indian citizen. The MEA also said that the Ministry of Home Affairs (MHA), not the MEA, establishes policy in this regard and therefore should be the proper respondent. After more than a half dozen adjournments at the request of the Solicitor General, the High Court of Delhi refused to grant any further adjournments and decided Ms. Dolkar's case in the manner set out above.

If Ms. Swamy's account is indicative of the national government's

attitude toward the High Court of Delhi's judgment and a harbinger of the government's actions in future cases, it is too soon to say whether the Indian government will abide strictly by the decision. On the one hand, Ms. Swamy told TJC that she does not think there is a sound basis for either a successful appeal or a contrary decision by a court elsewhere in India, viz., one that is not formally bound by the High Court of Delhi's judgment. On the other hand, she said that she knows that the decision has generated anger in certain government circles and, in particular, among lower-level officials of the MEA and MHA, some of who, she explained, had (prior to the decision) routinely threatened Tibetans with deportation or long-term detention to extort "fines."

The judgment covers Tibetans born on Indian soil between January 26, 1950, when India's Constitution entered into force (and the original Citizenship Act was enacted), and July 1, 1987, when amendments to the Act modified the scope of birthright citizenship as explained above. Even if the judgment is fully respected, however, Tibetans covered by it must be able to establish—typically, by producing a birth certificate—their birth within the period covered by the High Court's decision. This may turn out to be an obstacle for some Tibetans who theoretically fall within the scope of the judgment. Not all undocumented Tibetans born in India have valid Indian birth certificates. Furthermore, as explained earlier, for about a decade after 1979, it had been a relatively common practice, and one in which the Indian government tacitly acquiesced, for new arrivals to acquire RCs by obtaining birth certificates that purported to show their birth to Tibetan parents who had arrived in India between 1959 and 1979, thus enabling them to claim to be entitled to an RC. This former policy and practice might open the door for the executive branch to routinely challenge the validity and authenticity of birth certificates purportedly issued within the period covered by the High Court's judgment. Again, it is too soon to say.

That said, according to Ms. Swamy, the *prima facie* consequence of the High Court's decision is indeed that ethnic Tibetans born *in* India before July 1987 must now be deemed citizens as a matter of law, and if the decision is read for all it is worth, it could affect many areas of life for Tibetan communities within India. Some constitutional rights, for example, including the rights to freedom of speech and association, vest in all "citizens" as opposed to all "persons." Consequently, Tibetan *citizens* of India could bring constitutional challenges to the practice of repressing Tibetan demonstrations. No longer would it be obvious that the Indian government's policy in this regard can be followed without the risk of violating the constitutional rights of Indian citizens. Also, it would appear that the children of Tibetans covered by the decision will themselves qualify for citizenship under § 3 of the Citizenship Act, even

as amended, leading in time to a growing population of ethnic Tibetan citizens in India.

As for citizenship by naturalization, the text of the Citizenship Act, as amended, suggests that Tibetans who have resided in India for ten years should be eligible for citizenship under § 6 of the Act. But few if any Tibetans have successfully pursued citizenship by naturalization. Among other problematic criteria for undocumented Tibetans, § 6 requires that the applicant not be from a country that denies citizenship to Indians. In theory, China's Nationality Law satisfies this criterion, for it provides generally that foreign nationals "who are willing to abide by China's Constitution and laws" may be naturalized if they are close relatives of Chinese nationals, have settled in China, or have other "legitimate" reasons.²¹² But it is not clear that most Tibetans in India are Chinese "nationals"; they are more accurately described as stateless.

At any rate, citizenship by naturalization has not, in practice, ever been a realistic option for Tibetans. The U.S. Department of Citizenship and Immigration Services,²¹³ UNHCR,²¹⁴ the Immigration and Refugee Board of Canada,²¹⁵ and the U.S. Embassy in New Delhi,²¹⁶ uniformly confirm that Tibetans cannot become citizens in this way despite their apparent eligibility under § 6 of the Citizenship Act, as amended. Ms. Swamy confirmed this, observing that the MHA denies these applications as a matter of central government policy. To date, no one has challenged this practice in court—at least not to the best of TJC's research—and it is unclear whether § 6 is susceptible to challenge.

Occasionally, reports claim that Tibetans can obtain citizenship by paying bribes of about 50,000 Indian rupees (more than U.S.\$1,000). But most Tibetans lack the financial resources to pay that amount and these claims, in any event, have not been sufficiently substantiated to be

²¹² Nationality Law art. 7 (promulgated by Standing Comm. Nat'l People's Cong., Sept. 10, 1980, effective Sept. 10, 1980) (P.R.C.)

²¹³ U.S. Bureau of Citizenship and Immigration Serv., *India: Information on Tibetan Refugees and Settlements* (May 30, 2003), available at <http://www.unhcr.org/refworld/docid/3f51f90821.html> (last accessed on September 5, 2011).

²¹⁴ Response of UNHCR to query from U.S. Citizenship & Immigration Serv. (May 23, 2003); UNHCR statement (July 20, 1992).

²¹⁵ Refugee Board ZZZ100699, *supra* note 88; Immigration & Refugee Board of Canada, Response to Information Request IND42508.E (Mar. 26, 2004), available at http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=424802&l=e (last accessed on September 5, 2011); Refugee Board IND33125, *supra* note 18.

²¹⁶ An April 1999 Response from the Embassy in New Delhi to a Request for Information from the Secretary of State in Washington stated: "Tibetans born to Tibetan (non-Indian citizen) refugee parents between 1950 and 1966 do not automatically receive citizenship at birth." *Supra* note 157.

deemed credible.²¹⁷ Similarly, one anthropologist cites an occasion on which several hundred Tibetans received Indian citizenship at the same time. But TJC has been unable independently to verify this account, and at any rate, it remains, to the best of TJC's knowledge and research, an anomaly.²¹⁸

Without citizenship, Tibetans may not participate in India's political processes;²¹⁹ vote in parliamentary, state, or local *panchayat* elections;²²⁰ hold Indian government jobs and therefore obtain the perquisites that accompany such positions;²²¹ or own property absent approval from the Reserve Bank of India, which is reportedly very difficult to obtain. They also do not qualify for most of the seats in post-secondary educational institutions, and they may not legally own companies or shares in companies.²²² Furthermore, as non-citizens, Tibetans remain subject to the Foreigners Act and the Registration Act, which, as noted earlier, authorize the federal government broadly to impose a wide range of restrictions on their liberties.

VI. THE STATUS OF TIBETAN REFUGEES RESIDING IN OR TRANSITING THROUGH INDIA

A. Introduction

India has been extraordinarily generous to the Tibetan people: it has

²¹⁷ Interviews by TJC with anonymous refugees (on file with TJC). According to one interview, the rate may have dropped to 30,000 rupees. Interview by the TJC with Anonymous Refugees, Dharamsala, May 2, 2009 (on file with TJC).

²¹⁸ In *Immigrant Ambassadors: Citizenship and Belonging in the Tibetan Diaspora*, anthropologist Julia Hess reports that a small number of Tibetans were able to obtain citizenship. JULIA HESS, IMMIGRANT AMBASSADORS 88-90 (2009). Apart from Hess's research and the *Express India* article she cites (Esha Roy, *250 Tibetan Refugees to Cast Votes*, *Express India* (New Delhi), Mar. 19 2002, at <http://cities.expressindia.com/fullstory.php?newsid=12591> (last accessed on September 5, 2011)), TJC has not been able to verify this instance. Nor has TJC been able to find or substantiate any other instance in which Tibetans obtained citizenship in India by naturalization.

²¹⁹ ASIA PACIFIC HUMAN RIGHTS NETWORK, TIBETAN REFUGEES IN INDIA: DECLINING SYMPATHIES DIMINISHING RIGHTS, at www.hrdc.net/sahrdc/hrfeatures/HRF183.htm (last accessed on September 5, 2011).

²²⁰ "A person shall be disqualified for registration in an electoral roll if . . . not a citizen of India." The Representation of the People Act, No. 43 of 1950 § 16(1)(a); INDIA CODE (2003). See also Himachal Pradesh Panchayati Raj Act §121 (1994), at <http://india.gov.in/allimpfrms/allacts/630.pdf> (last accessed on September 5, 2011).

²²¹ Refugee Board IND33125, *supra* note 18.

²²² BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP'T. OF STATE, 1997 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (1998).

allowed Tibetans to enter India and, with respect to the first wave of arrivals, to develop settlements, schools, and medical facilities. Yet the overwhelming majority of Tibetans residing in India lack a legal status: they are stateless. Few possess Indian citizenship (although this could change, depending on the High Court of Delhi's decision),²²³ and most remain ineligible for naturalization. Indian law also does not recognize them as refugees in any meaningful sense, for again, India has neither ratified the Refugee Conventions nor enacted national laws for asylum or refugee protection.²²⁴ Tibetan refugees, with few exceptions, cannot travel freely, either domestically or internationally; own property directly; hold public jobs; or vote in Indian elections. At times, India also severely restricts the right of Tibetans to demonstrate, associate, and express themselves politically.²²⁵

B. Current Population of Tibetans in India

Estimates of the number of Tibetans arriving in India vary annually. Most sources estimate that between 1,500 and 3,500 Tibetans arrive each year.²²⁶ The reasons that Tibetans travel to India, whether temporarily

²²³ See *supra* at note 206.

²²⁴ 2008 Country Report, *supra* note 122, § 2(d); CHIMNI, *supra* note 60, at 378-79.

²²⁵ Unclassified Cable No. 004443 from Am. Embassy in New Delhi to Sec'y of S. D.C. (Apr. 22, 1996) [hereinafter Cable 004443] (on file with TJC).

²²⁶ Refugee Board IND33125, *supra* note 18; U.S. COMMITTEE FOR REFUGEES AND IMMIGRANTS, WORLD REFUGEE SURVEY 2004 COUNTRY REPORT: INDIA [hereinafter CSRI 2004 Report]. The U.S. Department of State reports that between 1,500 and 3,000 Tibetans transit through Nepal to India each year. BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T OF S., 2006 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: NEPAL § 2(d) (2007); BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T OF S., 2007 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: NEPAL § 2(d) (2008). The U.S. Department of State stated that in 2008 most of the Tibetans that entered Nepal transited to India. After protests in Tibetan areas in China on March 10, China closed the border between China and Nepal. The U.S. Department of State reported that almost no Tibetans entered Nepal between March and July of 2008. BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T OF S., 2008 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: NEPAL § 2(d) (2009). The number of Tibetans arriving in India in 1996, 1997, and 1998 were, respectively, 2,843, 2,000, and 3,100. Refugee Board IND33125, *supra* note 18. In 2000, 2900 Tibetans arrived in India. Rama Lakshmi, *Escaping Chinese, Tibetans Join Leader in India*, WASH. POST, Dec. 15, 2000, at A51. In 2001, the State Department reported that 1,268 arrived. BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP'T. OF STATE, 2001 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (2002). In 2003, the number climbed to 3,500. U.S. COMMITTEE FOR REFUGEES AND IMMIGRANTS, WORLD REFUGEE SURVEY 2004 COUNTRY REPORT: CHINA. In 2004, it fell again to 2427. BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP'T. OF STATE, 2004 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (2005). In 2005, there were 3,352 new arrivals. BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP'T. OF S., 2005 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (2006). In 2006, there were 2,946. BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP'T. OF S.,

or permanently, include flight from persecution, visiting or reuniting with their families in exile, getting a Tibetan education, and making a pilgrimage to see the Dalai Lama or to visit other lamas, monasteries, and nunneries.²²⁷ Estimates of the number of Tibetans living in exile also vary. According to the CTA, as of 2007, 111,170 Tibetans were in exile, about 85,000 of whom live in India.²²⁸ Most other sources report higher estimates: the U.S. Committee for Refugees and the UNHCR report puts the number of Tibetans in India at about 110,000;²²⁹ the U.S. Department of State reports that more than 125,000 Tibetans live in India, Nepal and Bhutan;²³⁰ and the Central Tibetan Relief Committee reports that some 145,150 Tibetans reside in India, Nepal and Bhutan.²³¹

C. Settlements

Most Tibetans in India live in thirty-seven formal settlements and about seventy informal Tibetan communities scattered throughout the country. India initially enabled the establishment of the settlements by leasing land for this purpose in the states of Himachal Pradesh, Ladakh, Arunachal Pradesh, Karnataka, Uttar Pradesh, Madhya Pradesh, South Sikkim, West Bengal, Maharashtra, and Orissa for a term of ninety-nine

2006 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (2007). In 2007, there were 2,445. BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP'T. OF S., 2007 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (2008). In 2008, the number of Tibetans leaving for India dropped to 550. The U.S. Department of State attributes this almost 75% decrease from the prior year to China's military and police measures in Lhasa and elsewhere in Tibet in March 2008, following widespread Tibetan protests. BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP'T. OF S., 2008 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (2009).

²²⁷ Refugee Board IND33125, *supra* note 18; see also Susan Fowler, *Asia and Pacific Post*, DIRECT RELIEF INT'L, June 2004, <http://www.directrelief.org/PressCenter/Commentary/NotesFromTheField/AsiaPacificEntry.aspx?id=1956&blogid=432> (last accessed on September 29, 2011) (stating that the majority of the 2,500 to 3,000 new arrivals are fleeing persecution or repression).

²²⁸ World Tibet Network News reported that there are 134,000 Tibetans in exile and 100,000 in Dharamsala, India alone. World Tibet Network News, Sept. 23, 2007.

²²⁹ U.S. COMMITTEE FOR REFUGEES AND IMMIGRANTS, WORLD REFUGEE SURVEY 2009 COUNTRY REPORT: INDIA; UNITED STATES BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES, *India: Information on Tibetan Refugees and Settlements*, May 30, 2003.

²³⁰ BUREAU OF POPULATION, REFUGEES, AND MIGRATION, U.S. DEP'T OF STATE, FUNDING OPPORTUNITY ANNOUNCEMENT FOR NGO PROGRAMS BENEFITING TIBETAN REFUGEES IN SOUTH ASIA (2009), <http://www.state.gov/g/prm/122028.htm> (last accessed on September 5, 2011).

²³¹ Central Tibetan Relief Committee, *Tibet in Exile*, <http://www.tibet.net/en/index.php?id=9> (last accessed on September 5, 2011). The Central Tibetan Relief Committee reports that there are approximately 101,242 Tibetans living in India; 16,313 Tibetans living in Nepal; and 1,883 Tibetans living in Bhutan. *Id.*

years.²³² Economically, almost half of the settlements rely principally on agriculture; another one-third of the settlements rely on agriculture and industry; and another one-fifth of them rely on the manufacture and sale of handicrafts.²³³ Because the number of Tibetans vastly exceeds available resources and land, overcrowding afflicts most settlements. As many as eight to ten Tibetans live in structures that were built to house five or fewer. These structures were also designed to be temporary shelters and few have been renovated since the 1960s.²³⁴ The size of the various settlements also varies. Some settlements in northeastern India, for example, have fewer than 100 residents, while Mungod, in southern India, has more than 6000.²³⁵

Because the Indian government did not facilitate the settlement of Tibetans who arrived after the first wave (in and soon after 1959), later arrivals received no land, housing, or assistance from India. Many of them live in inadequate shelters. The overcrowded settlements cannot accommodate new arrivals. Indeed, they can hardly accommodate even their natural growth, that is, the children of the original refugees. Many Tibetans arriving today reside in or near the CTA's headquarters in McLeod Ganj, Dharamsala, or settle in scattered Tibetan communities throughout India.²³⁶ Informal Tibetan settlements exist in and around Kulu and Manali in northern India, for example, and on the outskirts of major cities, including Delhi.²³⁷ The only new arrivals that the original settlements sometimes manage to accommodate are Tibetans joining family members already residing in these settlements and certain monks or nuns who live in the monasteries and nunneries within the settlements.²³⁸ In total, approximately 75% of the Tibetan refugees in India reside in the settlements, and 40% of this number live in the southern Indian state of Karnataka.²³⁹ About 20,000 Tibetan monks in India reside in approximately 200 monasteries located in or near 54 of

²³² Refugee Board IND33125, *supra* note 18.

²³³ *Id.*

²³⁴ *Id.*; see Unclassified Cable No. 261108 from Sec'y of S. Wash. D.C. to American Embassy in New Delhi (Dec. 24, 1996) (on file with TJC).

²³⁵ Shusham Bhatia et al., *A Social and Demographic Study of Tibetan Refugees in India*, 54 SOC. SCI. & MED. 411, 413 (2002) (hereafter BHATIA).

²³⁶ U.S. Bureau of Citizenship and Immigration Serv., *India: Information on Tibetan Refugees and Settlements* (May 30, 2003), at <http://www.unhcr.org/refworld/docid/3f51f90821.html> (last accessed on September 5, 2011).

²³⁷ See ANDREW POWELL, HEIRS TO TIBET: TRAVELS AMONG THE EXILES IN INDIA (1992); Dep't of Home, *A Short Story on Life in Exile*, CENT. TIBETAN ADMIN., <http://www.tibetgov.net/> (last accessed on June 29, 2011).

²³⁸ *Id.*

²³⁹ Interview with CTA Official (on file with TJC).

the settlements.²⁴⁰

In terms of governance, the CTA appoints a settlement officer for each settlement, and the residents themselves usually choose a “deputy leader.” India’s government, of course, technically retains plenary authority over the settlements. In practice, however, the authorities find it expedient to allow the CTA to manage most of their internal affairs, and India seldom interferes with the internal governance of the settlements.

D. Health

The CTA provides health services for Tibetans, including seven hospitals, five primary healthcare centers, forty-seven clinics, and two mobile clinics.²⁴¹ It also provides training in traditional Tibetan medicine at the Tibetan Medical and Astrological Institutes.²⁴² Tibetans may also seek healthcare from village health centers run by India’s local governments and subsidized by the federal government. These centers provide free healthcare to India’s rural populations. Because the centers lack adequate staff and resources to meet the demand for their services, however, in practice, it is often impossible for many residents in India, including Tibetans, to receive what should be “free” healthcare without first paying a bribe.²⁴³

The Tibetan population in India suffers from a high incidence of tuberculosis because of overcrowded and unsanitary housing, poor nutrition, and a (genetically) lower resistance to tuberculosis.²⁴⁴ In response to this serious health issue, the CTA has implemented a tuberculosis control program.²⁴⁵ Many Tibetan refugees also suffer from gastric illnesses, diarrhea, skin diseases, and respiratory diseases as a result of poor sanitation and hygiene, which is in turn the byproduct of inadequate water supplies in the settlements and other Tibetan communities. Some of the settlements, for example, lack adequate

²⁴⁰ *Young Monks Hone Skills in Tibetan Buddhism in Dharamsala*, WORLD TIBET NEWS (Sept. 23, 2007). An earlier study reported that there are 134 monasteries in or near Tibetan settlements in which over 10,000 monks and nuns reside. BHATIA, *supra* note 235 at 411, 417.

²⁴¹ CTA, *Administration of Hospitals and Primary Health Care Services*, <http://www.tibet.net/en/index.php?id=248&rmenuid=12> (last accessed on September 5, 2011).

²⁴² Refugee Board IND33125, *supra* note 18.

²⁴³ U.S. Dep’t of S., *Tibetan Refugees in India* (Aug. 1998).

²⁴⁴ *Id.* <http://www.tibet.net/en/index.php?id=249&rmenuid=12> (last accessed on September 5, 2011); Unclassified Cable No. 261108 from Sec’y of S. Wash. D.C. to American Embassy in New Delhi (Dec. 24, 1996) (on file with TJC).

²⁴⁵ <http://www.tibet.net/en/index.php?id=249&rmenuid=12>

drinking water for more than half of their residents.²⁴⁶ A demographic study of the health status of Tibetans residing in the settlements found that skin conditions, upper and lower respiratory tract infections, fevers, diarrheal diseases, tuberculosis, parasitic and other infectious diseases “abound in the settlements.”²⁴⁷ Furthermore, fewer than half of the children residing in the settlements receive vaccinations.²⁴⁸

E. Education

Shortly after fleeing to India in 1960, the Dalai Lama gave his sister, Tsering Dolma Taklha, authority to establish a nursery for Tibetan children. That nursery eventually evolved and developed into the Tibetan Children's Village (TCV) schools, a Tibetan school system operated by the CTA, with branches throughout India educating more than 16,000 Tibetan children.²⁴⁹ The Department of Education of the CTA oversees the education of Tibetan children in schools administered by the Central Tibetan Schools Administration, the Tibetan Homes Foundation Mussoorie, the Snowlion Foundation and other charitable organizations. The majority of young Tibetans in India attend one of these Tibetan schools, while perhaps five to ten percent attend non-Tibetan schools.²⁵⁰ Post-secondary education remains unavailable to most Tibetans,²⁵¹ but some Tibetans have received advanced degrees from institutions of higher education in Delhi and elsewhere.

Tibetan schools fall into three categories: (1) those administered by the CTA's Department of Education, headquartered in Dharamsala; (2) those run by the Central Tibetan Schools Administration, an independent institution that falls within the jurisdiction of the Indian Ministry of Human Resource Development; and (3) those established by charitable organizations, including TCV and the Tibetan Homes Foundation.²⁵² The CTA has also established “transit schools” for new arrivals who are eighteen years of age or older. Transit schools provide English and Tibetan language instruction and vocational training.

The Tibetan exile community's growth and overcrowding in the settlements have placed severe stress on the Tibetan education system

²⁴⁶ Refugee Board IND33125, *supra* note 18.

²⁴⁷ BHATIA, *supra* note 235 at 417.

²⁴⁸ *Id.*

²⁴⁹ See Tibetan Children's Village Home Page, <http://www.tcv.org.in/> (last accessed on September 5, 2011).

²⁵⁰ Refugee Board IND33125, *supra* note 18.

²⁵¹ *Id.*; Unclassified Cable No. 261108 from Sec'y of S. Wash. D.C. to American Embassy in New Delhi (Dec. 24, 1996) (on file with TJC).

²⁵² Refugee Board IND33125, *supra* note 18.

in India.²⁵³ In the first six months of 2007, for example, 424 newly arrived Tibetan children were admitted to the various TCV schools,²⁵⁴ but the schools lacked adequate textbooks, educational materials, space for classes, and dormitories for the new students.²⁵⁵

Most Tibetans do not attend college because they cannot afford it. India provides some assistance to the Tibetan exile community in this regard. In particular, it offers twenty scholarships per year to students graduating from CTA schools and two scholarships per year to Tibetans for the study of medicine or dentistry.²⁵⁶ The CTA provides an additional 500 to 600 scholarships per year. That number, however, is inadequate to meet the needs of the roughly 800 to 1,000 students who graduate from the twelfth grade or its equivalent annually.

About 300 Tibetans graduate from college each year.²⁵⁷ These graduates tend to be eager to continue their post-secondary education, but as non-citizens, they often find it difficult to attend professional or other graduate schools. Except for eight seats that the Indian government sets aside annually in engineering, medicine, pharmaceuticals, and printing technology, Indian postgraduate schools are closed to foreigners.²⁵⁸

No discussion of education among the Tibetan exile community in India would be complete without reference to the robust tradition of religious education among Tibetans, which continues in India. Indeed, about 45% of the Tibetans who have arrived in India since the 1980s are monks and nuns. Between 1986 and 1996, that number increased to 60%. Some return to Tibet after completing their monastic studies, but most remain in one of the Tibetan monasteries or nunneries established by India's exile community. The monastic population has more than doubled since 1980, which has led to serious overcrowding in the religious institutions and, in turn, created serious health problems.²⁵⁹

F. Property Ownership

Most Tibetans, as foreigners, may not directly own real property

²⁵³ *Id.*

²⁵⁴ Metok, *Newsletter from the Tibetan Children's Villages* 5 (Summer 2007) (on file with TJC).

²⁵⁵ Refugee Board IND33125, *supra* note 18.

²⁵⁶ *Id.*

²⁵⁷ Memorandum of Chris Seeds (July 19, 2005) (on file with TJC) [hereinafter Seeds Memo].

²⁵⁸ Interview with Nangsa Choden, Dep't of Educ., Dharamsala (Oct. 12, 2003) (on file with TJC).

²⁵⁹ See Refugee Board IND33125, *supra* note 18.

absent the Reserve Bank of India's approval.²⁶⁰ Tibetans with valid RCs may apply to the Reserve Bank for permission, but the process is time-consuming and burdensome. As a practical matter, it is only practicable for certain highly placed CTA officials.²⁶¹ The majority of Tibetans in India do not, at any rate, have the money to purchase real property. Even those with sufficient funds, however, often find it more expedient to eschew the formal process of applying to the Reserve Bank of India. For a Tibetan who wishes to purchase property, it is far more common and practicable to pay an Indian citizen, who, in turn, buys the property in his own name with the informal understanding that the Tibetan will use it.²⁶² ²⁶³ While this system is based on trust and good faith, it offers no legal protection to a Tibetan if the holder of record title asserts his ownership interest. Most of the land in Dharamsala, where Tibetans live and do business, is informally "owned" by them in this manner. The Tibetan transit school on the outskirts of Dharamsala, for example, is legally owned by an Indian citizen, who holds formal title. The other option available to Tibetans who cannot purchase their own land is to rent storefronts from Indian citizens.

In addition to federal laws restricting land ownership by foreigners in the absence of approval from the Reserve Bank, individual states may, and sometimes do, impose their own, further restrictions. Himachal Pradesh, for example, which includes Dharamsala and other regions with major Tibetan populations, prohibits ownership of agricultural land by anyone who is not a citizen of India *and* a lawful resident of Himachal Pradesh.²⁶⁴

G. Employment

About 30% of the Tibetans residing in India, and about 50% of those living in the formal settlements, work in agriculture or animal

²⁶⁰ BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP'T. OF STATE, 1997 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (1998); *See also* Foreign Exchange Management Act, No. 42 of 1999; India Code (1999); Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000, § 7 ("No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years.").

²⁶¹ Interview with Penpa Tsering, Member Sec'y of Tibetan Parliamentary & Pol'y Research Centre, Delhi, (Sept. 23, 2003) (on file with TJC).

²⁶² *Id.* *See also* Himachal High Court Issues Notices to Tibetan Government-in-Exile, Nov. 16, 2010, at <http://zeenews.india.com/news668553.html> (last accessed on September 5, 2011).

²⁶³ Interview with Yonten Norbu, Principal of Tibetan Transit School in Dharamsala (on file with TJC).

²⁶⁴ Himachal Pradesh Tenancy & Land Reforms Act, 1972.

husbandry. Another 30% manufacture, sell, and trade sweaters or other textile goods. And still others work in the service industry, make handicrafts, weave carpets, or serve in the CTA.²⁶⁵

Overcrowding in the settlements has made life increasingly difficult for families who rely on agriculture to support themselves. Land leased to a family of four in the 1960s, for example, must now, in many cases, support an extended family of fourteen.²⁶⁶ Many of the settlements are also located in regions prone to droughts, and only 5% of the settlement lands have irrigation.²⁶⁷ Because the farms no longer provide sufficient income, some Tibetan farmers supplement their incomes by traveling to the cities to sell sweaters.²⁶⁸

Many of the agricultural difficulties faced by Tibetans residing in the original settlements may be ascribed to the latter's design for short-term use—not permanent resettlement. Hence, for example, Tibetan farmers initially made excessive use of chemical fertilizers and pesticides, causing the soil to deteriorate over time. Furthermore, the long-term leasing structure by which agricultural lands were provided to the Tibetans made the creation of a permanent plan for a sustainable economy impossible. For the same reason, Tibetans have been unable to enter into business deals with other countries because they possess no land or assets that can serve as collateral.²⁶⁹

Because of the continuing, gradual disintegration of the settlements' agricultural economies, younger Tibetans and even some adults have increasingly been leaving the settlements to seek work elsewhere in India.²⁷⁰ According to UNHCR, Tibetans who do not reside in the settlements depend on stipends provided by the CTA's welfare office or work in odd jobs, guesthouses, restaurants, or other parts of the service industry.²⁷¹ Most Tibetans employed outside the settlement industries

²⁶⁵ Refugee Board IND33125, *supra* note 18. One CTA official estimated that 40% are involved in agriculture; 30% in informal sweater selling; and 10-20% in the service sector—while about 10% are monks and nuns. A 2002 demographic study of Tibetan refugees in the settlements concluded that of the settlement population, 27% were attending school, 16% were engaged in farming, 6.4% in sweater-selling, 5.2% were full-time housewives, 5.1% in handicrafts such as carpet making, 5% in military service, 2.4% unemployed, and 16.4% too old or young to be working. BHATIA, *supra* note 235, at 416.

²⁶⁶ Interview with Tibetan refugees and CTA officials (on file with TJC).

²⁶⁷ Refugee Board IND33125, *supra* note 18; *see* Unclassified Cable No. 261108 from Sec'y of S. Wash. D.C. to American Embassy in New Delhi (Dec. 24, 1996) (on file with TJC).

²⁶⁸ Interviews with Tibetan refugees and CTA officials (on file with TJC).

²⁶⁹ Interview with CTA official (on file with TJC).

²⁷⁰ *Id.*

²⁷¹ U.S. Bureau of Citizenship and Immigration Serv., *India: Information on Tibetan Refugees and Settlements* (May 30, 2003), available at <http://www.unhcr.org/refworld/docid/3f51f90821.html> (last accessed on September

work as small shopkeepers, food-stand owners, and peddlers.²⁷²

The unemployment rate for Tibetans is high and increasing. Most employment opportunities are closed to Tibetans, even those with valid RCs, because they are not citizens.²⁷³ Tibetans are therefore ineligible for government jobs, which are highly sought after in India.²⁷⁴ These public jobs include work at universities, hospitals, and public works projects.²⁷⁵ Tibetans also cannot run large-scale businesses because non-citizens cannot secure the requisite licenses.²⁷⁶

A 1999 estimate put the unemployment rate at 18.5% for Tibetans between the ages of sixteen and fifty, with a considerably higher rate for those over fifty, as well as for female-headed households and recent arrivals.²⁷⁷ A 1998 demographic study conducted by the CTA showed even more dire conditions, revealing that only 25.1% of Tibetans in India worked more than 183 days of the year and that a staggering 74.1% of the population was unemployed.²⁷⁸ The U.S. Committee for Refugees emphasized in this regard that “[m]any Tibetans in India are self-sufficient, but some, including elderly persons, female-headed families, and recent arrivals, must struggle to survive.”²⁷⁹ Since 1999, the unemployment rate has worsened considerably as Tibetan students graduate from Tibetan schools but cannot find jobs. Approximately 25% of the 800 high school graduates each year cannot find a job, and approximately 33% of the roughly 300 Tibetan college graduates each year also cannot find jobs, at least within the Tibetan communities.²⁸⁰

Underemployment is also a serious problem. The restrictions that prevent Tibetans from owning land or companies, together with the limits on their ability to attain a graduate education, result in limited

5, 2011).

²⁷² Response of U.S. Dep’t of S. to Canadian Immigration & Refugee Board, Research Directorate (Aug. 1998) (on file with TJC).

²⁷³ CHIMNI, *supra* note 60, at 393. According to the Immigration and Refugee Board of Canada, “Tibetans are free to work in the Indian economy, however, as non-citizens it is often difficult for them to find jobs.” Refugee Board IND33125, *supra* note 18.

²⁷⁴ *Id.*

²⁷⁵ Interview with Tashi Wangdu, Rep. of the Dalai Lama, Delhi office (Sept. 22, 2003) (on file with TJC).

²⁷⁶ Interviews with Tibetan refugees and CTA officials (on file with TJC). According to some research, Tibetans may not seek jobs with multinational corporations because Indian law requires (or required in the past) multinational corporations to hire only Indian nationals within the country. See Seeds Memo, *supra* note 257. But TJC has been unable to verify this question of Indian law.

²⁷⁷ Refugee Board IND33125, *supra* note 18.

²⁷⁸ PLANNING COUNCIL, CENT. TIBETAN ADMIN., *Tibetan Demographic Study: 1999* (2000).

²⁷⁹ U.S. COMMITTEE FOR REFUGEES AND IMMIGRANTS, WORLD REFUGEE SURVEY 2002 COUNTRY REPORT: INDIA.

²⁸⁰ Seeds Memo, *supra* note 257.

job opportunities for Tibetans. Consequently, some cannot find jobs that match their educational background, while others cannot secure the education that might enable them to obtain better jobs.²⁸¹

To address the problems of unemployment and underemployment, the CTA is encouraging Tibetans in micro-enterprise development, to convert Tibetans from “job seekers” to “job creators.” The CTA Department of Home offers skills training and small loans to groups of three or four Tibetans. Because the amount of income generated by these microenterprises is not substantial, the resulting businesses need not be registered as corporations.²⁸² In 1999, the average annual income for a Tibetan refugee in India was \$150, as compared to \$359 for Indian nationals.²⁸³

H. Freedom of Speech, Expression, and Assembly

Article 19 of India’s Constitution protects freedom of speech and expression and the right to assemble peacefully. But it qualifies these rights.²⁸⁴ Freedom of speech and expression may yield to reasonable restrictions imposed by the state “in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offense.”²⁸⁵ The government may place similar “reasonable restrictions” on the freedom of assembly “in the interests of the sovereignty and integrity of India or public order.”²⁸⁶ Furthermore, although the Constitution confers most other constitutional rights on “all persons,” Article 19 is limited to “all citizens,”²⁸⁷ and “a foreigner, not being a citizen, is not entitled to any of the rights under Article 19 or to remain in the territory of India.”²⁸⁸

In practice, the Indian government has become increasingly intolerant of Tibetan protests and demonstrations since the early 1990s,²⁸⁹ at least outside of the Dharamsala area.²⁹⁰ Tibetans must secure a permit before they legally may demonstrate or protest, and the Indian

²⁸¹ Interview with Kelsang Phuntsok, Tibetan Youth Congress, Dharamsala (Oct. 12, 2003) (on file with TJC).

²⁸² Seeds Memo, *supra* note 257.

²⁸³ *Id.*

²⁸⁴ INDIA CONST. art. 19(1)-(3).

²⁸⁵ *Id.* art. 19(2).

²⁸⁶ *Id.* art. 19(3).

²⁸⁷ Compare INDIA CONST. art. 14 (guaranteeing equal protection of the law to all persons), and INDIA CONST. art. 21 (guaranteeing due process to all persons), with INDIA CONST. art. 19 (protecting freedom of speech, expression and assembly to all citizens).

²⁸⁸ DURGA DAS BASU, SHORTER CONSTITUTION OF INDIA (12th ed. 1996).

²⁸⁹ Seeds Memo, *supra* note 257; Cable 004443, *supra* note 225.

²⁹⁰ Refugee Board IND33125, *supra* note 18; Seeds Memo, *supra* note 257.

police often try to prevent assemblies and protests. India's authorities almost always prevent or put down protests on the occasions of visits by Chinese dignitaries.²⁹¹ During such visits, the government typically positions police around and in the vicinity of the Tibetan settlements to discourage protests.²⁹² Officials also often deny permits for the requested location and instead issue a permit for a remote location to avoid publicity.²⁹³ It is relatively common for Tibetans to be arrested for violating the permit guidelines at demonstrations.²⁹⁴ Also, Tibetans who are known to be particularly politically active often find it impossible to acquire RCs or ICs.²⁹⁵

India's efforts to prevent demonstrations and political expression by Tibetans have intensified as its relationship with China has improved.²⁹⁶ The U.S. Department of State described India's policy in this regard as follows:

Indian authorities prohibit Tibetans from engaging in overt political agitation, particularly if it is anti-Chinese. The presence of the Dalai Lama and thousands of his supporters in India has long been a neuralgic issue for China and a perennial bone of contention in the Sino-Indian political agenda. As Sino-Indian relations have improved over the last few years, both New Delhi and Beijing have made conscious efforts not to allow the Dalai Lama's presence to cast a shadow over the broader relationship. Nonetheless, the Indian government has circumspectly tried to avoid giving Beijing the impression that the issue is political rather than humanitarian and that the Dalai Lama is a political leader rather than a religious and cultural figure. New Delhi is not always successful in persuading Beijing when, for example, Tibetan exiles assemble in Dharamsala to hear the Dalai Lama's annual March 10th address on the anniversary of his 1959 flight into exile or when Tibetans protest Chinese policies in small street demonstrations. On such occasions, Indian authorities generally cite the 'messiness' of democracies and ignore Chinese protests as best they can. New

²⁹¹ Refugee Board IND33125, *supra* note 18. On January 7, 1999, police tried to arrest Tibetans from protesting in New Delhi without first seeking permission to demonstrate. *Id.*

²⁹² Seeds Memo, *supra* note 257.

²⁹³ Interview with President of Tibetan Youth Cong. and the Additional Sec'y of Dep't of Home for the Central Tibetan Administration.

²⁹⁴ *Id.*

²⁹⁵ Email from Ted Albers of INS HQRIC to John Shandorf at INS ZNY (Jan. 29, 1998) (on file with TJC); Cable 004443, *supra* note 225.

²⁹⁶ Cable 004443, *supra* note 225.

Delhi can, however, and has in the past, arrested Tibetan demonstrators in order to prevent them from engaging in 'political activities' as a means to placate Beijing and maintain normalcy in its relations with China.²⁹⁷

Examples of this policy include the following: In November 1996, during the visit of former President Jiang Zemin, 300 Indian police officers used tear gas and water cannons against Tibetan protesters and detained fifty protesters.²⁹⁸ In 1998, Indian police broke up a protest by hunger strikers in Delhi and forcibly removed the hunger strikers to a hospital.²⁹⁹ On January 7, 1999, the police sought to prevent and arrest Tibetans for protesting in New Delhi without first seeking permission.³⁰⁰ This led China to express displeasure with India's failure to prevent Tibetans from demonstrating in front of the Chinese Embassy.³⁰¹ On October 20, 1999, riot police prevented Tibetan protesters from marching to the Chinese embassy.³⁰² On October 12, 2007, twenty-two activists were arrested during a Tibetan Youth Congress demonstration at the Chinese Embassy in New Delhi.³⁰³ Four of those detained suffered serious injuries after being beaten while in police custody.³⁰⁴

Indian intolerance of Tibetan political activity heightened in the months leading up to the 2008 Beijing Olympic games. In March of 2008, on the anniversary of the Dalai Lama's flight into exile, hundreds of monks and nuns organized a protest march from Dharamsala, the seat of the CTA, to the border of Tibet. India responded by issuing a restraining order that prohibited the protesters from leaving the province where Dharamsala is located, Himachal Pradesh.³⁰⁵ When the protesters continued with their march in defiance of the restraining order, Indian police detained more than 100 of them, and an Indian court ordered them to be held for 14 days.³⁰⁶ An Indian Ministry of External Affairs spokesman said, "India does not permit Tibetans to

²⁹⁷ *Id.*

²⁹⁸ Refugee Board IND33125, *supra* note 18.

²⁹⁹ Seeds Memo, *supra* note 257.

³⁰⁰ *Id.*

³⁰¹ Refugee Board IND33125, *supra* note 18.

³⁰² *Id.*

³⁰³ *Tibetan Activists in Tihar Jail after Severe Beatings by Delhi Police*, WORLD TIBET NETWORK NEWS (Oct. 12, 2007).

³⁰⁴ *Id.*

³⁰⁵ Heather Timmons, *Tibetan Protest Marchers Vow to Reach Homeland*, N.Y. TIMES, Mar. 12, 2008.

Simon Robinson and Madhur Singh, *India Detains Tibet Protestors*, TIME, Mar. 14, 2008.

engage in anti-China political activities in India.”³⁰⁷

Later in 2008, China used those words in the course of encouraging India to halt the “special meeting” proposed by the Dalai Lama on the future of Tibet. Qin Gang, China’s foreign ministry spokesman, said, “The Indian government has made a solemn commitment about not allowing any anti-China activities on its soil. We hope that the commitment will be implemented.”³⁰⁸ As protest activities related to the Beijing Olympics continued into April 2008, 680 Tibetan protesters were arrested because of their political activities.³⁰⁹ In July, Indian police arrested hunger strikers protesting the Beijing Olympics. Police also arrested 86 other Tibetans who attempted to keep the police officers from reaching the hunger strikers.³¹⁰

India’s intolerance of political dissent that threatens its relations with China appears likely to continue. Shortly before this report went to press, for example, the Indian authorities detained more than 20 Tibetans demonstrating for independence at the time of Chinese Premier Wen Jiabao’s visit to India.

I. Relations Between Tibetan and Indian Communities

Tibetans and Indians generally coexist peacefully. But violence and hostilities have erupted occasionally, and increasingly, a growing anti-Tibetan sentiment has poisoned the historic mutual tolerance of these peoples. Northern India experienced major conflicts in the early 1990s, coinciding with the dramatic increase in the number of Tibetans coming to India, which exacerbated intercommunal tensions. For example, shortly before a U.S. Congressman’s visit in 1991, portions of a Chautilla settlement were burned down.³¹¹

As noted above, perhaps the most serious clash occurred in Dharamsala in April 1994. The intercommunal violence erupted after a Tibetan youth stabbed an Indian taxi driver to death during a dispute that turned violent. Indian mobs looted Tibetan-owned stores and burned Tibetan government offices. India temporarily closed the refugee reception center in Dharamsala. Some Indian politicians and editorialists began criticizing Tibetans for taking advantage of Indian hospitality – and the Indian government for its tolerance of the Tibetan

³⁰⁷ *Id.*

³⁰⁸ Saibal Dasgupta, *China wants India to Block Dalai Lama’s Dharamshala Meet*, THE TIMES OF INDIA, Nov. 14, 2008.

³⁰⁹ U.S. Comm. For Refugees and Immigr., *World Refugee Survey – India, 2008 Summary* at <http://www.unhcr.org/refworld/country,,USCRI,,BTN,,485f50d82,0.html> (last accessed on September 5, 2011).

³¹⁰ *Id.*

³¹¹ Barnett Aff., *supra* note 43, ¶17

community.³¹²

The numerous other examples of growing anti-Tibetan sentiment in India include the following: In 1995, Arunachal Pradesh took on a failed campaign to expel 12,000 Tibetans.³¹³ In July 1999, in the northern Indian city of Manali, approximately 140 Tibetan shops and market stalls were attacked and burned after a Tibetan killed an Indian youth following a disagreement.³¹⁴ The Tibetan market was reportedly “razed to the ground.”³¹⁵ In November 1999, the Dalai Lama considered relocating some of the CTA’s offices and his private residence to the Faridabad region “as the growing tension between the locals and the Tibetans [was] becoming a cause of worry.”³¹⁶ He ultimately rejected this plan after local Indian community leaders reached out to him and requested that he not relocate. In addition, on May 10, 2005, a political party in the southern Indian city of Mysore staged a demonstration calling on Tibetans to “quit India.”³¹⁷ Demonstrators carried placards with anti-Tibetan slogans and urged the Indian government to oust all Tibetans, in part to preserve India’s relationship with China.³¹⁸ In 2008, escalating tensions between the Tibetan and Indian communities led to a temporary, unofficial boycott by Tibetans of Indian taxis. (Taxicabs are predominantly owned by Indians, and Tibetans stopped using them as a response to incidents of violence between the two communities.)³¹⁹

In spite of episodic tensions such as these, the Tibetan and Indian peoples generally coexist peacefully, and the Tibetan exile community is immensely grateful to India. In 2009, both the Tibetan and Indian communities took positive steps towards building a more peaceful relationship. To commemorate fifty years in exile, the CTA organized a series of events officially thanking the Indian government for its generosity,³²⁰ and simultaneously, the Indian government designed a community-policing program to improve relations between the two communities.³²¹

³¹² *Id.* at ¶20.

³¹³ Refugee Board IND33125, *supra* note 18.

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Bhagat Singh Samithi Asks Tibetans to ‘Quit India’*, STAR OF MYSORE (May 10, 2005).

³¹⁸ *Id.*

³¹⁹ Interviews by TJC with residents of Dharamsala, May 2, 2009 (on file with TJC).

³²⁰ One such event was held in Dharamsala on May 3, 2009 and was designed to thank Indian NGOs working with the Tibetan community. At one end of the meeting hall hung a poster that read “Thank you India – 50 Years in Exile” and each attendee received miniature Tibetan prayer flags inscribed “Thank you India.” Kaufman *supra* note 89, at 565.

³²¹ Interview by the TJC with Tsering Phuntsok, head of the Tibetan Settlement Office, Central Tibetan Administration, Dharamsala (May 3, 2009);, *Self Help for Peace*,

VII. CONCLUSION

This report documents the precarious status and circumstances for undocumented Tibetans residing in or transiting through India—whether on a pilgrimage, to get a Tibetan education, or in flight from persecution. In India, most undocumented Tibetans and their children remain stateless: India does not recognize them, legally speaking, as refugees under either international law or its own national laws, which do not provide for the adjudication of refugee status. Nor does India enable them to become Indian citizens—with the potential exception of those born on Indian soil between January 26, 1950 and July 1, 1987.

Unquestionably, since 1959, India has been tremendously generous to the Tibetan people. It has permitted Tibetans to enter and reside in exile in India as well as, with respect to the earliest arrivals, to develop settlements and schools. Yet because most Tibetans in India, and those born or entering at present, are legally stateless, they can live in India only by the grace of current executive policy. They enjoy no legal right to reside there—certainly not with any permanent status. Furthermore, without an RC or other appropriate documents, Tibetans cannot travel freely, either in India or internationally; own property; hold public jobs; or vote in Indian elections. India also limits the ability of Tibetans to assemble peacefully and to protest China's continuing occupation of and human rights violations in Tibet—including, above all, the denial of the right of Tibetans as a people to enjoy genuine self-determination under international law.

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Indian Gov't Superintendent of Police Foreign Registration Office, 2009 (on file with TJC). The neighborhood watch, which went into effect in April 2009, has reportedly resolved the problem of rogue local police stopping Tibetans purportedly to check RCs, but actually to obtain a bribe. Interviews by the TJC with residents of Dharamsala (May 2, 2009) (on file with TJC); Kaufman *supra* note 89 at 565.

over the course of nearly a decade as TJC sought to clarify and confirm the information in this report and to incorporate new developments. We owe special thanks to Professor Kaufman, who wrote the final substantive draft and brought together a host of research materials and interview transcripts that TJC had been gathering in the years after Ms. Daly's initial draft of the report. Professor Sloane would also like to acknowledge and thanks several former students who contributed research to and helped to edit this report, in particular, Melissa Rick, Kristopher Natoli, and Meg Larkin, all graduates of Boston University Law School. Finally, TJC thanks the CTA, Robert Barnett, and the countless other individuals who have assisted us in collecting and consolidating the very diverse sources of information that have been brought together in this report.

ABOUT TIBET JUSTICE CENTER

Tibet Justice Center - formerly the International Committee of Lawyers for Tibet - is a non-governmental organization comprised of Tibetan and American lawyers, law professors, and advocates who for over twenty years have used legal action and education to advocate for human rights and self-determination for the Tibetan people.

TJC's ongoing mission includes legal scholarship and advocacy to help Tibetans with immigration and asylum matters. In 2002 TJC published *Tibet's Stateless Nationals I: Tibetan Refugees in Nepal* to help the legal community better assist exile Tibetans in Nepal, and we continue to contribute a range of reports, submissions to the United Nations, and other initiatives related to Tibetan human rights, democracy, and governance. Please visit www.tibetjustice.org for more information.

IX. APPENDIX: TABLE OF CONTENTS

I. Indian Constitution and Statutes	76
1. The Citizenship Act, 1955	76
2. The Foreigners Act, 1946	95
3. Indian Bare Acts: The Registration of Foreigners Act, 1939	105
4. Selections from the Constitution of India:	108
II. Documents Issued by the Government of India:	113
5. Identity Certificate:	113
6. Registration Certificate:	118
III. Laws of the People's Republic of China	122
7. Nationality Law of the People's Republic of China:	122
IV. U.S. State Department Documents	125
8. Unclassified Cables:	125
V. Canadian Documents	128
VI. Tibetan Government in Exile Documents	132
9. Kashag Circular:	132
10. Tibetan Birth Certificate	134
11. Tibetan Green Book and Translation	135

I. Indian Constitution and Statutes

1. The Citizenship Act, 1955

(57 of 1955)

30th December, 1955

An Act to provide for the acquisition and determination of Indian citizenship.

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

1. Short title —

This Act may be called the Citizenship Act, 1955.

2. Interpretation —

(1) In this Act, unless the context otherwise requires, —

(a) "a Government in India" means the Central Government or a State Government;

(b) "citizen", in relation to a country specified in the First Schedule, means a person who under the citizenship or nationality law for the time being in force in that country, is a citizen or national of that country;

(c) "citizenship or nationality law", in relation to a country specified in the First Schedule, means an enactment of the legislature of that country which, at the request of the Government of that country, the Central Government may, by notification in the Official Gazette, have declared to be an enactment making provision for the citizenship or nationality of that country:

Provided that no such notification shall be issued in relation to the Union of South Africa except with the previous approval of both Houses of Parliament;

(d) "Indian consulate" means the office of any consular officer of the Government of India where a register of births is kept, or where there is no such office, such office as may be prescribed;

(e) "minor" means a person who has not attained the age of eighteen years:

(f) "person" does not include any company or association or body of individuals, whether incorporated or not;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "undivided India" means India as defined in the Government of India Act, 1935, as originally enacted.

(2) For the purposes of this Act, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Act to the status or description of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the father's death; and where that death occurred before, and the birth occurs after, the commencement of this Act, the status or description which would have been applicable to the father had he died after the commencement of this Act shall be deemed to be the status or description applicable to him at the time of his death.

(4) For the purposes of this Act, a person shall be deemed to be of full age if he is not a minor and of full capacity if he is not of unsound mind.

Comments

(i) The Citizenship Act and the Constitution are completely exhaustive of the citizenship of this country and these citizens can only be natural persons, the fact that corporations may be nationals of the country for purposes of International laws will not make them citizens of this country for purposes of Municipal Law or the Constitution; *State Trading Corporation of India v. Commercial Tax Officer*, AIR 1963 SC 1811: (1964) 45 SCR 99.

(ii) Nationality and Citizenship are not interchangeable terms; *State Trading Corporation of India v. Commercial Tax Officer*, AIR 1963 SC 1811: (1964) 4 SCR 99.

(iii) "Citizenship" has nothing to do with a juristic person. "Person" means a natural person and not any legal entity; *State Trading Corporation of India v. Commercial Tax Officer*, AIR 1963 SC 1811: (1964) 4 SCR 99.

Acquisition of Citizenship

3. Citizenship by birth –

(1) Except as provided in sub-section (2), every person born in India, –

(a) on or after the 26th day of January, 1950, but before the commencement of the Citizenship (Amendment) Act, 1986;

(b) on or after such commencement and either of whose parents is a citizen of India at the time of his birth, shall be a citizen of India by birth..

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

(a) his father possesses 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.

4. Citizenship by descent –

(1) A person born outside India, –

(a) on or after the 26th January, 1950, but before the commencement of the Citizenship (Amendment) Act, 1992, shall be a citizen of India by descent if his father is a citizen of India at the time of his birth; or

(b) on or after such commencement, shall be a citizen of India by descent of either of his parents is a citizen of India at the time of his birth:

Provided that if the father of such a person referred to in clause (a) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless –

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) his father is, at the time of his birth, in service under a Government in India:

Provided further that if either of the parents of such a person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless –

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 1992, which ever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) either of his parents is, at the time of his birth in service under a Government in India.

(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.

(3) For the purposes of the proviso to sub-section (1), any person born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only.

5. Citizenship by registration –

(1) Subject to the provisions of this section and such conditions and restrictions as may be prescribed, the prescribed authority may, on application made in this behalf, register as a citizen of India any person

who is not already such citizen by virtue of the Constitution or by virtue of any of the other provisions of this Act and belongs to any of the following categories:—

- (a) persons of Indian origin who are ordinarily resident in India and have been resident for five years immediately before making an application for registration;
- (b) persons of Indian origin who are ordinarily resident in any country or place outside undivided India;
- (c) persons who are, or have been, married to citizens of India and are ordinarily resident in India and have been so resident for five years immediately before making an application for registration;
- (d) minor children of persons who are citizens of India; and
- (e) persons of full age and capacity who are citizens of a country specified in the First Schedule:

Provided that in prescribing the conditions and restrictions subject to which persons of any such country may be registered as citizens of India under this clause, the Central Government shall have due regard to the conditions subject to which citizens of India may, by law or practice of that country, become citizens of that country by registration.

Explanation.—For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, *** was born in undivided India.

(2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause(b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.

Comments

If a person satisfies the requirements of this section, he/she can be registered as a citizen of India. This section can be invoked by persons who are not citizens of India but are seeking citizenship by registration; *National Human Rights Commission v. State of Arunachal Pradesh*, AIR 1996 SC 1234: (1996) 1 SCC 742.

6. Citizenship by naturalisation –

(1) Where an application is made in the prescribed manner by any person of full age and capacity who is not a citizen of a country specified in the First Schedule for the grant of a certificate of naturalisation to him, the Central Government may, if satisfied that the applicant is qualified for naturalisation under the provisions of the Third Schedule, grant to him a certificate of naturalisation:

Provided that, if in the opinion of the Central Government, the applicant is a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive all or any of the conditions specified in the Third Schedule.

(2) The person to whom a certificate of naturalisation is granted under sub-section (1) shall, on taking the oath of allegiance in the form specified in the Second Schedule, be a citizen of India by naturalisation as from the date on which that certificate is granted.

6A. Special provisions as to citizenship of persons covered by the Assam Accord. –

(1) For the purposes of this section –

(a) "Assam" means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985;

(b) "detected to be a foreigner" means detected to be a foreigner in accordance with the provisions of the Foreigners Act, 1946 (31 of 1946) and the Foreigners (Tribunals) Order, 1964 by a Tribunal constituted under the said Order;

(c) "specified territory" means the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985;

(d) a person shall be deemed to be of Indian origin, if he, or either of his parents for any of his grandparents was born in undivided India;

(e) a person shall be deemed to have been detected to be a foreigner on the date on which a Tribunal constituted under the Foreigners (Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.

(2) Subject to the provisions of sub-sections (6) and (7), all persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.

(3) Subject to the provisions of sub-sections (6) and (7), every person of Indian origin who—

(a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and

(b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and

(c) has been detected to be a foreigner,

shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such authority

(thereafter in this sub-section referred to as the registering authority) as may be specified in such rules and if his name is included in any electoral roll for any Assembly or Parliamentary constituency in force on the date of such detection, his name shall be deleted therefrom.

Explanation.—In the case of every person seeking registration under this sub-section, the opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 holding such person to be a foreigner, shall be deemed to be sufficient proof of the requirement under clause (c) of this sub-section and if any question arises as to whether such person complies with any other requirement under this sub-section, the registering authority shall,—

(i) if such opinion contains a finding with respect to such other requirement, decide the question in conformity with such finding;

(ii) if such opinion does not contain a finding with respect to such other requirement, refer the question to a Tribunal constituted under the said Order having jurisdiction in accordance with such rules as the Central Government may make in this behalf under section 18 and decide the question in conformity with the opinion received on such reference.

(4) A person registered under sub-section (3) shall have, as from the date on which he has been detected to be a foreigner and till the expiry of a period of ten years from that date, the same rights and obligations as a citizen of India (including the right to obtain a passport under the Passports Act, 1967 (15 of 1967) and the obligations connected therewith), but shall not be entitled to have his name included in any electoral roll for any Assembly or Parliamentary constituency at any time before the expiry of the said period of ten years.

(5) A person registered under sub-section (3) shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner.

(6) Without prejudice to the provisions of section 8,—

(a) if any person referred to in sub-section (2) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985, for year a declaration that he does not wish to be a citizen of India, such person shall not be deemed to have become a citizen of India under that sub-section;

(b) If any person referred to in sub-section (3) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement the Citizenship (Amendment) Act, 1985, for year or from the date on which he has been detected to be a foreigner, whichever is later, a declaration that he does not wish to be governed by the provisions of that sub-section and sub-sections (4) and (5), it shall not be necessary for such person to register himself under sub-section (3).

Explanation. – Where a person required to file a declaration under this sub-section does not have the capacity to enter into a contract, such declaration may be filed on his behalf by any person competent under the law for the time being in force to act on his behalf.

(7) Nothing in sub-sections (2) to (6) shall apply in relation to any person –

(a) who, immediately before the commencement of the Citizenship (Amendment) Act, 1985, for year is a citizen of India;

(b) who was expelled from India before the commencement of the Citizenship (Amendment) Act, 1985, for year under the Foreigners Act, 1946 (31 of 1946).

(8) Save as otherwise expressly provided in this section, the provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force.

Comments

Under sub-section (2) of section 6A two conditions are required to be satisfied – (i) persons who are of Indian origin (undivided India) came before 1-1-1966 to Assam from the specified territory, and (ii) have been "ordinarily resident" in Assam as it existed in 1985 since the date of entry in Assam; *State of Arunachal Pradesh v. Khudiram Chakma*, AIR 1994 SC 1961.

7. Citizenship by incorporation of territory. –

If any territory becomes a part of India, the Central Government may, by order notified in the Official Gazette, specify the persons who shall

be citizens of India by reason of their connection with that territory; and those persons shall be citizens of India as from the date to be specified in the order.

Termination of citizenship

8. Renunciation of citizenship –

(1) If any citizen of India of full age and capacity, who is also a citizen or national of another country, makes in the prescribed manner a declaration renouncing his Indian Citizenship, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India:

Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central Government otherwise directs.

(2) Where a person ceases to be a citizen of India under sub-section (1) every minor child of that person shall thereupon cease to be a citizen of India:

Provided that any such child may, within one year after attaining full age, make a declaration that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

(3) For the purposes of this section, any woman who is, or has been, married shall be deemed to be of full age.

Comments

A person who gives up his claim to Indian citizenship cannot claim right of residence on the basis of his domicile; *A.H. Magermans v. S. K. Ghose*, AIR 1966 Cal 552.

9. Termination of citizenship –

(1) Any citizen of India who by naturalisation, registration otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act, voluntarily acquired the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires, the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

Comments

Section 9 is a complete code as regards the termination of Indian citizenship on the acquisition of the citizenship of a foreign country; *Bhagwati Prasad Dixit 'Ghorewala' v. Rajeev Gandhi*, AIR 1986 SC 1534.

10. Deprivation of citizenship. –

(1) A citizen of India who is such by naturalisation or by virtue only of clause (c) of article 5 of the Constitution or by registration otherwise than under clause (b) (ii) of article 6 of the Constitution or clause (a) of sub-section (1) of section 5 of this Act, shall cease to be a citizen of India, if he is deprived of that citizenship by an order of the Central Government under this section.

(2) Subject to the provisions of this section, the Central Government may, by order, deprive any such citizen of Indian citizenship, if it is satisfied that –

(a) the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) that citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India as by law established; or

(c) that citizen has, during any war in which India may be engaged unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(d) that citizen has, within five years after registration or naturalisation, been sentenced in any country to imprisonment for a term of not less than two years; or

(e) that citizen has been ordinarily resident out of India for a continuous period of seven years, and during that period, has neither been at any time a student of any educational institution in a country outside India or in the service of a Government in India or of an international organisation of which India is a member, nor registered annually in the prescribed manner at an Indian consulate his intention to retain his citizenship of India.

(3) The Central Government shall not deprive a person of citizenship under this section unless it is satisfied that it is not conducive to the public good that the person should continue to be a citizen of India.

(4) Before making an order under this section, the Central Government shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and, if the order is proposed to be made on any of the grounds specified in sub-section (2) other than clause (e) thereof, of his right, upon making application therefore in the prescribed manner, to have his case referred to a committee of inquiry under this section.

(5) If the order is proposed to be made against a person on any of the grounds specified in sub-section (2) other than clause (e) thereof and that person so applies in the prescribed manner, the Central Government shall, and in any other case it may, refer the case to a Committee of Inquiry consisting of a chairman (being a person who has for at least ten years held a judicial office) and two other members appointed by the Central Government in this behalf.

(6) The Committee of Inquiry shall, on such reference, hold the inquiry in such manner as may be prescribed and submit its report to the Central Government; and the Central Government shall ordinarily be guided by such report in making an order under this section.

Comments

Certificate of Registration cannot be cancelled unless fraud, false, representation or suppression of material fact exists; *Fazal Dad v. State of Madhya Pradesh*, AIR 1964 MP 272.

Supplemental

11. Commonwealth citizenship. —

Every person who is a citizen of a Commonwealth country specified in the First Schedule shall, by virtue of that citizenship, have the status of a Commonwealth citizen in India.

12. Power to confer rights of Indian citizen or citizens of certain countries. —

(1) The Central Government may, by order notified in the Official Gazette, make provisions on a basis of reciprocity for the conferment of all of any of the rights of citizen of India on the citizens of any country specified in the First Schedule.

(2) Any order made under sub-section (1) shall have effect notwithstanding anything inconsistent therewith contained in any law other than the Constitution of India or this Act.

Comments

A citizen of any Commonwealth country can have only those rights which the Central Government may confer on him; *Fazal Dad v. State of Madhya Pradesh*, AIR 1964 MP 272.

13. Certificate of Citizenship in case of doubt —

The Central Government may, in such cases as it thinks fit, certify that a person, with respect to whose citizenship of India a doubt exists, is a citizen of India; and a certificate issued under this section shall, unless it is proved that it was obtained by means of fraud, false representation or concealment of any material fact, be conclusive evidence that person was such a citizen on the date thereof, but without prejudice to any evidence that he was such a citizen at an earlier date.

14. Disposal of application under sections 5 and 6 —

(1) The prescribed authority or the Central Government may, in its discretion, grant or refuse an application under section 5 or section 6

and shall not be required to assign any reasons for such grant or refusal.

(2) Subject to the provisions of section 15 the decision of the prescribed authority or the Central Government on any such application as aforesaid shall be final and shall not be called in question in any court.

15. Revision –

(1) Any person aggrieved by an order made under this Act by the prescribed authority or any officer or other authority (other than the Central Government) may, within a period of thirty days from the date of the order, make an application to the Central Government for revision of that order:

Provided that the Central Government may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) On receipt of any such application under sub-section (1), the Central Government shall, after considering the application of the aggrieved person and any report thereon which the officer or authority making the order may submit, make such order in relation to the application as it deems fit, and the decision of the Central Government shall be final.

16. Delegation of power –

The Central Government may, by order, direct that any power which is conferred on it by any of the provisions of this Act other than those of section 10 and section 18 shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by such officer or authority as may be so specified.

17. Offences –

Any person who, for the purpose of procuring anything to be done or not to be done under this Act, knowingly makes any representation which is false in a material particular shall be punishable with

imprisonment for a term which may extend to six months, or with fine, or with both.

18. Power to make rules. –

(1) The Central Government may, by notification in the Official Gazette make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for –

(a) the registration of anything required or authorized under this Act to be registered, and the conditions and restrictions in regard to such registration;

(b) the forms to be used and the registers to be maintained under this Act;

(c) the administration and taking of oaths of allegiance under this Act and the time within which, and the manner in which, such oaths shall be taken and recorded;

(d) the giving of any notice required or authorized to be given by any person under this Act;

(e) the cancellation of the registration of, and the cancellation and amendment of certificate of naturalisation relating to, persons deprived of citizenship under this Act, and the delivering up of such certificates for those purposes;

(ee) the manner and form in which and the authority to whom declarations referred to in clauses (a) and (b) of sub-section (b) of section 6A shall be submitted and other matters connected with such declarations;

(f) the registration at Indian consulates of the births and deaths of persons of any class or description born or dying outside India;

(g) the levy and collection of fees in respect of applications, registrations, declarations and certificates under this Act, in respect of the taking of

an oath of allegiance, and in respect of the supply of certified or other copies of documents;

(h) the authority to determine the question of acquisition of citizenship of another country, the procedure to be followed by such authority and rules of evidence relating to such cases;

(i) the procedure to be followed by the committees of inquiry appointed under section 10 and the conferment on such committees of any of the powers, rights and privileges of civil court;

(j) the manner in which applications for revision may be made and the procedure to be followed by the Central Government in dealing with such applications; and

(k) any other matter which is to be, or may be, prescribed under this Act.

(3) In making any rule under this section, the Central Government may provide that breach thereof shall be punishable with fine which may extend to one thousand rupees.

(4) Every rule made under this section shall be laid, as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

19. Repeals —

Repealed by the Repealing and Amending Act, 1960 (Act 58 of 1960), sec. 2 and the First Schedule (w.e.f. 26-10-1960).

The First Schedule

See sections 2(1)(b) and 5(1)(e)

A. The following Commonwealth countries: –

1. United Kingdom.
2. Canada.
3. Commonwealth of Australia.
4. New Zealand.
5. Union of South Africa.
6. Pakistan.
7. Ceylon.
8. Federation of Rhodesia and Nyasaland
9. Ghana.
10. Federation of Malaya.
11. Singapore.

B. The Republic of Ireland.

Explanation – In this Schedule, "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland, and includes the Channel Islands, the Isle of Man and all Colonies; and "Commonwealth of Australia" includes the territories of Papua and the territory of Norfolk Island.

The Second Schedule

See sections 5(2) and 6(2)

Oath of Allegiance

I, A.B.....do solemnly affirm (or swear) that i will bear true faith and allegiance to the Constitution of India as by law established, and that i will faithfully observe the laws of India and fulfil my duties as a citizen of India.

The Third Schedule

See section 6(1)

Qualifications for naturalisation

The qualifications for naturalisation of a person who is not a citizen of a country specified in the First Schedule are –

(a) that he is not a subject or citizen of any country where citizens of India are prevented by law or practice of that country from becoming subjects or citizens of that country by naturalisation;

(b) that, if he is a citizen of any country, he has renounced the citizenship of that country in accordance with the law therein in force in that behalf and has notified such renunciation to the Central Government;

(c) that he has either resided in India or been in the service of a Government in India or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application;

(d) that during the twelve years immediately preceding the said period of twelve months, he has either resided in India or been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than nine years;

(e) that he is of good character;

(f) that he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution; and

(g) that in the event of a certificate of naturalisation being granted to him, he intends to reside in India, or to enter into or continue in, service under a Government in India or under an international organisation of which India is a member or under a society, company or body of persons established in India:

Provided that the Central Government may, if in the special circumstances of any particular case it thinks fit, –

(i) allow a continuous period of twelve months ending not more than six months before the date of the application to be reckoned, for the purposes of clause (c) above, as if it had immediately preceded that date;

(ii) allow periods of residence or service earlier than thirteen years before the date of the application to be reckoned in computing the aggregate mentioned in clause (d) above.

2. The Foreigners Act, 1946:

An Act to confer upon the Central Government certain powers in respect of foreigners.

Whereas it is expedient to provide for the exercise by the Central Government of certain powers in respect of the entry of foreigners into India, their presence therein and their departure therefrom;

It is hereby enacted as follows:

1. Short title and extent. —

(1) This Act may be called the Foreigners Act, 1946.

(2) It extends to the whole of India.

2. Definitions. — In this Act, —

(a) *foreigner* means a person who is not a citizen of India;

(b) *prescribed* means prescribed by orders made under this Act;

(c) *specified* means specified by direction of a prescribed authority.

3. Power to make orders. — (1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or, their departure therefrom or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the foregoing powers, orders made under this section may provide that the foreigner

—

(a) shall not enter India or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(b) shall not depart from India or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c) shall not remain in India, or in any prescribed area therein;

(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal;

(d) shall remove himself to, and remain in, such area in India as may be prescribed;

(e) shall comply with such conditions as may be prescribed or specified

- (i) requiring him to reside in a particular place;
- (ii) imposing any restrictions on his movements;
- (iii) requiring him to furnish such proof of his identify and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;
- (iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;
- (v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;
- (vi) prohibiting him from association with persons of a prescribed or specified description;
- (vii) prohibiting him from engaging in activities of a prescribed or specified description;
- (viii) prohibiting him from using or possessing prescribed or specified articles;
- (ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;

(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or prescribed or specified restrictions or conditions;

(g) shall be arrested and detained or confined;

and may make provision for any matter which is to be or may be prescribed and for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

(3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under Clause (e) for Clause (f) of subsection (2).

3-A. Power to exempt citizens of Commonwealth countries and other persons from application of Act in certain cases. – (1) The Central Government may, by order, declare that all or any of the provisions of this Act or of any order made thereunder shall not apply, or shall apply only in such circumstances or with such exceptions or modifications or subject to such conditions as may be specified in the order, to or in relation to –

(a) the citizens of any such Commonwealth country as may be so specified; or

(b) any other individual foreigner or class or description of foreigner.

(2) A copy of every orders made under this section shall be placed on the table of both Houses of Parliament as soon as may be after it is made.

4. Internees. – (1) Any foreigner (hereinafter referred to as an internee) in respect of whom there is in force any order made under Clause (g) of sub-section (2) of Section 3, directing that he be detained are confined, shall be detained or confined in such place and manner and subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.]

(2) Any foreigner (hereinafter referred to as a person on parole) in respect of whom there is in force an order under Clause (e) of sub-section (2) of Section 3 requiring him to reside at a place set apart for the residence under supervision of number of foreigners, shall while residing therein be subject to such condition as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.

(3) No person shall –

(a) knowingly assist an internee or a person on parole to escape from custody or the place set apart for his accidence, or knowingly harbour an escaped internee or person or parole, or

(b) give an escaped internee or person on parole any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internee or the person on parole.

(4) The Central Government may, by order, provide for regulating access to, and the conduct of persons in, places in India where internees or persons on parole are detained or restricted, as the case may be, and for prohibiting or regulating the dispatch or conveyance from outside such places to or for internees or persons on parole therein of such articles as may be prescribed.

5. Change of name. – (1) No foreigner who was in India on the date on which this Act came into force shall, while in India after that date, assume or use or purport to assume or use for any purpose any name other than that by which he was ordinarily known immediately before the said date.

(2) Where, after the date on which this Act came into force, any foreigner carries on or purports to carry on (whether alone or in association with any other person) any trade or business under any name or style, other than that under which that trade or business was being carried on immediately before the said date, he shall, for the purposes of sub-section (1), be deemed to be using a name other than that by which he was ordinarily known immediately before the said date.

(3) In relation to any foreigner who, not having been in India on the date on which this Act came into force, thereafter enters India sub-sections (1) and (2) shall have effect as if for any reference in those sub-sections to the date on which the Act came into force there were substituted a reference to the date on which he first enters India thereafter.

(4) For the purposes of this section –

(a) the expression name includes a surname, and

(b) a name shall be deemed to be changed if the spelling thereof is altered.

(5) Nothing in this section shall apply to the assumption or use –

(a) of any name in pursuance of a licence or permission granted by the Central Government; or

(b) by any married woman, of her husband's name,

Comments

Section 5 contemplates that a foreigner while in India shall not change or use any name other than the name by which he was known previously without the permission of the Central Government. If a foreigner has lawfully changed his name and comes to this country it cannot be said he is committing an offence under Section 5(3). (AIR 1968 Madras 349)

6. Obligations of masters of vessels, etc. – (1) The master of any vessel landing or embarking at a port in India passengers coming to or going from that port by sea and the pilot of any aircraft landing or embarking at any place in India passengers coming to or going from that place by air, shall furnish to such person and in such manner as may be prescribed a return giving the prescribed particulars with respect to any passengers or members of the crew, who are foreigners.

(2) Any District Magistrate and any Commissioner of Police or, where there is no Commissioner of Police, any Superintendent of Police may, for any purpose connected with the enforcement of this Act or any order made thereunder, require the master of any such vessel or the pilot of any such aircraft to furnish such information as may be prescribed in respect of passengers or members of the crew on such vessel or aircraft, as the case may be.

(3) Any passenger on such vessel or such aircraft and any member of the crew of such vessel or aircraft shall furnish to the master of the vessel or the pilot of the aircraft, as the case may be, any information required by him for the purpose of furnishing the return referred to in sub-section (1) or for furnishing the information required under sub-section (2).

(4) If any foreigner enters India and contravention of any provision of this Act or any order made thereunder, the prescribed authority may, within two months from the date of such entry, direct the master of the vessel or the pilot of the aircraft on which such entry was effected or the owner or the agent of the owner of such vessel or aircraft, to provide, to the satisfaction of the said authority and otherwise than at the expense of Government, accommodation on a vessel or aircraft for the purpose of removing the said foreigner from India.

(5) The master of any vessel or the pilot of any aircraft which is about to carry passengers from a port or place in India to any destination

outside India, or the owner or the agent of the owner of any such vessel or aircraft shall, if so directed by the Central Government and on tender of payment therefore at the current rates, provide on the vessel or aircraft accommodation to such port or place outside India, being a port or place at which the vessel or aircraft is due to call, as the Central Government may specify, for any foreigner ordered under Section 3 not to remain in India and for his dependents, if any, travelling with him.

(6) For the purposes of this section –

(a) *master of a vessel and pilot of any aircraft* shall include any person authorised by such master or pilot as the case may be, to discharge on his behalf any of the duties imposed on him by this section;

(b) *passenger* means any person not being a bona fide member of the crew, travelling or seeking to travel on a vessel or aircraft.

7. Obligation of hotel keepers and others to furnish particulars. – (1) It shall be the duty of the keeper of any premises whether furnished or unfurnished where lodging or sleeping accommodation is provided for reward, to submit to such person and in such manner such information in respect of foreigners accommodation in such premises, as may be prescribed.

Explanation. – The information referred to in this sub-section may relate to all or any of the foreigners accommodated at such premises and may be required to be submitted periodically or at any specific time or occasion.

(2) Every person accommodated in any such premises shall furnish to the keeper thereof a statement containing such particulars as may be required by the keeper for the purpose of furnishing the information referred to in sub-section (1).

(3) The keeper of every such premises shall maintain a record of the information furnished by him under sub-section (1) and of the information obtained by him under sub-section (2) and such record shall be maintained in such manner and preserved for such period as may be prescribed, and shall at all times be open to inspection by any police officer or by a person authorised in this behalf by the District Magistrate.

(4) If in any area prescribed in this behalf the prescribed authority by notice published in such manner as may in the opinion of the authority be best adapted for informing the persons concerned so directs, it shall be the duty of every person occupying or having under this control any residential premises to submit to such person and in such manner such information in respect of foreigners accommodated in such premises as may be specified; and the provisions of sub-section (2) shall apply to every person accommodated in any such premises.

7-A. Power to control places frequented by foreigners. – (1) The prescribed authority may, subject to such conditions as may be prescribed, direct the owner or person having control of any premises used as a restaurant or as a place of public resort or entertainment or as a club and frequented by foreigners –

(a) to close such premises either entirely or during specified periods, or
(b) to use or permit the use of such premises only under such conditions as may be specified, or
(c) to refuse admission to such premises either to all foreigners or to any specified foreigner or class of foreigner.

(2) A person to whom any direction has been given under sub-section (1) shall not, while such direction remains in force, use or permit to be used any other premises for any of the aforesaid purposes except with the previous permission in writing of the prescribed authority and in accordance with any condition which that authority may think fit to impose.

(3) Any person to whom any direction has been given under sub-section (1) and who is aggrieved thereby may, within thirty days from the date of such direction, appeal to the Central Government; and the decision of the Central Government in the matter shall be final.

8. Determination of nationality. – (1) When a foreigner is recognised as a national by the law of more than one foreign country or where for any reason it is uncertain what nationality, if any, is to be ascribed to a foreigner, that foreigner may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected:

Provided that where a foreigner acquired a nationality by birth, he shall, except where the Central Government so directs either generally or in a particular case, be deemed to retain that nationality unless he proves to the satisfaction of the said authority that he has subsequently acquired by naturalization or otherwise some other nationality and still recognised as entitled to protection by the Government of the country whose nationality he has so acquired.

(2) A decision as to nationality given under sub-section (1) shall be final and shall not be called in question in any Court:

Provided that the Central Government, either of its own motion or on an application by the foreigner concerned, may revise any such decision.

Comments

A married woman acquires the domicile of her husband on marriage and capable of acquiring a new domicile by re-marriage after divorce. (State of Bihar v. Amar Singh, AIR 1955 S.C. 282).

9. Burden of proof. – If in any case not falling under Section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus the proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall notwithstanding anything contained in the Indian Evidence Act, 1872, (1 of 1972) lie upon such person.

10. Power to exempt from application of Act. – Repealed by the Foreigners Laws (Amendment) Act, (11 of 1957).

11. Power to give effect to orders, directions, etc. – (1) Any authority empowered by or under or in pursuance of the provisions of this Act to give any direction or to exercise any other power, may, in addition to any other action expressly provided for in this Act, take, or cause to be taken such steps and use, or cause to be used, such force as may, in its opinion, be reasonably necessary for securing compliance with such direction or for preventing or rectifying any breach thereof, or for the effective exercise of such power, as the case may be.

(2) Any police officer may take such steps and use such force as may, in his opinion, be reasonably necessary for securing compliance with any order made or direction given under or in pursuance of the Act or for preventing or rectifying any breach of such order or direction.

(3) The power conferred by this section shall be deemed to confer upon any person acting in exercise thereof a right of access to any land or other property whatsoever.

12. Power to delegate authority. — Any authority upon which any power to make or give any direction, consent or permission or to do any other act is conferred by this Act or by any order made thereunder may, unless express provision is made to the contrary, in writing authorise, conditionally or otherwise, any authority subordinate to it to exercise such power on its behalf, and thereupon the said subordinate authority shall, subject to such conditions as may be contained in the authorisation, be deemed to be the authority upon which such power is conferred by or under this Act.

13. Attempts, etc., to contravene the provisions of this Act, etc. — (1) Any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of, the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

(2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of this Act or of any order made or direction given thereunder, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention shall be deemed to have abetted that contravention.

(3) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves India in contravention of any order made under, or direction given in pursuance of, Section 3 shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have contravened this Act.

14. Penalties. — If any person contravenes the provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or such, he shall be punished with imprisonment for a term

which may extend to five years and shall also be liable to fine; and if such person has entered into a bond in pursuance of Clause (f) of subsection (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid.

Comments

Petitioner, a Pakistani national had entered India unauthorisedly via Bangladesh without any valid passport, visa and he had not informed any authority about his entry and stay in India and not got himself registered as a citizen of India. He has clearly contravened cl. 3(1) and cl. 7(2) of Foreigners Act, 1948 and committed offence under Sections 13 and 14 of the Foreigners Act (Mohd. Anwar v. State of Bihar 1992 Cr. L.J. 48).

15. Protection to persons acting under this Act. – No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

16. Application of other laws not barred. – The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Registration of Foreigners Act, 1939 (16 of 1939) the Indian Passport Act, 1920 (34 of 1920) and of any other enactment for the time being in force.

17. Repeals. – [Repealed by the Repealing and Amending Act, 1950 (35 of 1950)]

3. Indian Bare Acts: The Registration of Foreigners Act, 1939

An act to provide for the registration of foreigners in India.

Whereas it is expedient to provide for the registration of foreigners entering, being present in, and departing from, India. It is hereby enacted as follows: -

1. Short title and extent. - (1) This Act may be called the Registration of Foreigners Act, 1939.

(2) It extends to the whole of India.

2. Definitions. - In this Act, -

(a) "*foreigner*" means a person who is not a citizen of India;

(aa) [Omitted].

(b) "*prescribed*" means prescribed by rules made under this Act.

3. Power to make rules. - [(1) The Central Government may, after previous publication, by notification in the Official Gazette, make rules with respect to foreigners for any or all of the following purposes, that is to say -

(a) for requiring any foreigner entering, or being present in, India to report his presence to a prescribed authority within such time and in such manner and within such particulars as may be prescribed;

(b) for requiring any foreigner moving from one place to another place in India to report, or arrival at such other place, his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(c) for requiring any foreigner who is about to leave India to report the date of his intended departure and such other particulars as may be prescribed to such authority and within such period before departure as may be prescribed;

(d) for requiring any foreigner entering, being present in, or departing from, India to produce, on demand by a prescribed authority, such proof of his identity as may be prescribed.

(e) for requiring any person having the management of any hotel, boarding house, sarai or any other premises of like nature to report the name of any foreigner residing therein or whatever duration, to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(f) for requiring any person having the management or control of any vessel or aircraft to furnish to a prescribed authority such information as may be prescribed regarding any foreigner entering, or intending to depart from, India, in such vessel or aircraft, and to furnish to such authority such assistance as may be necessary or prescribed for giving effect to this Act;

(g) for providing for such other incidental or supplementary matters as may appear to the Central Government necessary or expedient for giving effect to this Act.

[(2) Every rule made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session, of a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

4. Burden of Proof. - If any question arises with reference to this Act or any rule made thereunder whether any person is or is not a foreigner or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.

5. Penalties. - Any person who contravenes, or attempts to contravene, or fails to comply with, any provision of any rule made there this Act shall be punished, if a foreigner, with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both, or if not a foreigner, with fine which may extend to five hundred rupees.

6. Power to exempt from application of Act. - The Central Government may, by order, declare that any or all of the provisions of the rules made under this Act shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified in the said order, to or in relation to any individual foreigner or any class or description of foreigner:

Provided that a copy of every such order shall be placed on the table of Parliament as soon as may be after its promulgation.

7. Protection to persons acting under this Act. - No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

8. Application of other laws not barred. - The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Foreigners Act, 1946 (31 of 1946) and any other law for the time being in force.

9. Application of Act to Part B States. - [Rep. by the Part B States (Laws) Act, 1951 (3 of 1951) Section 3 and Schedule.]
Renumbered as sub-sec. (1) by Act No. 4 of 1986.
Ins. by Act No. 4 of 1986.

4. Selections from the Constitution of India:

Part II: Citizenship

5. At the commencement of this Constitution, every person who has his domicile in the territory of India and –

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,

shall be a citizen of India.

6. Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if –

(a) he or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted; and

(b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on application made by him therefore to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

7. Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947 migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for the resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

8. Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

9. No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.

10. Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

11. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

Part III – Fundamental Rights. – Right to Freedom

19. (1) All citizens shall have the right –
- (a) to freedom of speech and expression;
 - (b) to assemble peaceably and without arms;
 - (c) to form associations or unions;
 - (d) to move freely throughout the territory of India;
 - (e) to reside and settle in any part of the territory of India; [and]

(g) to practise any profession, or to carry on any occupation, trade or business.

[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions in the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.]

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in [sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, [nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the state from making any law relating to, --

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

20. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

[21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.]

22. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply -

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless -

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe -

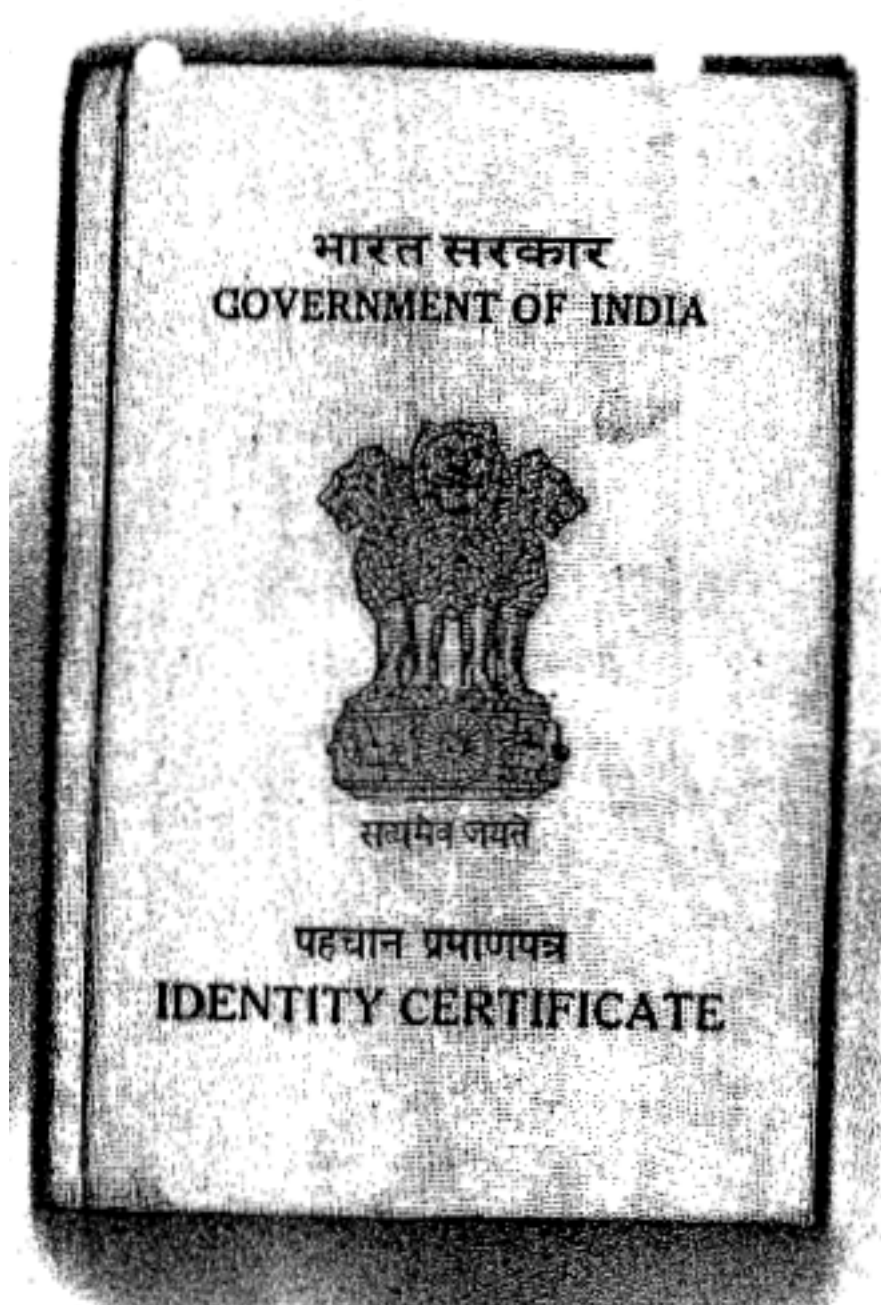
(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under [sub-clause (a) of clause (4)].

II. Documents Issued by the Government of India

5. Identity Certificate:



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इस पहचान प्रमाणपत्र में 13 पृष्ठ हैं।
This Identity Certificate contains 13 pages


पहचान प्रमाणपत्र
IDENTITY CERTIFICATE

प्रमाणपत्रधारी को राष्ट्रीय पासपोर्ट के अभाव में पहचान देना ही इस प्रमाणपत्र की जारी करने का एकमात्र उद्देश्य है। यह न तो प्रमाणपत्रधारी की राष्ट्रियता से प्रभावित है और न उसकी राष्ट्रियता को प्रभावित करता है। यदि प्रमाणपत्रधारी राष्ट्रीय पासपोर्ट प्राप्त कर लेता तो यह प्रमाणपत्र वैध न रह जाएगा और उसे इस प्रमाणपत्र को पासपोर्ट जारी करनेवाले विदेशीय भारतीय अधिकारी के पास जमा कर देना होगा।

This certificate is issued for the sole purpose of providing the holder with identity papers in lieu of a national passport. It is without prejudice to and in no way affects the national status of the holder. If the holder obtains a national passport, this certificate ceases to be valid and must be surrendered to the nearest Indian Passport Issuing Authority.

यह प्रमाणपत्र पृष्ठ 5 पर विहित देशों की यात्रा के लिए वैध है और इसकी वैधता निम्नलिखित तिथि को समाप्त होती है:

This certificate is valid for travel to Countries mentioned at page 5 and its validity ceases on: 1 MAY 2006

 Rambh
भारत के दूतावास के अध्यक्ष (भारत के दूतावास के अध्यक्ष)
CONSULATE GENERAL OF INDIA
NEW YORK

स्थान NEW YORK तिथि 2 Nov. 2005
Place Date

पहचान प्रमाणपत्र का नम्बर
No. of Identity Certificate: [REDACTED]

प्रमाणपत्रधारी का नाम
Name of holder: [REDACTED]

मूल राष्ट्रियता
Nationality of origin: TIBETAN

नम्बर N^o [REDACTED]

व्यक्ति का विवरण
Personal Description

व्यवसाय
Profession

जन्म की तारीख
Date of birth

जन्म-स्थान
Place of birth

पिता / पति का नाम
Name of father / husband

माँ का नाम
Name of mother

ऊँचाई
Height

बालों का रंग
Colour of hair

आँसुओं का रंग
Colour of eyes

BLACK

BLACK

नम्बर N^o [REDACTED]

विशिष्ट चिह्न
Distinguishing marks

वर्तमान कार्य
Present occupation

विदेरा में पिछले स्थायी पता
Last permanent address abroad

वर्तमान पता
Present address

MONK

21 - OFFICE OF TIBET
241 EAST 32ND ST.
NEW YORK N.Y. 10016

नम्बर N^o [REDACTED]

प्रवाहकधारी के साथ एक बच्चा है / बच्चे हैं;
ब्यौता नीचे दिया गया है
The holder is accompanied by a child / children
whose particulars are given below:
बच्चों का विवरण
Particulars of Children

क्रमिक S.No.	नाम Name	जन्म की तारीख Date of birth	लड़का / लड़की Sex
1.			
2.			
3.			
4.			
5.			

(प्रवाहकधारी के हस्ताक्षर)
(Signature of holder)

नम्बर N^o [REDACTED]

पुष्टीकृत
ENDORSEMENTS

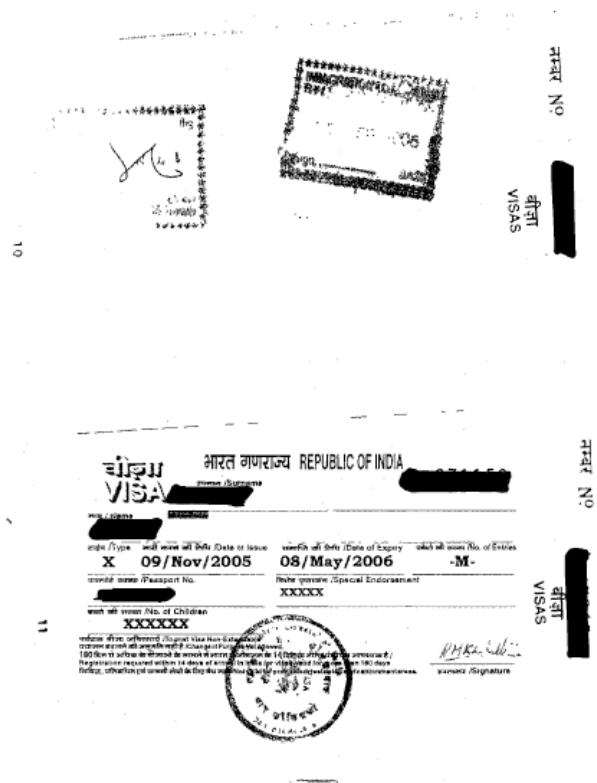
THIS PASSPORT IS VALID FOR
TRAVEL TO ALL COUNTRIES

NO OBJECTION TO RETURN TO INDIA during the period of validity of this passport. The holder is required to obtain a visa in order to return to India.

Previously held Passport No. [REDACTED] issued at Paris on 17.12.83 and valid upto 8.11.2005 (15) which has been cancelled & returned. Valid visas within this Passport NOT CANCELLED.

Ramesh Chand
RAMESH CHAND
ASSISTANT CONSULAR OFFICER
CONSUL GENERAL OF INDIA
NEW YORK

Tibet's Stateless Nationals II:
Tibetan Refugees in India



6. Registration Certificate:

3/14
/15

The Security Office of His Holiness the Dalai Lama requests all civil authorities to allow the bearer of this Indian Registration Certificate to pass freely and to give assistance in case of need.

**THE REGISTRATION OF FOREIGNERS
RULES 1939.**

FORM-A

(Rules 2, 5, 6, 7, 9, 12, 13, 15, 16, & 17)
Part III-CERTIFICATE OF REGISTRATION

- Serial Number : 713/10/2006
- Name in full (Block capitals, surname first) : [REDACTED]
- Sex : Female Height : 5 feet
Colour of eyes : Black
- Date and place of birth : [REDACTED] Tibetan
- Present nationality : Tibetan
- Previous nationality, if any : _____

7. Manner and date of acquiring present nationality :
by birth
8. Occupation and profession and purpose of visiting India :
Refugee student
9. If a member of any country's navy, military or air force or its reserves, state which country's and rank :
[REDACTED]
10. Number, date and office of issue of passport or particulars of other proof of identity :
[REDACTED]
11. Address or intended address in India :
P.C.V.
Senior School
Upper Dharamsala (H.P.)
12. Port of place of embarkation or departure for India :
[REDACTED]
13. Date and place of arrival in India :
the 1st of 1958
14. Name of vessel in which arrived in India :
[REDACTED]
15. Address of last residence outside India :
[REDACTED]

their nationalities (if accompanying the visitor) :

17. Signature of registree : *Jhmo.*

18. Date of expiry of registration (Tourist only):

Sharda
Foreigners Registration Officer
Kangra - Dharamsala.

4

Registered at *Dharamsala*
on *26/2/90*



Note : No alteration should be made on this Form ; corrections should be noted and attested on the reverse.

5

Tibet's Stateless Nationals II:
Tibetan Refugees in India

RESIDENTIAL PERMIT

(Under paragraph 7 of the Foreigners Order 1948)

Mr/Mrs/Miss. [redacted] of Noban nationality, holding Passport No. [redacted] dated [redacted] for India is permitted to remain in India till [redacted]

2. This permit must be surrendered at the time of departure from India to the Registration Officer of the place from which Mr/Mrs/Miss. [redacted] leaves India.

3. In the event of Mr/Mrs/Miss. [redacted] not departing from India before [redacted] he/she will unless he/she has obtained the permission of the Central Government to remain for a longer period, be liable to prosecution for a contravention of the provisions of the Foreigners Act, 1946 punishable with imprisonment for a period of [redacted]

4. Application for an extension of the period of this permit must be made at least 15 days before 25/5/91 and must be addressed to the Government has the discretion to withhold any application which does not have adequate grounds for an extension.

Dated: 1/6/90
Seal:

Foreigners Registration Officer,
& Superintendent of District, Kangra
25/6/90
21/6/95

6

STAY EXTENDED UPTO... 18-6-2000
F.R.O. Kangra at D/Sala

STAY EXTENDED UPTO... 12/6/2001
F.R.O. Kangra at D/Sala

STAY EXTENDED UPTO... 16-6-2002
F.R.O. Kangra at D/Sala

STAY EXTENDED UPTO... 15-6-2003
F.R.O. Kangra at D/Sala

SPACE FOR EXTENSION

15

III. Laws of the People's Republic of China

7. Nationality Law of the People's Republic of China:

Article 1 This law is applicable to the acquisition, loss and restoration of nationality of the People's Republic of China.

Article 2 The People's Republic of China is a unitary multinational state; persons belonging to any of the nationalities in China shall have Chinese nationality.

Article 3 The People's Republic of China does not recognize dual nationality for any Chinese national.

Article 4 Any person born in China whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality.

Article 5 Any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality.

Article 6 Any person born in China whose parents are stateless or of uncertain nationality and have settled in China shall have Chinese nationality.

Article 7 Foreign nationals or stateless persons who are willing to abide by China's Constitution and laws and who meet one of the following conditions may be naturalized upon approval of their applications:

- (1) they are near relatives of Chinese nationals;
- (2) they have settled in China; or
- (3) they have other legitimate reasons.

Article 8 Any person who applies for naturalization as a Chinese national shall acquire Chinese nationality upon approval of his application; a person whose application for naturalization as a Chinese national has been approved shall not retain foreign nationality.

Article 9 Any Chinese national who has settled abroad and who has been naturalized as a foreign national or has acquired foreign nationality of his own free will shall automatically lose Chinese nationality.

Article 10 Chinese nationals who meet one of the following conditions may renounce Chinese nationality upon approval of their applications:

- (1) they are near relatives of foreign nationals;
- (2) they have settled abroad; or
- (3) they have other legitimate reasons.

Article 11 Any person who applies for renunciation of Chinese nationality shall lose Chinese nationality upon approval of his application.

Article 12 State functionaries and military personnel on active service shall not renounce Chinese nationality.

Article 13 Foreign nationals who once held Chinese nationality may apply for restoration of Chinese nationality if they have legitimate reasons; those whose applications for restoration of Chinese nationality have been approved shall not retain foreign nationality.

Article 14 Persons who wish to acquire, renounce or restore Chinese nationality, with the exception of the cases provided for in Article 9, shall go through the formalities of application. Applications of persons under the age of 18 may be filed on their parents or other legal representatives.

Article 15 Nationality applications at home shall be handled by the public security bureaus of the municipalities or countries where the applicants reside; nationality applications abroad shall be handled by China's diplomatic representative agencies and consular offices.

Article 16 Applications for naturalization as Chinese nationals and for renunciation or restoration of Chinese nationality are subject to examination and approval by the Ministry of public Security of the People's Republic of China. The Ministry of Public Security shall issue a certificate to any person whose application has been approved.

Article 17 The nationality status of persons who have acquired or lost Chinese nationality before the promulgation of this Law shall remain valid.

Article 18 This Law shall come into force on the day of its promulgation.

IV. United States State Department Documents

8. Unclassified Cables:

P 221217Z Apr. 96
FM Am Embassy New Delhi
TO SecState Wash DC Priority 7162

UNCLAS NEW DELHI 004443

DEPARTMENT ALSO CA/VO/F/P

E.O. 12958: N/A
TAGS: PHUM, PREF, PREL, CUIS, CH, IN
SUBJECT: TIBETAN ASYLEES IN INDIA

REF: State 76030

1. In response to reftel query, poloffs contacted UNHCR and Jampal Chosang, Secretary at the Dalai Lama's New Delhi Bureau and long-time resident of India. The consular section also came up with a sample of the travel documents India provides to Tibetans.
2. According to UNHCR and Chosang, Tibetans resident in India receive from the Indian Ministry of Home Affairs a "Registration Certificate" on a single sheet of paper, which permits them to reside in India. If a Tibetan resident of India travels outside India, he must first obtain an "Identity Certificate," a passport-like book issued by the passport office of the Ministry of External Affairs. The cover of this certificate is imprinted with the Indian National Symbol. The lion capital of the ashoka pillar, like an Indian passport, but is yellow in color instead of dark blue. This identity certificate serves in lieu of a passport for foreign travel and return to India.
3. An essential element of the "Identity Certificate" is a "No Objection of Return to India" (NORI) stamp placed in the certificate by the passport office, probably subject to the approval of the Home Ministry. Chosang had the impression that the Home Ministry issued the certificates and placed the NORI stamps in them but the sample we have seen clearly indicates that the MHA passport office is the issuing agency. The NORI stamp states "Not a Visa (Underline) No Objection To Return to India Provided A Visa Is Obtained Within Two Years of Date Here Of. Permitted to stay up to one year from the date of return

to India.” A Tibetan resident of India may travel outside India without a NORI stamp but will not be able to return to India without it. We do not as a rule place a U.S. Visa in an “Identity Certificate” unless a NORI stamp appears in it.

4. NORI stamps are occasionally withheld by the Indian authorities. According to Chosang, usually in cases where the Tibetan has been convicted of committing unlawful activities. Asked if “unlawful activities” included political activities, Chosang said “yes.” He cited the example of Tibetans who may have demonstrated in front of the Chinese Embassy in New Delhi being arrested and convicted of disturbing the public order.

5. Regarding the statement of Reftel Asylum Seeker. It is not our sense that the “general population” of India resents the presence of the roughly 100,000 Tibetans in their country. The Indian Federal Government and several State governments have provided land for Tibetan refugees fleeing Communist Chinese oppression in 1959 and the Tibetans have resided more or less without incident in India since then. There was a recent incident of communal tension between the Tibetan and Indian communities in the Northern Indian City of Dharamsala, site of the Dalai Lama’s home in exile, in 1994. Tension in this case was occasioned by an isolated incident of violence between individuals. Although local politicians attempted briefly (and ultimately unsuccessfully) to use the incident to stir up passions; most of the populace in both communities quickly allowed the incident to fade and no permanent repercussions were felt.

6. The asylum seeker is correct to assert, however, that Indian authorities prohibit Tibetans from engaging in overt political agitation, particularly if it is anti-Chinese. The presence of the Dalai Lama and thousands of his supporters in India has long been a neuralgic issue for China and a perennial bone of contention in the Sino-Indian political agenda. As Sino-Indian relations have improved over the past few years, both New Delhi and Beijing have made conscious efforts not to allow the Dalai Lama’s presence to cast a shadow over the broader relationship. Nonetheless, the Indian Government has circumspectly tried to avoid giving Beijing the impression that the issue is political rather than humanitarian and that the Dalai Lama is a political leader rather than a religious and cultural figure. New Delhi is not always successful in persuading Beijing when, for example, Tibetan exiles assemble in Dharamsala to hear the Dalai Lama’s annual March 10 address on the anniversary of his 1959 flight into exile, or when

Tibetans protest Chinese policies in small street demonstrations. On such occasions, Indian Authorities generally cite the “messiness” of democracies and ignore Chinese protests as best they can. New Delhi can, however, and has in the past, arrested Tibetan demonstrators in order to prevent them from engaging in “political activities” as a means to placate Beijing and maintain normalcy in its relations with China.

7. If the asylum seeker’s statement that he is well known to Indian authorities for engaging in political activities for Tibetan independence is true, it is credible that he may be barred from reentering India: none of our sources are aware of the practice of placing any endorsement or marking in an Identity Certificate that would invalidate the NORI stamp. It would not be surprising, however, if the names of perceived “trouble makers” were included on watch lists consulted by Indian Embassies in issuing visas or by Immigration Authorities at points of entry.

Wisher

V. Canadian Documents

Immigration and Refugee Board of Canada

India/China: Whether a Tibetan whose birth in India between 1950 and 1987 was not registered with the authorities would be recognized as a citizen; whether the Indian government accepts birth certificates issued by the Tibetan government-in-exile; whether the Indian government issues birth certificates to Tibetans born in India

Citizenship and Legal Status

According to information provided on the Website of India's Ministry of Home Affairs, Section 3 of the Indian Citizenship Act of 1955 stipulates that a person "born in India on or after 26th January 1950 but before 1st July, 1987" is a citizen of India "irrespective of the nationality of his parents" (India n.d.). However, a person born between 1 July 1987 and 2 December 2004 is a citizen of India if one of the parents is a citizen of India at the time of the birth (ibid.). A person born in India after 2 December 2004 is a citizen by birth if both parents are citizens of India at the time of the birth or if one of the parents is a citizen and the other "is not an illegal migrant at the time of [the] birth" (ibid.).

In 17 January 2006 correspondence to the Research Directorate, an official with the Canadian High Commission in New Delhi stated that while Tibetans born in India between 1950 and 1987 are eligible for Indian citizenship, few of them apply because there is a general belief that their exile in India is temporary and a return to Tibet will eventually follow. The Indian daily newspaper *The Hindu* reported in a 26 May 2005 article that refugees born in India can apply for citizenship, yet only between two and three per cent of Tibetan refugees have done so. Although there are no official statistics available on the number of Tibetans who have applied for and obtained citizenship, the Dalai Lama's office in New Delhi estimates that less than one per cent of eligible Tibetans have applied for Indian citizenship (Canada 17 Jan. 2006). Along with the United Nations High Commissioner for Refugees (UNHCR), the Dalai Lama's office is aware of some Tibetans having received Indian citizenship upon application (ibid.). However, in 2003, a representative with the Office of Tibet in New York indicated to the United States (US) Citizenship and Immigration Services department that Tibetan refugees in India have experienced difficulties in obtaining citizenship (US 30 May 2003). The representative did not indicate what those difficulties were (ibid.).

The Hindu reported that refugees who have lived in India for 14 years or more are eligible to apply for citizenship (26 May 2005). Corroborating information could not be found among the sources consulted by the Research Directorate.

The official with the Canadian High Commission indicated that Tibetans, like all foreigners in India, are subject to the Foreigners Act and Rules (1946), but also to a regulation entitled "Regulating Entry of Tibetan Nationals into India," adopted in 1950 (Canada 17 Jan. 2006). Tibetans who arrived in India before 1979 can obtain residence permits, which are renewed yearly and allow holders to obtain travel documents, including the Identity Certificate (*ibid.*). Residence permits are necessary for work purposes as well as for renting homes, running businesses and opening bank accounts (USCRI 2005). However, Tibetans who arrived after 1979 are "not officially recognized by the Indian government" (Canada 17 Jan. 2006). The U.S. Committee for Refugees and Immigrants (USCRI) stated in its 2005 survey of the world's refugees that many newly arrived Tibetans in India experience difficulties in obtaining residence permits (USCRI 2005). Nevertheless, new arrivals are given some measure of protection by the Indian government (Canada 17 Jan. 2006). According to the official with the Canadian High Commission, Tibetans in India are tolerated, and "reports of any Tibetans facing problems due to lack of legal status are extremely rare and [are] dealt with by the Dalai Lama's office" (*ibid.*). The official added that Tibetans in India have access to employment and education and would be protected from refoulement (*ibid.*).

Birth Certificates

The Central Tibetan Administration, a network of agencies based in Dharamsala, India, that make up the Tibetan government-in-exile (US 30 May 2003), until late 2002 or early 2003 issued birth certificates to Indian-born Tibetans indicating the place of birth as India (Canada 17 Jan. 2006). These birth certificates are accepted by the Indian government for the purposes of applying for documents such as residence permits and Identity Certificates (*ibid.*). According to the Canadian High Commission in New Delhi, the Indian government issues birth certificates to Tibetans in India, and some authorities "will also accept an affidavit countersigned by the Dalai Lama's office ... as well as school certificates showing the person's birth date" (*ibid.*).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time

constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

References

Canada. 17 January 2006. Canadian High Commission, New Delhi. Correspondence from an official.

The Hindu. 26 May 2005. "Nurturing a Dream of Returning Home." (Factiva)

India. n.d. Ministry of Home Affairs. "Foreigners Division: Acquisition of Indian Citizenship (IC)." <<http://mha.nic.in/citizenship/acquisition.htm>> [Accessed 19 Dec. 2005]

United States (US). 30 May 2003. Citizenship and Immigration Services, Department of Homeland Security. "India: Information on Tibetan Refugees and Settlements." <<http://uscis.gov/graphics/exec/prnfriendly.asp>> [Accessed 19 Dec. 2005]

U.S. Committee for Refugees and Immigrants (USCRI). 2005. *World Refugee Survey 2005*. <<http://www.refugees.org/article.aspx?id=1342>> [Accessed 19 Dec. 2005]

Additional Sources Consulted

Oral sources: The Office of Tibet in New York did not provide publicly available information. Three additional oral sources did not provide information within the time constraints of this Response.

Internet sites, including: Amnesty International, Central Tibetan Administration, European Country of Origin Information Network, Human Rights Watch, Phayul.com, TJC, United Nations High Commissioner for Refugees (UNHCR), United Kingdom Home Office, United States Department of State.

Topics: Tibetan, Exiles,

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VI. Tibetan Government in Exile Documents

9. Kashag Circular:

As you are aware, since recently quite a few Tibetans have migrated to the West. Some among them are new arrivals from Tibet and have now settled in the country of their residence and have even started to invite their family members for family unification.

The persons invited for family re-unification have Travel Documents issued either by the host country or from an international organization such as the International Red Cross. They also have immigration visa clearance from the to be host country.

Until recently, the Government of India has been issuing Exit permit to these people who have the above documents. However, as the number of such people kept steadily increasing, the Indian Government found it uncomfortable with this situation. They feel that some Tibetans are using India as a conduit or a passage to travel abroad and therefore, expressed its inability to issue Exit Permit to such people with effective from December 31st, 2006.

But to all Tibetans who arrive through our Reception Centre in Kathmandu, the Indian Embassy there, issue them with Special Entry Permit (SEP). The SEP is issued under the categories of either for pilgrimage or education or others and the duration of stay for education is normally for a year while the validity for SEP for pilgrimage is normally for one month.

Those who arrive in India with SEP validity of one year will be allowed to apply for Registration Certificate (RC), resident permit in India. Any RC holder can apply for Identity Certificate (IC), which normally take 14-18 months to process. A person with an IC will be allowed to travel abroad without an Exit Permit, provided a visa is obtained, but for those who are migrating to other countries will have to obtain an Exit Permit which normally takes between 7-14 days to process.

This is to inform that no request for Exit Permit will be entertained by the Government of India after December 31st, 2006 for those who obtained Travel Document on SEP and therefore, we ask all the representatives to make sure that our people under your jurisdiction are informed and kept updated with these developments to avoid

unnecessary complications to all the concerned and to make necessary arrangements accordingly.

10. Tibetan Birth Certificate



འོ་གཞུང་ཕྱི་ལོ་གཞུང་ལྷན་ཁང་།

OFFICE OF THE RECEPTION CENTRES

Phone : 01892-21307
Fax : 01892-21307
e-mail : oorc@nda.vsnl.net.in

Central Tibetan Administration
of His Holiness the Dalai Lama
P.O. McLeod Ganj-176219
Dharamsala (H.P.)
INDIA

BIRTH CERTIFICATE

Certified that the following information has been collected from the records maintained by the Branch Tibetan Reception Center, Kathmandu, Nepal.

Name: [Redacted]
Date of birth: [Redacted]
Place of birth: [Redacted] Tibet
Name of Father: [Redacted]
Name of Mother: [Redacted]
Nationality: Tibetan



Date of birth was registered on April 25th, 2003.

I, Sonam Khorlatsang, authorised the issuance of this birth certificate on behalf of Central Tibetan Administration of His Holiness the Dalai Lama, Dharamsala.

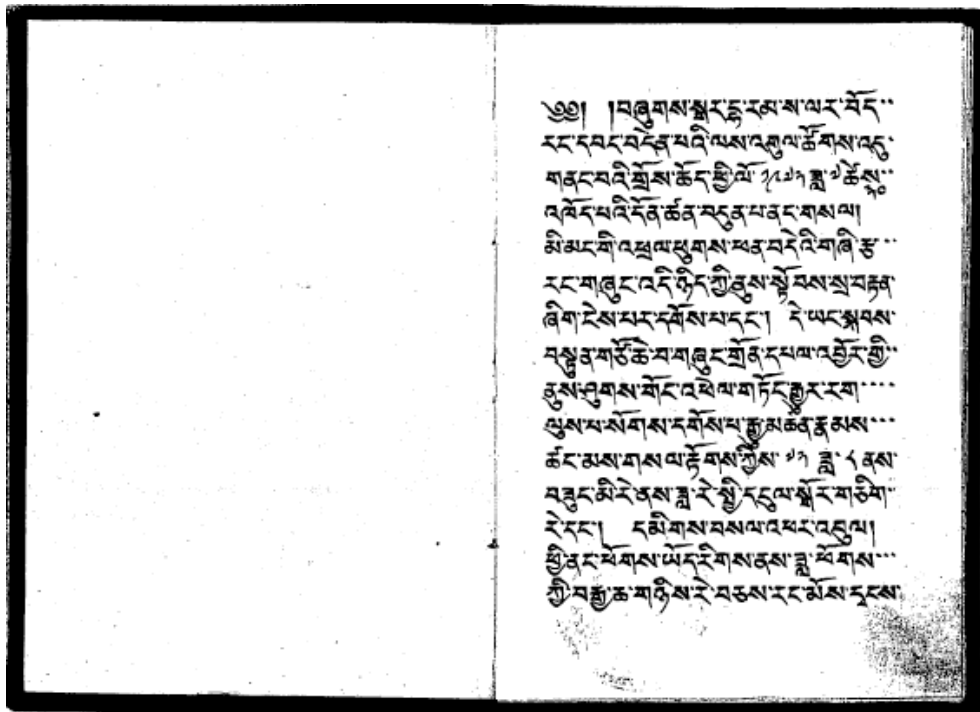
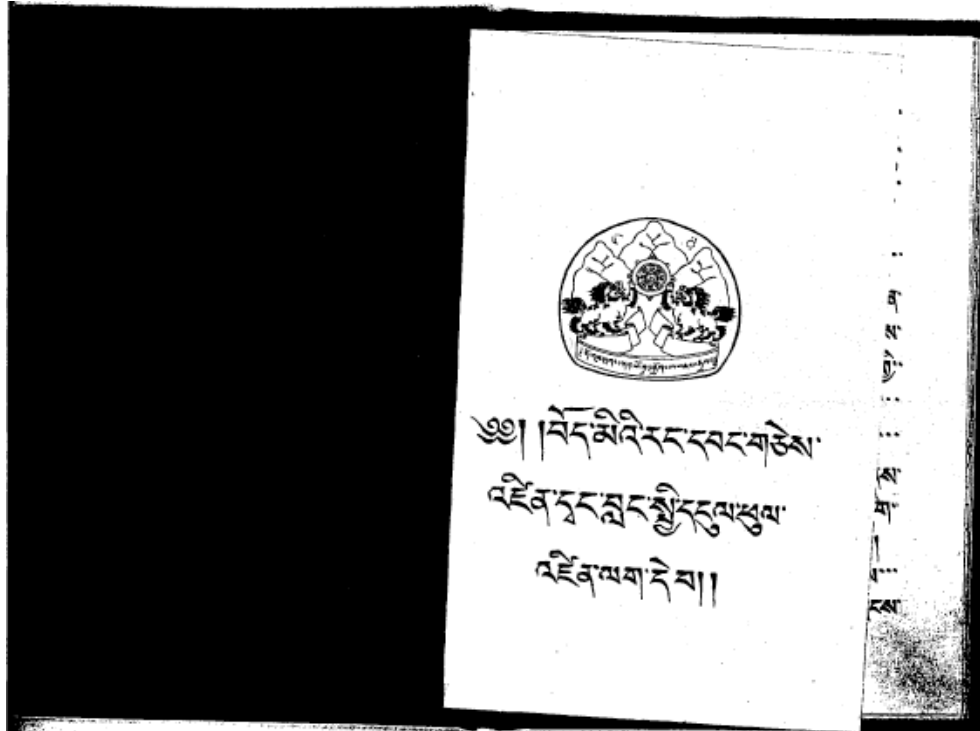
Date of issue: May 20th, 2003

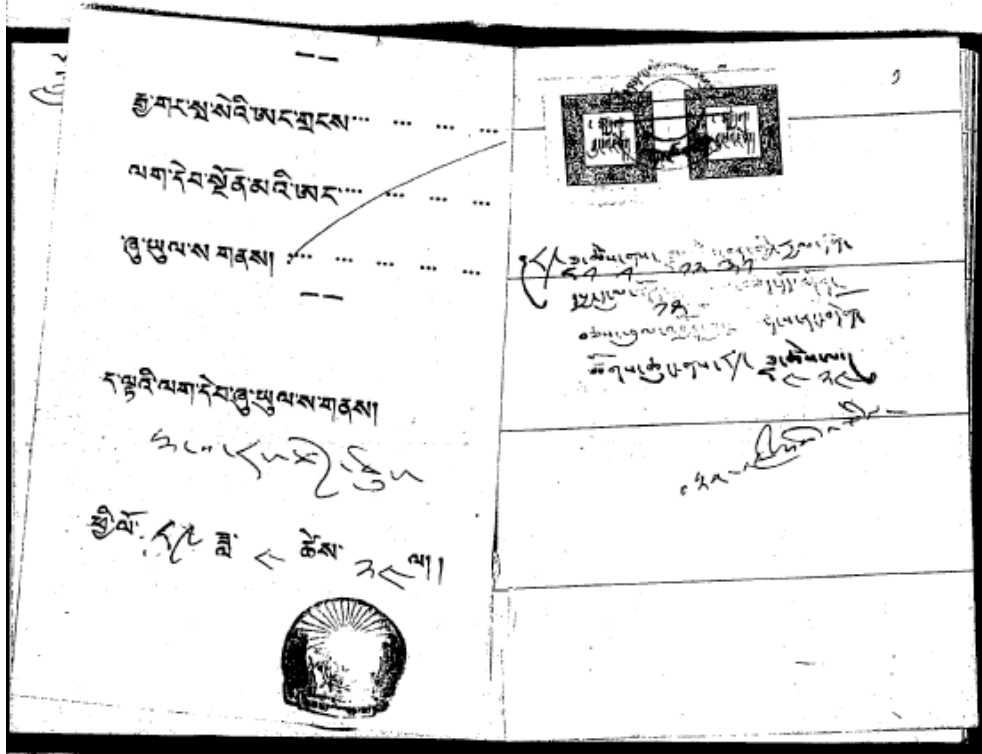
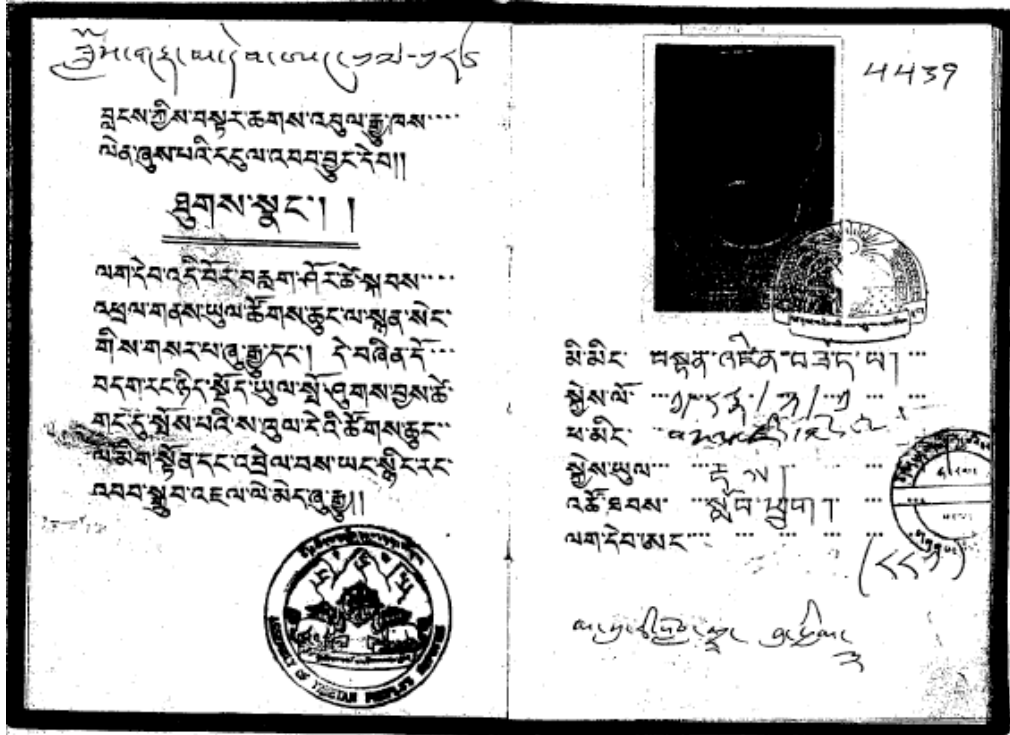


[Signature]
Sonam Khorlatsang

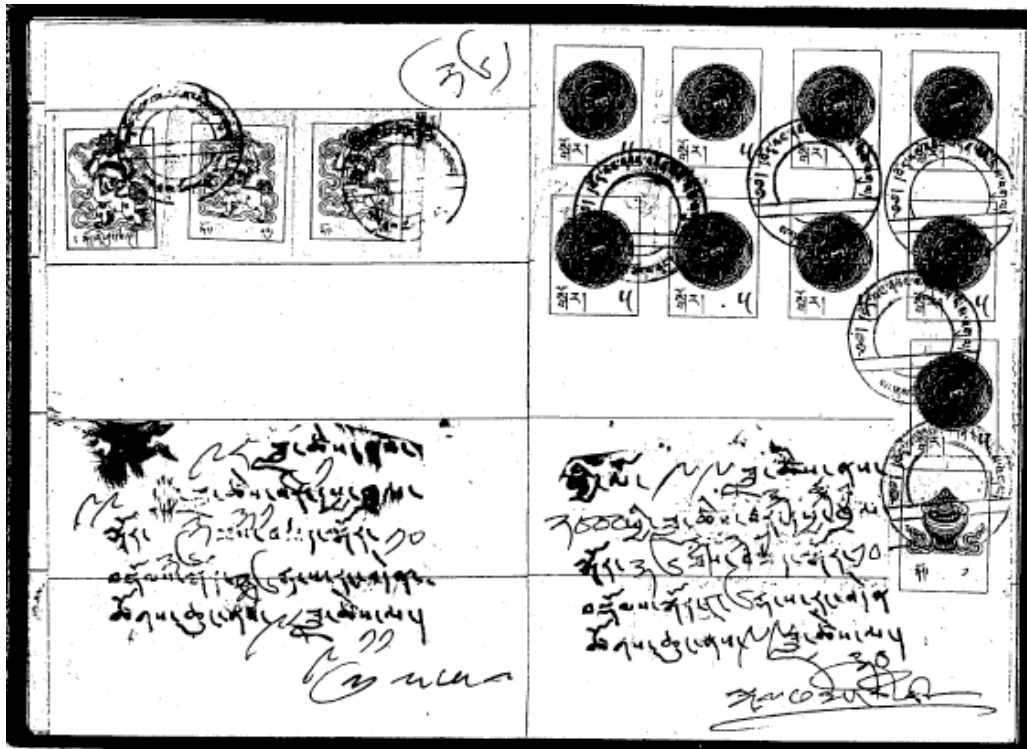
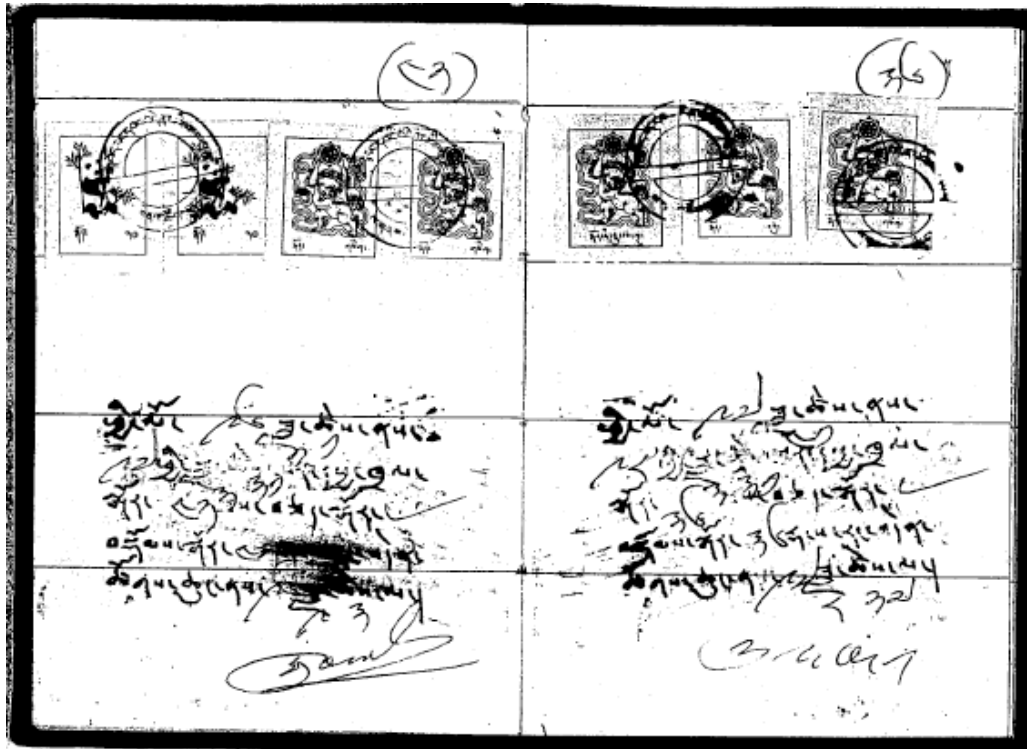
Director
Office of the Reception center
Dharamsala, HP, India

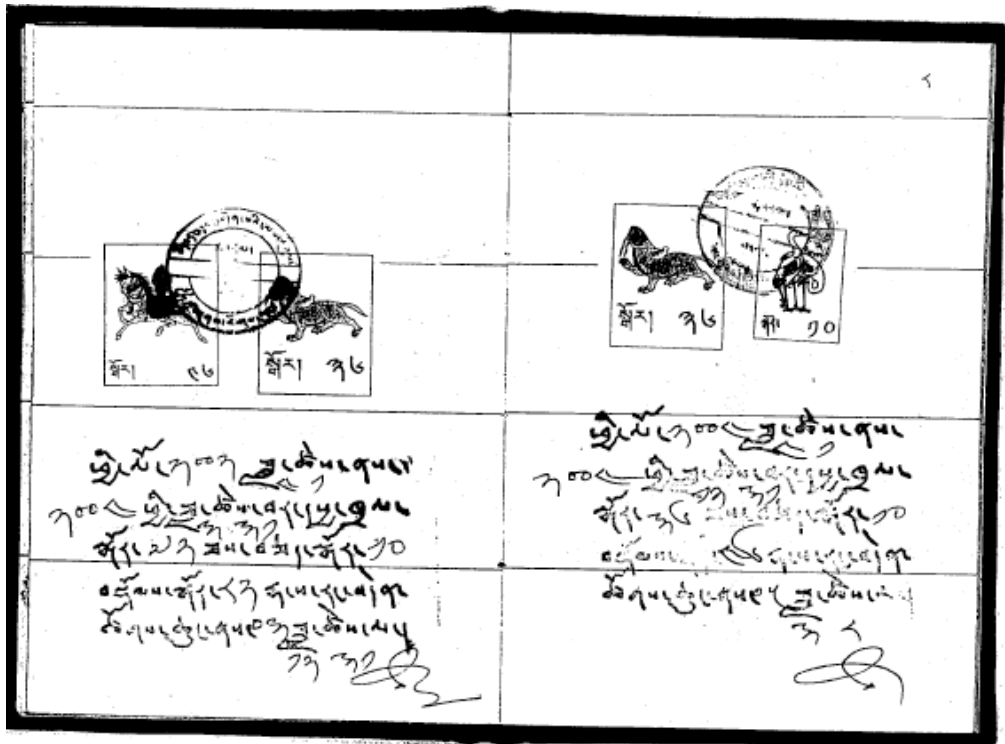
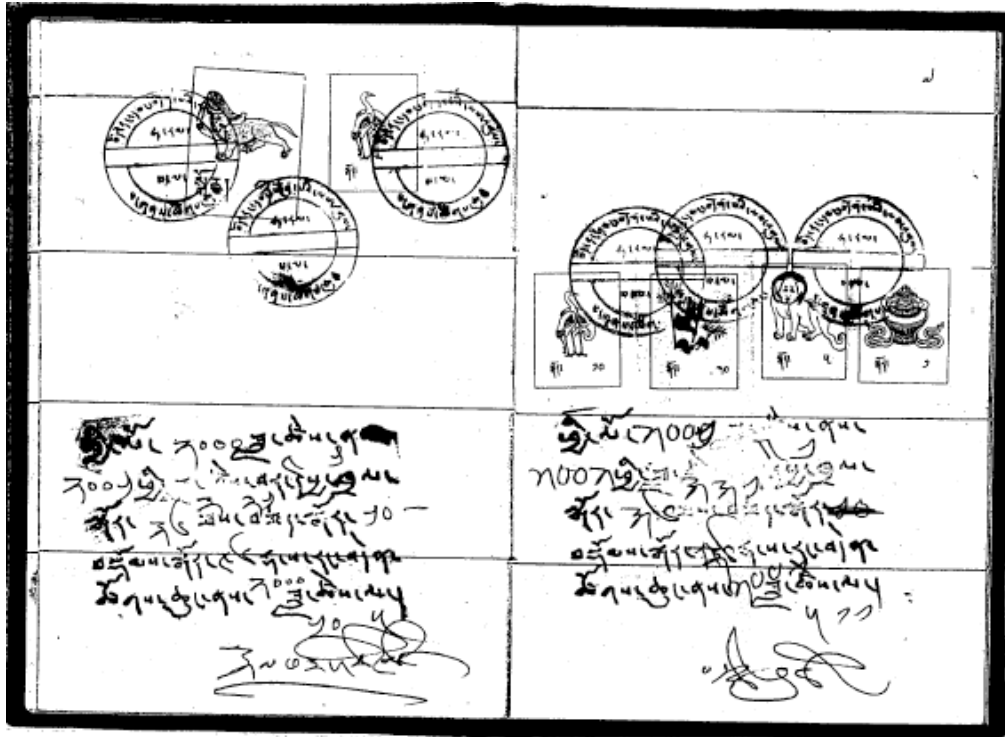
11. Tibetan Green Book and Translation

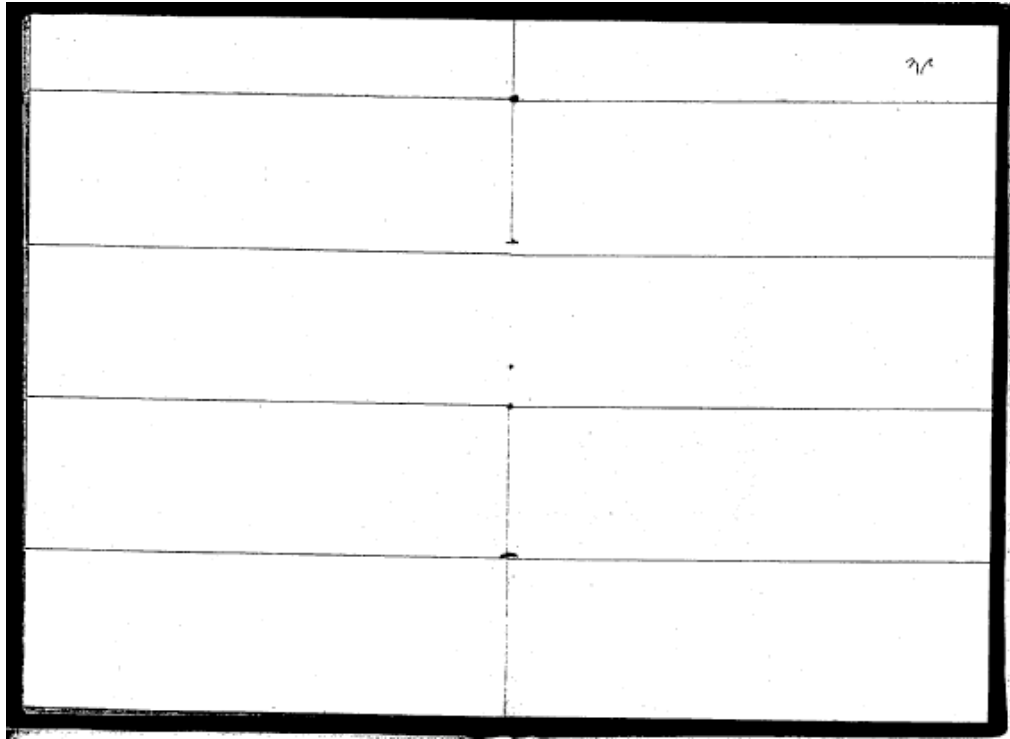








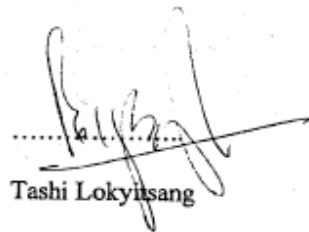




The image shows a large, empty rectangular area with a thick black border. It appears to be a redacted section of a document or a placeholder for content that is not visible. The interior of the box is white and contains no text or data.

CERTIFICATE OF TRANSLATION

I CERTIFY THAT I AM FLUENT AND PROFICIENT IN BOTH TIBETAN AND ENGLISH. I AM COMPETENT TO TRANSLATE THE ATTACHED DOCUMENT FROM TIBETAN TO ENGLISH AND I HAVE TRANSLATED THE ATTACHED DOCUMENT FROM TIBETAN TO ENGLISH COMPLETELY AND ACCURATELY TO THE BEST OF MY ABILITY.


.....
Tashi Lokyisang

117 Pacific Street, Apt. 201

Cambridge, MA 02139

TRANSLATION FROM TIBETAN INTO ENGLISH LANGUAGE

Cover Page

EMBLEM OF THE TIBETAN GOVERNMENT-IN-EXILE
TIBETAN IDENTIFICATION BOOK
STICKER HANDWRITING: [REDACTED]

Page i.

The bearer of this book is a bona-fide Tibetan citizen in exile. He/she has paid annual contributions to the Tibetan Government in Exile, as per resolution adopted on July 30, 1972 by the Assembly of Tibetan People's Deputies, located in Dharamsala, India. From August 1972, each Tibetan will contribute Rupee 1.00 per month. Special contributions are welcome. All gainfully employed Tibetans will make an extra contribution of 2% from their monthly salary. The Tibetan Government in Exile provides educational and social assistance to the Tibetan refugees throughout India and Nepal and promotes human rights and democratic freedoms in Chinese-occupied region of Tibet.

Page ii.

Note:

One should contact one's local Refugee Community Center in case of loss of this identity document. When you move to another refugee camp your annual contributions should be paid at your new location.

SEAL OF ASSEMBLY OF TIBETAN PEOPLE'S DEPUTIES
Handwriting: incomprehensible

Page iii.

PHOTO OF BEARER
Seal of the Regional Tibetan Freedom Movement
Top right-hand corner: 4439 (in red ink)

Name: [REDACTED]
Date of birth: [REDACTED]
Father's name: [REDACTED]
Place of birth: Dhasa
Occupation: Student
Booklet number: [REDACTED]

SEAL OF THE REGIONAL TIBETAN FREEDOM MOVEMENT
Handwriting: Student of Mussorie Tibetan Homes School (# 3)

Page iv.

Indian permit: -blank-
Previous Booklet No.: -blank-
Previous Issuing Post: -blank-
Current Issuing Post: Dhasa
Date of Issue: April 24, 1989

STAMP OF REGIONAL TIBETAN FREEDOM MOVEMENT

Page 1

(Front):

2 Payment stamps
Seal of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1989
Signed: Tenzin Choephel

(Back):

2 Payment stamps
Seal of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1990
Signed: illegible

Page 3

(Front):

4 Payment stamps
Seal of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1992
Signed: illegible

(Back):

6 Payment stamps
2 Seals of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1993
Signed: illegible

Page 4

(Front):

6 Payment stamps
2 Seals of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1994
Signed: illegible

(Back):

4 Payment stamps
2 Seals of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1996
Signed: illegible

Page 5

(Front):

3 Payment stamps
2 Seals of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1997
Signed: illegible

(Back):

3 Payment stamps
2 Seals of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1998
Signed: illegible

Page 6

(Front):

10 Payment stamps
5 Seals of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1999
Signed: illegible

(Back):

2 Payment stamps
3 Seals of the Regional Tibetan Freedom Movement

All payment received up to December 31, 2000
Signed: illegible

Page 7

(Front):

4 Payment stamps
3 Seals of the Regional Tibetan Freedom Movement
All payment received up to December 31, 2001
Signed: illegible

(Back):

2 Payment stamps
Seal of the Regional Tibetan Freedom Movement
All payment received up to March 31, 2004
Signed: illegible

Page 8

(Front):

2 Payment stamps
Seal of the Regional Tibetan Freedom Movement
All payment received up to December 31, 2004
Signed: illegible

(Back):

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Page 9 - 29

All pages blank