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**Tibetans in Bylakuppe:
Political and Legal Status
and Settlement
Experiences**

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TIBETANS IN BYLAKUPPE: POLITICAL AND LEGAL STATUS AND SETTLEMENT EXPERIENCES

Tunga Tarodi*

Abstract

This paper discusses the laws and regulations governing refugees in India in general and the Tibetan refugees in particular. In this context, it describes the actual practices in two Tibetan settlements in Karnataka. The paper highlights the ways in which Tibetans have negotiated the restrictions they face as refugees in India and created enabling conditions in exile. The discussion reveals the shortcomings of the current protection framework and the necessity of a national legislation on refugees.

Introduction

Tibetans have been living as refugees in India for more than 50 years. The Chinese occupation of Tibet in 1959 and the subsequent flight of the Dalai Lama to India led to thousands of Tibetans seeking refuge in India. Today, there are about 1,45,150 refugees worldwide, with the largest number of refugees residing in India.ⁱ The total population of registered Tibetans in India in 1998 was 85,147ⁱⁱ and the estimated figure for 2007 was 1,01,242.ⁱⁱⁱ Currently, the Tibetans are living in 38 settlements all over India, with the agricultural settlements concentrated in the South and the ones based on handicrafts in the North.

This paper discusses the laws, rules and regulations governing Tibetan refugees in India and also describes the actual practices in two Tibetan settlements in Bylakuppe, Karnataka. The paper seeks to highlight the ways in which Tibetans have negotiated the restrictions and limitations they face as refugees in India and create enabling conditions in exile. The paper is divided into two sections: in the first section we review selected writings on the legal status of refugees in India, followed by a subsection that delineates the status and concessions granted to Tibetan refugees in particular. In the second section, we describe ways in which the laws, rules and procedures are actually lived out in Bylakuppe. This leads to an analysis of the legal status of the Tibetans and the shortcomings of the current protection framework. The following section contextualises the legal status of Tibetans within the broad contours of the refugee regime in India.

Legal status of Tibetans in India: A Macro View

India is not a signatory to the 1951 United Nations' Convention on Refugees, or its Protocol of 1967. India does not have a domestic refugee law either. In this context, the status of refugees in India is that of foreigners in law (Chimni, 2000). However, India has been a witness to refugees arriving in the country under different political and historical conditions. The refugees during Partition became Indian citizens. The Bangladeshi refugees at the time of the 1971 Indo-Pakistan War were repatriated, while

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the Tamil refugees from Sri Lanka continue to live in and out of camps. These examples highlight the fact that though all refugees in India are deemed to be foreigners by law, different refugee groups have received different kinds of treatment from the Indian state.^{iv}

1. Description of Legal Regimes Governing Refugees in India

There is no legal category or definition of 'refugee' in Indian laws. Refugees are, therefore, considered as foreigners or aliens. As foreigners, they are subject to the regimes of citizenship, statutory framework which are related to extradition, laws regulating foreigners and illegal migrants, laws governing legal entry procedures and laws dealing specially with refugees (Dhavan, 2004: 32-80). The fundamental rights regime, the judicial interpretation of rights and India's commitment to international treaty obligations, though, have enabled a minimum of rights for refugees (Chimni, 2003; Dhavan, 2004). A brief description of these regimes is given below.

Citizenship regime:

The citizenship regime is important when discussing the legal regime for refugees since these laws determine who is to be considered an Indian citizen and on what basis. The formulation of citizenship in India begins with the Constitution itself. The word 'citizen' is mentioned in Part III of the Constitution, in discussion of rights available to citizen and foreigners (Rodrigues, 2005). The articles 5-10 in Part II of the Indian Constitution determine who are Indian citizens at the commencement of the Constitution and Article 11 confers on the Parliament the power to enact laws relating to citizenship. The Indian Citizenship Act, 1955, accordingly makes provisions for the acquisition and determination of Indian citizenship. Indian citizenship could be acquired through birth, descent, registration, naturalisation and incorporation of territory.

The citizenship regime which encompasses the relevant articles in the Constitution and the Act are instrumental in determining the conditions under which refugees can be eligible for applying for Indian citizenship. For example, the refugees of Partition became Indian citizens by the provisions in the articles in the Constitution itself. The Chakmas can apply for Indian citizenship through registration, while others such as the Afghan refugees need to apply for Indian citizenship through naturalisation or registration depending on whether they are of Indian origin or not.^v Thus, the citizenship regime determines who among the refugees are eligible for Indian citizenship and the conditions that they must satisfy to acquire Indian citizenship.

The Act of 1955 has since then been amended and changes have been effected in some of the provisions.^{vi} The right to citizenship by birth for everyone born on Indian soil existed before the amendment of 1986. The recent Amendment to Citizenship Act (2003) is very significant. It countermands the access to Indian citizenship by birth of those whose parents are not Indian citizens and who were born in India after July 1, 1987. It also rules out Indian citizenship if either parent of the applicant is an illegal migrant. This has implications for those refugees who were born in India after the above stated date and year because they can no longer acquire Indian citizenship by birth. However, the alternative is to apply for naturalisation, if they satisfy the condition of having resided in India for 12 continuous years prior to the application for Indian citizenship.

Fundamental rights regime:

The fundamental rights regime is the most important part of the Indian Constitution. Part III of the Constitution guarantees fundamental rights to all citizens and some rights to aliens as well. In other words, it specifies the rights that only citizens possess. Thus, refugees are not given the freedom of movement, work, or residing or settling in any part of India, or any rights under Article 19.^{vii} However, as 'aliens' or 'foreigners', the refugees have access to rights enshrined in Articles 14, 21 and 25 of the Constitution (Bhattacharjee, 2008: 72; Chimni 2005: 297-301).

Article 14 embodies the right to equality before the law and equal protection of the law within the territory of India. Article 21 establishes that no person shall be deprived of his life or liberty except according to due procedure established by law. Article 25 confers right to freedom of conscience and religion. Article 14 and Article 21, in the context of refugees, bring them within the ambit of law and protect them from arbitrary actions of the executive. Through expansive interpretation of Article 21,^{viii} the Supreme Court has held that the provision of 'due process of law' established that the procedures laid down by the legislature also be just, fair and reasonable. This marks a very important judicial interpretation as the Courts can now consider, in the cases of deportation under the Foreigners Act, 1946, whether the procedure itself was fair, just and reasonable (Chimni, 2005).

Chimni (2000) argues that the principle of *non-refoulement* of refugees is upheld by Article 21. *Non-refoulement* is the cardinal principle of international refugee law. It prescribes that 'no refugee shall be returned to any country where she or he likely to face persecution or torture' (Chimni, 2005: 302). This would mean that the absolute and unfettered discretion of the State to expel foreigners would be subject to the principle of *non-refoulement*. In practice, the Courts have interpreted Article 21 in individual cases to put on hold the deportation of individuals, especially when the determination of their refugee status was pending with the UNHCR. These cases have not resulted in substantiating the claims of refugees *per se*, as the Courts have not brought the international refugee law into any discussion (Chimni 2000: 488-490).

Laws regulating foreigners:

As foreigners, refugees are subject to a variety of laws relating to foreigners such as the Registration Act, 1939, the Foreigners Act, 1946, the Passport (Entry into India) Act, 1920 and the Passports Act, 1967 (Chimni 2000: 486). Dhavan (2004: 49) notes that these Acts collectively regulate the entry, stay, movement and exit of foreigners in India. Besides, a number of Orders have also been passed under the Foreigners Act, 1946 and considered together, vest a high degree of control in the State over the foreigners and this makes foreigners as well as refugees 'susceptible to arbitrary and preventive detention.'

In recent years, the issue of trans-border migration, especially from Bangladesh has often been in the news for the supposedly large number of Bangladeshi migrant movements to India, including clandestine migrants. The category of 'illegal migrant' has entered legal discourse, but it is interesting to note the contradictory trends in the context of illegal migration to Assam and the debates on illegal migration from Bangladesh. In the case of Assam, the federal government passed the Illegal Migrants (Determination of Tribunal Act) (IMDT Act) 1983, to deal with the issue of migration to Assam

from Bangladesh. It is important to note here that by this Act, the burden of proof was placed on the person making the allegation (individual or the police) that a person was an illegal alien (Chimni, 2005: 294). Thus, while the Foreigners Act (1946) was in force in the rest of India, the IMDT Act which remained only in Assam became highly controversial. The IMDT Act was finally struck down by the Supreme Court in 2005.^{ix}

In 2003, some changes to the Foreigners Act, 1946 were proposed. One of the proposed changes was to repeal the 1983 Illegal Migrants Act. Among the amendments that were actually passed included strengthening the punishments for illegal migrants in India (Dhavan, 2004: 50-55). These have implications for refugees as well, since deportation of refugees without any due process for status determination procedures becomes possible, as also the penalisation of illegal entry of refugees into India (ibid: 58).

Refugee specific legislations:

The laws discussed above are related to all foreigners, irrespective of whether they are refugees, illegal migrants or aliens. Some legislations have been framed exclusively to respond to the refugee flows, when the need arose. The Union Government as well as the state governments enacted legislations pertaining to the rehabilitation of East Punjab refugees, their properties and compensation such as the Patiala Refugees (Registration of Land Claims) Act, 1948, The UP Land Acquisition (Rehabilitation of Refugees) Act, the East Punjab Refugees Rehabilitation (Loans and Grants) Act, 1948 (Vijaykumar, 1998: 1). During the 1971 refugee influx from Bangladesh, the Union government passed certain legislations to raise funds for refugee relief, such as the Railway Passenger Fare Act, 1971, the Tax on Postal Articles Act, 1971 and the Indian Air Travel Tax, 1971. After the war, when the refugees were repatriated, the Refugee Relief Taxes (Abolition) Act, 1973 was passed (ibid: 3).

Role of judicial interpretation:

The judiciary has provided an interpretation of the existing rights in the Constitution, especially Art 14 and Art 21 to lend humanitarian protection to the refugees in the absence of a domestic refugee law. Dhavan (2004) notes that the judiciary has given a liberal interpretation in some cases dealing with refugees, especially in cases concerning the Chakmas, the Sri Lankan Tamil refugees and some refugees under the UNHCR mandate. In the case of the Chakmas, in a landmark judgement in 1996, the Supreme Court restrained the state of Arunachal Pradesh from forcibly evicting them without due process of law.^x In the case of Sri Lankans, the Court emphasised that repatriation needs to be voluntary;^{xi} in the case of the UNHCR mandated refugees such as the Burmese, the courts have stayed the deportation and have given the refugees the right to have their status determined by the UNHCR;^{xii} the Courts have also suggested some basic amenities for refugee women and children (Vijaykumar 1998: 6).^{xiii}

India is a signatory to a number of International Conventions and Treaties and these can become the basis on which the Courts can give expansive interpretation of existing laws to secure the rights of *non-refoulement* of the refugees. However, these have not been included in or enacted into Indian law and hence, they are not enforceable in Indian courts. The Courts may take them into

consideration while interpreting the statute law in given cases. Regarding the question as to whether *non-refoulement* as a principle is domestically enforceable in Courts still remains a subject of controversy. However, the judicial interventions are always case-specific (Bhattacharjee, 2008: 73) and this means that rights have not really been established for all refugees and remain largely case specific.

The literature concerning the legal status of refugees in India reflects the fact that the refugees are subject to a variety of legal regimes, but are not authors of any of them, as non-citizens. The second point is that the laws do not recognise refugees as a special category of people requiring protection. They are treated as foreigners and there is no subdivision which distinguishes them from different types of foreigners such as migrants, or asylum seekers (Dhavan, 2004). This does not confer any special rights to the refugees, apart from those rights which foreigners also enjoy under the Constitution, mainly the right to due process of law and right to reasonable, fair and just procedure, under Article 14 and Article 21. Right to *non-refoulement* under right to life (Article 21) is a subject of controversy. Thus, Choudhary (2004) contends that refugees in India are not guaranteed the right to *non-refoulement* under Article 21, while Chimni (2000) suggests the opposite. One can thus conclude that right to *non-refoulement* has not been conclusively upheld by the Supreme Court in India.

A distinction has also emerged in the status of UNHCR mandate refugees and other refugees. While under the UNHCR mandate refugees have been granted relief by the Courts in several cases, these elude those refugees who are outside the UNHCR mandate. Refugees from countries such as Ethiopia and Somalia are not under the UNHCR mandate, nor are they recognised by the state and hence, are often not within the purview of even the minimum rights available to the refugees recognised by the Indian government or the UNHCR. Their status is that of illegal migrants in India.

The existing legal regime for refugees in India can be best summed up in Chimni's words, as that of a '**minimalist regime**' (Chimni, 2005: 297). Even though there is no domestic law for refugees, the existing laws and the fundamental rights in the Constitution have provided the basis for the judiciary to mark a regime of rights and protection to the refugees. However, this regime is minimal, as it secures the basic rights of due process of law and procedural fairness. However, the other rights which are necessary ingredients for upholding refugee rights, such as right to voluntary repatriation, right to be heard prior to deportation are not secure and have been upheld only in a few cases.

2. Tibetans in India: Law, Rules and Procedures

The legal framework described above applies to Tibetans as well. However, in consideration of the historical circumstances in which the Tibetan refugee movement to India took place, the Tibetan refugees have a unique status in India. This status is reflected in the concessions from certain procedures governing other refugees, certain rights enjoyed only by Tibetan refugees and some facilities provided by the Central Government. The sub-section below discusses the documentary necessities and administrative procedures that Tibetan refugees in India are subject to.

While the Ministry of Home Affairs is responsible for regulating foreigners in India, the Tibetan refugees also have the government-in-exile established in 1960 by the Dalai Lama, the spiritual and temporal leader of the Tibetan refugees. With headquarters in Dharamsala, India, and through its Central Tibetan Administration (CTA), it has a presence in all the Tibetan settlements. The Settlement

Officer (SO) appointed by the CTA represents the government -in-exile and looks after the day-to-day affairs in the settlement.

Documenting Tibetans: Registration Certificate, Special Entry Permit and Identify Certificate:

The Tibetan refugees have sought shelter in India in three main phases: the first phase between 1959 and 1962, the second between 1986 and 1996 and the post 1990s phase (Duska, 2008: 89). Those refugees who came to India till the 1980s were issued registration certificates (RC) under the Foreigner's Act.^{xiv} The RCs are automatically issued to the children of these refugees too. The RCs legalise their stay in India, serve as an identity card and are necessary for their movement in India. The RC is issued for a year and it needs to be renewed every year from the place where it was issued, which is the FRRO nearest the settlement.

The RC is the most important document and the *only* document for Tibetans that makes them 'legal' residents in India. It is a necessary document for getting admission for children in CST schools, to be able to live and work in the settlements and for obtaining movement permit, if they wish to go out of the settlements. This reveals the power of documents over the lives of these refugees and their vulnerability if they do not possess it.

Those refugees who came to India during the 1980s were issued RCs, but the Tibetans who came after 1987 have not been issued RCs by the Indian government.^{xv} Different reasons have been attributed, such as withdrawal of UNHCR assistance in the 1970s, increasing burden of the refugees and improvement in Indo-China relations (Kharat, 2003). Whatever the reasons, the fact is that for those refugees who have come after the 1980s, no financial assistance is provided by Government of India and only a few have been issued RCs. This practise of the Indian government only highlights the discrepancies in the treatment of refugees arriving at different periods.

There is also currently a small number of Tibetans who are staying in India under the Special Entry Permit (SEP). These are the new arrivals in the late 1990s and 2000s who have come from Kathmandu in Nepal. Those under SEP are classified into a further category – those who are refugees fleeing persecution, those who come for pilgrimage, those coming for education and others. Only those who have been issued SEP for refuge or education are eligible to apply for RC. They are not permitted to stay in India indefinitely and technically speaking, need to either obtain RC or return before the expiry of the term. However, it often happens that many of them neither obtain RC nor return, but continue to stay in India.^{xvi}

Every year, a small number of refugees come to India from Tibet through the Nepal border. Most of these Tibetans are uneducated and are not aware of the legal procedures or their importance. Many do not report to the Dalai Lama's Office. Their arrival remains undocumented and their legal status is that of illegal migrants, for they lack RC or SEP and hence do not have legal permission to stay in India. As illegal migrants, they also forgo a number of facilities that the refugees with RC can access, such as the Identity Certificate (IC).

As the Tibetans lack passports, they are issued IC if they wish to travel abroad. While obtaining the IC, the RC of the concerned person must be deposited with the relevant authority and an

exit permit needs to be taken. But the return to India is not via the IC. The refugee, while returning has to submit his/her IC and apply for an Indian visa. They can come back to India only on the basis of this visa.

Facilities accorded to Tibetans: residence, work and education:

Along with the RCs, the Tibetans who came to India between 1959 and 1962 were also leased agricultural lands for their livelihood and resettlement. This land cannot be bought or sold. According to Roemer (2004: 62) the Tibetans who came in that period also enjoyed access to the formal Indian economic sector such as employment in Indian government and entrance to Indian Universities. The Tibetans who came after 1962 were not given any agricultural land for resettlement. Apart from the refugees of the Partition and some Bangladeshi refugees who came before 1959, no other refugee group in India has been leased agricultural lands for establishing settlements anywhere in India.

The Tibetans do not need a work permit in India and may be employed anywhere in the informal sector. Government employment (except for serving in the Indo-Tibetan Border Police Force and in CST schools up to standard IV) is, however, closed to them as they are not Indian citizens (Chimni, 2000: 496; Vijaykumar 1998: 3). A very important facility provided by the Government of India to the Tibetans, which no other refugee group in India enjoys, is providing exclusive schools for Tibetan children, the Central School for Tibetans (CST) under the Central Tibetans School Administration. The expenditure of these schools is fully met by the Central Government. The Tibetans however do not have access to higher education in India except for some scholarships provided by the Indian government. In the state education institutions, domicile certificate is required, which only the citizens are given (Chimni 2000, page 496). Hence, Tibetans are forced to pay fees as foreigners and do not have access to higher education on par with Indians.

Tibetans and Indian citizenship:

The issue of whether Tibetans are entitled to Indian citizenship was raised as early as 1951, in the Lok Sabha, when there was an influx of Tibetan refugees to India.^{xvii} The Minister of Home Affairs at that time said, "Yes, provided they satisfy the conditions laid down in Part II of the Constitution or such future legislation as Parliament may enact." It is important to note here that, at this point, The Citizenship Act of 1955 was not passed. Tibetans could become citizens by birth, if born in India.

The issue of Indian citizenship with regard to Tibetans came up repeatedly in the Lok Sabha after 1959, after there was a huge influx of refugees following the Dalai Lama's flight to India. From 1959 to 1976, questions were repeatedly raised in Parliament as to whether Tibetans have applied for citizenship, whether their children can acquire citizenship and whether the Tibetans will be treated as Indians or foreigners. The Government's stand, as per the Citizenship Act of 1955 as well as subsequent Amendments has been that Tibetans will be treated as foreigners, it is up to them to apply voluntarily for Indian citizenship if they so desire and the Government would consider their application as per rules and Act.

There is considerable ambiguity in the literature regarding citizenship rights for Tibetans. Chimni (2000:495, footnote) refers to the right of citizenship by birth, citing the unamended Section 3

of Indian Citizenship Act of 1955.^{xviii} Houston et al (2003: 223) state that 'India grants few Tibetans citizenship'; here we do not know whether the authors are referring to the rights that exist as per the provisions of the Indian Citizenship Act or the state purposely undermines the existing rights to citizenship through bureaucratic delays.

Falcone and Wangchuck (2008) and Duska (2008) indicate that the issue remains confusing. Falcone and Wangchuk (2008) have referred to Oberoi (2006: 95) and Choedron (2003) who suggested that Tibetans have the right to Indian citizenship by birth. However, Oberoi's reference is to a 1969 executive document of the UNHCR and Choedron's reference is to Article 5 of the Indian Constitution. Since the Citizenship Act has been amended several times after 1969 and the articles in the Indian Constitution (1950) make it explicit that once the Indian Citizenship Act is passed, it would determine the basis of right to Indian citizenship, both sources of reference are obsolete as references to understand the right of Tibetans to Indian citizenship by birth.

To clarify the issue, the correct source to refer to is the Indian Citizenship Act, 2003. A careful reading of The Indian Citizenship (Amendment) Act, 2003 makes it clear that Tibetans born in India **before** July 1, 1987 are entitled to Indian citizenship by birth. Further, the reading of Section 3 C of the Indian Citizenship (Amendment) Act, 2003, along with the interpretation of Roy (2006) would exclude Tibetans born in India after July 1, 1987 from having the right to Indian citizenship by **birth, if one of their parents is not an Indian.**^{xix}

This means that the majority of the second generations Tibetans in India are eligible for Indian citizenship as they were born before 1987.^{xx} However, among the younger generation, only those born before July 1 are eligible for Indian citizenship by birth. For the rest, if one of their parents has not acquired Indian citizenship, then they cannot become Indian citizens by **birth**. This does not mean that doors to Indian citizenship are closed to the younger generation. The Indian Citizenship (Amendment) Act, 2003, Sec 6 provides for acquiring Indian citizenship by **naturalisation**, as Duska (2008: 95, footnote) notes.^{xxi}

To sum up, the Tibetans can acquire Indian citizenship, but depending on whether they were born before or after July 1, 1987, there is a difference in their entitlement to the same right. While all those born before the stated date can become Indian citizens by birth, those born after the same date have to apply for naturalisation. Secondly, those refugees who were not born in India, but arrived from Tibet can also acquire Indian citizenship through naturalisation provided they meet the required criteria of residence in India for a period of 12 years preceding the application.

So far, only the legal aspect related to obtaining Indian citizenship has been discussed. Nevertheless, as it so happens, the bureaucratic procedures and the government functioning in reality may often delay or impede the process of law. Falcone and Wangchuk (2008), on the basis of their primary research and information collected from the Tibetans they interviewed, suggest that apart from bureaucratic impediments there seems to be a 'bi-lateral though unofficial agreement among the CTA and Government of India officials' which denies Indian citizenship to the Tibetan applicants. As will be discussed further later, I have come across a similar state of affairs in Bylakuppe too.

Tibetans have the permission to reside, move throughout India, travel abroad and work within the India territory if they have a RC. A section of Tibetan refugees does not possess RCs and their legal

status is that of illegal migrants. These Tibetans, as illegal migrants, are on the fringes of the Tibetan community in India. They may be deported from India at any time or arrested for not carrying valid travel documents. Such incidents have, in fact, occurred when 8 Tibetans were repatriated in March 2003 and another group of 14 was arrested in October 2003.^{xxii} Though the numbers are small, it highlights the plight of the refugees who are not provided legal documents by the state.

Legalities in practises: A Micro View from Bylakuppe

The preceding sub-sections outlined the legal dimensions of the status of Tibetans in India. In this sub-section, the effort is to observe how these legalities are translated in the day-to-day life in the two settlements in Bylakuppe in Mysore district, Karnataka, India. The Lugsung Samdupling (L.S) settlement, established in 1960, is the oldest one in India and the Tibetan Dickyi Larsoe (TDL) settlement, which was set up in 1969, have a total population of 11,048 and 4,526 respectively.^{xxiii} The legalities governing refugees in Bylakuppe include the official procedures which exist in the settlements pertaining to the RC, travel/movement permit, IC, obtaining birth certificate, the restrictions surrounding right to travel and usage of land.

On issues relating to education, occupation and citizenship, responses obtained from three generation of refugees – the older, middle and younger generation during field work carried out between July – November 2007 have been used. The total number of respondents were 72, of them, refugees in the older generation (65 years and above) is 12 and middle (35-65 years) and younger generation (18-35 years) are 32 and 29 respectively.

1. Bylakuppe revisited

In the settlements, the Tibetans have their own administrative system, functioning under the CTA. The SO appointed by the CTA looks after the immediate needs of the refugees and also functions as a means of communication between the CTA and the Tibetans. The SO also implements some of the programmes of the CTA such as training programmes for technical education and informs them of the programmes and policies of the government -in-exile.

The first procedure that one notices in Bylakuppe is that the movement in and out of the settlement is monitored. Any person who is not an Indian citizen needs a Protected Area Permit (PAP) to enter the settlements or stay there temporarily in the hotels or guest houses. Bylakuppe is often visited by foreign tourists and students.^{xxiv} As per the Foreigners' Act, 1946, the police visit the guest houses regularly to check the hotel records (which again need to be scrupulously maintained) and if there is any foreigner without PAP, they are fined and expelled. During my stay, there was such an incident where a couple were to stay overnight in the guest house, but the police checking took place on that very day and they were politely, but firmly told to leave, though no fine was imposed.

The RC is necessary for residing in the settlement and once a person is registered in the settlement, she/he cannot leave that settlement unless under extraordinary circumstances (Subramanya 2008: 15). The RC once issued has to be renewed at the Foreigners' Regional Registration Office (FRRO) in Mysore. But the present arrangement in Bylakuppe is that every year in May-June, a list of the people in the settlement is submitted by the RC Section to the FRRO and they depute three officials

to the settlement for two days to do the work of RC renewal. The RC Section in Bylakuppe is an independent section set up by the people of the settlement; it is not provided by the CTA.

There has been an interesting development in the procedure of RC renewal. The renewal of the RC as per rules requires physical verification, i.e., the RC holder must be physically present at the time of renewal of the RC. But this procedure was not earlier followed in practice and for reasons of convenience the RCs used to be sent to the FRRO in Mysore and were sent back after renewal. But since 2004, the process of physical verification is being followed very strictly. At present, the RC holder should be present when the officials visit the settlement and the RC is accepted for renewal only after physical verification.

When asked if there were specific reasons for vigorously implementing the process of physical verification, the response of the RC Section in charge was that the terrorist bombing of the trade towers in the US on September 11, 2001, had changed the entire scenario. The process of physical verification has been followed to strengthen security measures and it is the foreigners who are the objects of suspicion. Hence, the implementation of the physical verification rule has been taken up after a lapse of many years.

The Tibetans have given different views about this development. A few of them think of this as an inconvenient process. They are unable to understand as to why this 'new' rule was being imposed on them. Their opinion was this was an example of the mentality of the Indian officials to harass Tibetans as they were refugees. The other refugees thought that there was no inconvenience as it was only once a year and they were informed beforehand. The Tibetans also mentioned that there was never any random checking of the RCs in the settlement.

If the RC is not renewed before the expiry of the term of one year, then a penalty of \$30 needs to be paid at the time of its renewal. It was observed in the field visit that some of the Tibetans, especially those who were uneducated, had not renewed their RC and were not aware of the fines imposed on non-renewal. If the RC is lost, then the concerned person needs to file an FIR and get a recommendation letter from the SO and file an application for a duplicate RC.

For the Tibetans in the settlement, the RC and its yearly renewal is a powerful reminder that their residence in India is subject to official approval every year. The respondents cited the renewal procedure as the ritual that marks their residence in India with an imprint of uncertainty in the form of one year permissions rather than the right to stay here as long as they continue to be refugees. While many of the respondents consider this as a routine activity, some of them mentioned that it was tiresome to go through the procedure year after year. Some female respondents who had moved to the settlement after marriage also complained that they had faced difficulties in getting their names changed in the RC after their marriage and had to make many visits to the RC office in Mysore for a small change in spelling. In some cases, the identity photograph on the RC was considered as 'too old' by the officer in charge and putting a new photograph involved days of waiting before the RC office.

In some Tibetan settlements in Darjeeling or Sikkim, the RC is to be renewed every six months. Irrespective of whether the procedure itself is easy or cumbersome, the RC renewal insinuates a sense of uncertainty and insecurity among the refugees owing to their legal status. As Basu (2008: 433), Houston and Wright (2003: 224) note, the yearly renewal of RC is seen as indicative of the shaky

status of Tibetans and 'lends an air of uncertainty to the exile experience' Falcone and Wanghchuk (2008:176).

While the RC renewal is followed stringently, the case is different when it comes to movement outside the settlements and within India. In practice, the Tibetans apply for a travel permit when they go out for their sweater business for three months or more in winter. On an average, each year 300-400 people in each settlement apply for travel permits. But when it comes to travel now and then outside the state, neither do the Tibetans apply for any permission nor is it a serious issue for officials. Most of the respondents have never applied for this permit when going out of the state, except in the case of the sweater business. A similar situation was noted by Subramanya (2008: 15-16) in the 1960s and 1970s, when Tibetans moved back and forth within the settlements in Karnataka as well as from different settlements in the country. Both the SO and the in-charge of the RC Section mentioned that there was rarely any harassment by the Indian officers regarding breach of rules by Tibetans and that 'everything' was cordial.

This picture of the mutually cordial interaction among the Indian and Tibetan officials differs from that described by Magnusson and Subramanya (2008: 19-22) in the 1970s in Bylakuppe. On the basis of official letters exchanged between the Tibetan representative and his Indian counterpart, the authors note that the Indian officials often sent lengthy letters seeking explanation from the SO regarding minor issues such as how many unauthorised Tibetans were living in the settlement, how many had applied for travel permits and returned and so on. It was quite obvious that these issues would not cause issues of law and order, but the Indian officials were annoyed with the Tibetans for what they considered lack of respect for "Indian administrative authority" (ibid: 21).

For Tibetans obviously, it was not (and is still not) practical in day-to-day affairs to follow all rules down to the last letter. For negotiating their day-to-day affairs, they often find the bureaucratic procedures time-consuming or outdated. For reasons of practicability and expediency, they often sidestep procedures and rules. But harassment from the Indian officials in such situations did not occur - such a scenario was not expressed in the interviews with the various sections of CTA as well as the respondents and neither was such incidents observed on the field.

As it has been mentioned previously, the Tibetans need an exit permit to obtain an Identity Certificate (IC). Each year, around 30 to 40 Tibetans go abroad by obtaining IC. This procedure is scrupulously followed as a lack of exit permit may mean that the person may not be allowed to board his/her flight if they are asked for the exit permit at the emigration check. There have been a few examples where the Tibetans did not have exit permits and were sent back. But among the few respondents who had travelled abroad and returned, some of them reported that they faced difficulties because the emigration officers were not aware of the IC with which they can technically travel abroad. In practice, obtaining an IC as well as returning back to India is not hassle-free.

1. Occupation and Education

Education:

The Tibetans of the first generation were largely illiterate when they came to India as refugees. However, since then there has been a steep rise in the overall literacy rates of the Tibetans. The literacy

rate among the Tibetans is as high as 74.5 per cent in 1998, which is higher than the Indian national average in the same year at 69.8 per cent (Norbu, 2003: 201). The school enrollment rates are around 85 percent^{xxv} and most of the younger Tibetans (18-years) have secondary education.

In the settlement too, the Tibetan youth have acquired secondary education but the real problem they face is in joining colleges. Though Tibetans have access to education until class XII, in CST run schools, they have to pay fees as foreign students in colleges. This fee is far higher than that paid by Indian students. The Tibetan government-in exile does sponsor the educational expenses for one of the children if the family has more than five children, but for the rest, obtaining graduate or postgraduate education becomes an expensive affair. Therefore, the result is a large number of youth in the settlement who are unable to pursue education beyond higher secondary level. This is a cause of considerable discontentment for the Tibetans, especially the youth who have very limited access to education beyond the higher secondary level.

Occupation:

The primary occupation of the people in the settlement is agriculture. Seasonal sweater selling provides an additional source of income along with farming. There are also other occupations such as running a restaurant, small shops such as those selling momos, cloth or gift articles, carpet weaving, teaching, tailoring and Thangka painting.

Tibetans cannot venture into business operations which require paperwork and they can take up work only in the informal sector such as carpet making, handicrafts, etc. and on a small scale. Those of the respondents who had managed to set up shops and petty business noted that they had the desire to expand their business and proceed to other business like cable operator, petrol pump or hotels, but were unable to do so because they were refugees.

The above state of affairs has been noted by other authors too, who have pointed out that the main issues in the settlements are high unemployment rates among the younger generation of Tibetans who are educated, but unable to get jobs in the settlement. The other issue is that the land available for agriculture is not sufficient to accommodate more people in farming and there are limited options for the educated youth in the settlements (Kharat 2003; Norbu, 2004).

3. Land, Rules and Informal Negotiations:

The most interesting cases of informal negotiations to overcome bureaucratic procedures and routines are related to land. The land in the settlement has been leased to the Tibetans for a period of 99 years. By law, this land cannot be bought or sold either to Indians or other Tibetans. Since the land is classified as agricultural land, permission needs to be taken from the Office of the Assistant Commissioner if any new construction needs to be made, such as a house, or shop. In Bylakuppe, while permission has been taken in some cases, in some cases, it has not been taken. Some of the respondents said that 'they had heard' rumours that bribes needed to be paid for getting such permissions.

The restriction that Tibetans cannot own land, buy or build houses beyond the camp area did not pose a problem for the older generation as for them, the first priority was to earn a livelihood and

become self-sufficient. Agriculture and, later, making and selling sweaters proved to be a good source of income for them. By the 1990s, the economic condition of the Tibetans had improved and the population of the settlement had more than doubled. Additional land would augment their income as well as the need for housing. But now, Tibetans who have the economic capacity to buy land from the Indians from the surrounding villages are unable to do so, on account of the restrictions on them from owning immovable property.

A similar situation exists in land allotted to the monasteries. When it was set up in 1970, the Sera monastery had just about 300 monks and the monks also farmed the lands allotted for agriculture. But over the years, the population of the monks has increased more than tenfold and it is obvious that land is needed for constructing hostels where the monks can reside. In fact, the 'Lama Camp' where the monasteries are located is packed with hostels. If one thinks of the number of times that permission is needed for building hostels and lodges, then one realises that the rules have become antiquated with the passage of time. Since the Tibetans are foreigners, they do not complain against any rule, instead they negotiate within the existing framework and informal mechanisms have been established to navigate the meandering ways of bureaucracy. The best examples of such mechanisms are found in informal leasing arrangements in land.

There are at present two sets of regulations governing land – the regulations by Indian law (see page 7) and the regulations by the Tibetan government in exile. The regulations of the Tibetan government in exile do not have legal recognition, but nevertheless carry the same weight of law for the Tibetans. According to the regulations of the government -in-exile, land leased to the settlement as a whole is treated as common property of all the Tibetans. To explain the rules governing the distribution of land, an example is given. Suppose Family A owned 5 acres and now have 2 children dependent on land and Family B has 5 acres and 4 children dependent on land. Then a portion of land of A is redistributed to B. However, this exercise is difficult when conceived on a collective scale, as it requires data on land holdings, dependents and so on.

In practice, there are some farmers in Bylakuppe who have large land holdings of more than 10 acres and some families who are poor and have less than two acres of land. Since a number of such cases have been observed during the course of the field work, it is difficult to say that there is redistribution of land along the basis of regulations of the government in exile. There were also some Tibetan farmers who had leased land from other Tibetans and were cultivating it in return for a fixed payment. But the most prevalent practise was to lease land to the Indians. The rate of such leasing is also fixed per acre and it varies between Rs 1,200 to Rs 1,800 per acre per year. In case of lands that are lying adjacent to the water canals in the field, the rates may be as high as Rs.2000 per acre. There were also a few Tibetans, who have leased lands from Indians on a similar basis.

These informal leasing arrangements have been in existence since the 70s (Magnusson and Subramanya, 2008: 22), but in the last 15 years or so, it has become very common. Both the Indian as well as the Tibetan officials are aware of this practice and there is an implicit understanding that this 'working' arrangement is harmless and has in fact benefited the landless Indians, for whom this is an extra source of income. In fact, as some Indian locals noted, there is 'competition' among the villagers for the leased lands, which is the reason for the leasing rates to rise in recent years from Rs 1,200 to Rs

1,800. It is also interesting to note that these arrangements work on the basis of mutual trust and so far, it has worked smoothly.

One area that has the potential to trigger conflicts between the locals and the Tibetans are with regard to buying land outside the settlements. Within the land transactions, two variations exist. In one variation, a Tibetan and a local Indian mutually make a pact to buy land in the local villager's name and then share the proceeds of the farm. In almost all the cases, after the money was paid and the legalities done with, the Indian claimed the land was his and the Tibetan was duped. After learning from many such instances, the Tibetans now rarely venture into such pacts.

The second variation is buying land in the name of those Tibetans who have Indian citizenship. It needs to be mentioned here that the settlements in Bylakuppe are home to some of the biggest monasteries such as the Sera, Namdroling and Sakya. Some of the monks residing in these monasteries are ethnic Tibetans from the Ladakh region. Hence, technically, they are Indian citizens. In recent years, it is in the name of such Tibetans that land has been bought in and around Bylakuppe. Not only land for agriculture but land is also bought for building additional hostels, shops or business purposes.

These transactions are not unique to Bylakuppe. There is evidence in the literature to show that such transactions have occurred in other places too, especially in Darjeeling and Dharamshala. In these areas, it has been noted that *benami* (i.e. illegal) transactions have also taken place. There have been conflicts between the local community and Tibetans over land issues in Dharamshala in Himachal Pradesh (Routray, 2007: 85). In Bylakuppe also, local Indians voiced discontent over the Tibetans buying land. Moreover, as they are not aware that the land has in fact been bought in the name of Tibetans who are Indian citizens, they termed these transactions as *benami* and felt that that the Tibetans were using 'foreign money' (which means funds coming from foreign countries) to buy these lands. From the responses received from the locals, it is clear that there is a discontentment over this issue and it could trigger conflicts as it did elsewhere.

On the part of the Tibetans too, land is a major issue of worry as the population of the Tibetans in the settlement has grown along with the capacity to buy land. But on account of their status as foreigners they are restricted from buying additional land or using the land as they see fit even the land that was leased to them.

4. Tibetans and the dilemma of Indian citizenship:

The majority of the older generation stated that they are unwilling to take up Indian citizenship. Explaining the reasons for their decision, they said that first, they were Tibetans and they did not wish to become Indians. Secondly, if they remained as refugees, they would be motivated to struggle for the Tibetan cause. Indian citizenship would make the Tibetans forget the conditions that made them refugees. Taking up Indian citizenship, according to them, is thus detrimental to the Tibetan cause

Among the middle generation, data reveal an interesting scenario, where almost half the respondents expressed willingness to take up Indian citizenship and the remaining did not wish to take up Indian citizenship. This is symptomatic of the debates around the issue of citizenship among the Tibetan community. The crux of the issue is the rights and benefits accruing to the Tibetan community

on taking up India citizenship and the possible negative repercussion it might have on Tibetan identity and the Tibetan cause.

Those respondents who expressed willingness to acquire Indian citizenship elaborate upon the necessity and advantages of being Indian citizens. First, as citizens, they would be relieved of the procedures such as yearly RC renewal and applying for travel permits. It has already been discussed elsewhere that the yearly RC renewal is seen as burdensome by many of the Tibetans. It would be easier for them to acquire birth certificates for their children and move anywhere in India without applying for permits.

Those interested in buying additional agricultural land or venturing into new avenues of business would be free to do so. Many Tibetans are already involved in small-scale ventures such as handicraft shops, exporting paintings through agents and running small hotels within the settlement. If they obtained Indian citizenship, they could expand their business and shed the cumbersome restrictions that have accompanied them all these years as refugees.

The other dimension of citizenship, according to the Tibetans, is that as citizens they would have the same rights and status as the Indians. This aspect is given a great weightage by the respondents as they have always been at the receiving end during conflicts with the local Indian community. As Indian citizens, they will share an equal status with the Indians and this would enable them to interact with them as equals.

Citizenship also means access to the welfare entitlements that were accessible only to the citizens of the state. For the Tibetans in Bylakuppe, it also translates into access to loans and schemes available to farmers, educational loans and ration cards. The respondents also noted that if they took up Indian citizenship, their children would also automatically become Indian citizens and would not have to pay fees as foreigners in colleges. Citizenship is thus of relevance in everyday affairs such as availing subsidies, getting their children admitted in colleges and applying for loans.

Among the younger generation, the issue of citizenship poses a dilemma. What is interesting in the data is that almost one-third of the younger generation stated that they were unsure and undecided as to what course of action they might want to choose. For these respondents, there were good reasons for taking up Indian citizenship but moral imperatives made them hesitant to do the same.

A section of these youth (31%) responded that they desired to acquire Indian citizenship. According to them, taking up Indian citizenship would mean getting the same rights and benefits that the Indians enjoyed. The rights and benefits noted were similar to the responses of the middle generation, but with an addition. For the younger generation, acquiring Indian citizenship also means the eligibility to apply for a passport. A passport would give them the opportunity to travel abroad easily without the hassles of the IC.

The other section (27.52%) of the younger generation Tibetans who declined Indian citizenship offered the same reasons as the respondents of the middle generation, mainly that once the youth took up Indian citizenship, the Tibetan cause might be neglected. The highlight of the data is that 28 per cent of the respondents said they were unable to decide either way. Though acquiring Indian citizenship is important to them, the Tibetan cause and Tibetan identity is also a critical factor. These respondents suggest that the issue as to whether or not to take Indian citizenship should be discussed

by the government-in-exile and the Tibetan community and their opinion must be considered before taking any step.

The interaction in the field also revealed that the Tibetans have little information about the entire gamut of legalities and procedures that underlie taking up of Indian citizenship. Hence, a section (10/ 34.4%) of the respondents of the younger generation opined that they had the right to Indian citizenship by birth and were free to take up Indian citizenship whenever they wanted. Only three of the respondents were aware of the procedures and two of them had tried to apply for Indian citizenship. Both of them, however, were not successful because they could not get the valid papers required – in one case, a birth certificate and in the second case, a 'No Objection Certificate' from the government-in-exile. Four of the respondents thought that they had no right to take Indian citizenship.

Similarly, among the middle generation too, two respondents thought that the Indian government did not allow them right to apply for citizenship. Very few Tibetans are, in fact, aware of the rights and actual process related to applying for Indian citizenship. There is considerable misinformation – many of the uneducated and poor Tibetans do not know that they have to apply for Indian citizenship. They think that the Indian government would automatically 'give it to them' if they are eligible, like the ration cards that they had earlier received.^{xxvi} Then again, there is a widely shared perception among the younger generation that since they were born in India, they have the right to take up Indian citizenship anytime. However, as discussed previously, the amendments to the Indian citizenship Act exclude those Tibetans born after 1987 from the right to Indian citizenship by birth.

Two respondents, one each from the middle and the younger generation, had applied for Indian citizenship. However, both of them were denied 'No Objection Certificate' from the government-in-exile and did not further pursue the process. According to highly placed people in the CTA, the Tibetan government-in-exile is not issuing the 'No Objection Certificate', which prevents Tibetans from applying for Indian citizenship in the first stage itself. At the same time, the Indian government is also not recognising the birth certificate issued by the CTA since 2003.

Owing to lack of requisite documents and inadequate knowledge of the procedures, some of the Tibetans have not been able to apply for citizenship. My observation concurs with Falcone and Wangchuk's (2008:170) point that the data and observations lead one to surmise that the Indian government and the government-in-exile perhaps have an 'unofficial agreement' about not allowing Tibetan refugees to claim Indian citizenship.^{xxvii}

Lastly, I found during the course of fieldwork that a few Tibetans have already acquired the necessary documents required to apply for Indian citizenship and some of them were even procured by doubtful means, such as, birth certificates, ration cards and passport. It may be mentioned here that one cannot obtain a passport without having citizenship, but one respondent revealed that he had an Indian passport but not Indian citizenship. Some of the Tibetans said that only those people who were poor and uneducated remained in the dark but the rich and smart people had quietly obtained the documents necessary for applying for citizenship and if it became necessary, they could become Indian citizens anytime. While this may be an exaggeration, it is true that some of the Tibetans have prepared channels for obtaining the necessary papers and are prepared to obtain citizenship if they feel the need.

5. Living undocumented: Unregistered Tibetans in Bylakuppe

An area of concern in the settlement is the number of Tibetans staying with SEP. This issue is more prominent in the LS settlement due to the large number of monks coming to the monasteries with SEP. Of the 700 people with SEP in the settlement, 591 are monks in the Sera Jhey and Sera Mey monasteries. The cases keep adding up every year, as the old cases have not been still disposed off. Some of the cases are pending from 2003. According to the official sources interviewed, the Tibetan administration has already made a representation to the Ministry of Home Affairs regarding this issue and their request has been considered and a circular sent to the concerned department to issue RCs for the Tibetans in question. But the departments in the state are slow to respond and the whole process is likely to be time consuming as papers need to be sent back and forth.

According to sources, there are a few Tibetans in the settlement who do not have proper documents and some without any legal documents. The presence of unauthorised Tibetans in the settlements had first been noted as early as in 1970 and that too in large enough numbers (111 in 1970) to initiate official exchanges between the Indian officials and the Tibetan SO (Magnusson and Subramanya: 2008: 15-16). I interacted with seven unauthorised Tibetans in the settlement who were working as domestic help and lending a hand in the fields, shops or restaurants. Some of them are relatives of the Tibetans who live in this settlement and have come here in search of work. I have found Tibetans from places as far as Chandragiri (Orissa), Sikkim and Himachal Pradesh and to nearby settlements of Hunsur, now staying in Bylakuppe. There are a few Tibetans without RC or SEP and, thus, 'illegal' but it is difficult to give an estimate of their numbers, as by definition, their presence is undocumented.

Conclusion

An analysis of the persisting formal and informal arrangements in the settlement shows that there are three categories of Tibetans in the settlement. The first category comprises the legal residents, their 'legality' underscored by documentary proof of RC. The second category is that of the semi-legal Tibetans, who have SEP and are waiting for their RC to be issued. Since there is no time frame for the state government to process their application for RC, there is no assurance as to whether and when they would be get it. There is no other way for them except to wait. The third category is of the undocumented Tibetans. While those Tibetans with an SEP still have a legal standing, the undocumented Tibetans are illegal migrants in law and if arrested, may be deported, fined or imprisoned.

The analytical categories reveal that there is a difference in the Indian government's stand on Tibetans who arrived at different points of time. This has created a situation where rights and welfare measures are unevenly distributed within the same refugee community. From the perspective of the Indian government, the majority of the Tibetans who arrived after 1979 came for educational or religious purposes and were not fleeing persecution. While this may be a fact, there is no legal provision by which their long term residence in India can be legalised. It is quite obvious that these Tibetans have not come to India as economic migrants and their presence is a proof that their religious, cultural and educational rights under the Chinese are not protected.

While both the Indian government and the CTA are aware that many Tibetans who slip into India across the borders do not register themselves at the Dalai Lama's Office and hence, are illegal residents, neither of the governments is anxious to do anything about it. This is because on one hand, the numbers each year are miniscule and secondly, they are not perceived as culturally hostile or security threats at the level of the politics of nationalism and regionalism, and neither at the micro level in the rural settlements or urban areas. Thus, there is a situation of apathy on this issue and among India's multicultural billion these Tibetans blend in without much ado.

The second feature emerging from the field is the relatively few restrictions placed on the Tibetans relating to their freedom of movement and work. The Tibetans are at a distinct advantage due to the presence of the Government in exile which has set up the SO to liaison with the Indian officials. In Bylakuppe, moreover, there are special officers to handle travel permits and RC applications. A lot of paperwork such as getting travel permits, sorting out issues related to RC, exit permit and so on is done through the office and the Tibetans have the support of the government-in-exile in many such cases.

It has been noticed that in the recent years, some procedures such as physical verification during RC renewal and checking of PAP in the settlement has become stringent. These changes, though innocuous in appearance, become a matter of concern when seen in the context of a general tightening of restrictions around foreigners in India and denial of RC to newly arrived Tibetans. The access to citizenship by birth has also become restricted to those who were born in India before July 1987. The eligibility conditions for acquiring citizenship by naturalisation have become more restrictive.

The issue of citizenship has become more relevant than ever for the Tibetans as the Dalai Lama is aging and a solution for the Tibetan issue does not seem to be forthcoming in the near future. The Tibetans, especially the youth, find themselves left with fewer choices in terms of education and employment, owing to their refugee status. Taking up Indian citizenship would endow them with the rights of citizenship as well as relieve them of the uncertainty inherent in their legal status in India. A section of the Tibetans think positively of taking up of Indian citizenship based on these considerations. But on the other hand, there is also another section which has insisted on retaining their refugee status on considerations of loyalty to the Tibetan cause and preservation of Tibetan identity.

From the perspective of the Indian state's policy, the amendments to the Citizenship Act, the Foreigners' Act, non-issuing of RC and tightening of procedures in the settlement are seemingly disparate events, when seen in the perspective of the stance of the Indian state on foreigners in general, reveal the concern of the state to control cross-border migration and regulate the movement of foreigners. These concerns have cast a shadow on Tibetans living in the remote settlement in Bylakuppe. On the one hand, the laws formulated at the macro level, often with totally different intentions, produce ripples at the micro level causing unintended effects. The Amendment of the Citizenship Act was intended to exclude the Bangladeshi illegal migrants from Indian citizenship, but along with them an entire generation of Tibetans has been bypassed. The stance on Tibetans is no longer of a 'generous' government, but alternating between indifference and attempt to have a measure of control over their movements at times.

The last point emerging in the discussion is the way the Tibetans have managed to carry on their day-to-day transactions within the framework of the numerous rules and regulations. A main

reason for their success in negotiating with the bureaucratic setup is that the Tibetans are rarely involved in any criminal activities and avoid conflicts with the local community. The leasing arrangements in land have worked out smoothly so far, but the transactions in land might spell trouble in future. The Tibetans have so far successfully manoeuvred themselves to negotiate with laws, rules and restrictions, but the legal “space available around them is shrinking”, as one Tibetan respondent astutely put it.^{xxviii}

The Tibetan case underlines the fact that even though the Tibetans have received better treatment compared to other refugee groups, their lives are circumscribed within the numerous restrictions that refugees in India face. More worrisome is the fact that even after fifty years in exile, their legal status bequeaths a stamp of insecurity on their presence in India and greatly restricts their choices in livelihood, education and employment. While one agrees with Oberoi (2001: 42) that states of South Asia, including India, can claim with some credibility that they have honoured the “spirit if not the letter” of the 1951 Convention and 1967 Protocol, the lack of a domestic law on refugees impacts the way in which refugees have to negotiate with their insecure status in India on an everyday basis. This is one compelling reason why a national legislation on refugees needs to be passed.

End Notes

- ⁱ Numbers cited by The Central Tibetan Administration (CTA) available at: <http://www.tibet.net/en/index.php?id=9>>
- ⁱⁱ Norbu (2003), the author’s figures are based on the Planning Council, CTA, Demographic Survey, Vol.2
- ⁱⁱⁱ The projected figures for 2007 of the Planning Council, CTA, with an annual growth rate of 2.2% Available at: <http://www.tibet.net/en/index.php?id=9>> But the actual number of refugees may be much higher as there a few hundred unregistered Tibetan refugees in India.
- ^{iv} Chimni (2000) discusses the legal status of refugees, in different sections, as in Refugees of Partition, Tamil refugees, Chakma refugees and so on.
- ^v I thank Ms Sahiba of Human Rights Lawyers Network, New Delhi, for her detailed information on the issue of citizenship and Afghan refugees.
- ^{vi} The Citizenship (Amendment) Act, 1957, The Repealing and Amending Act, 1960, the Delegated Legislations Provisions (Amendment) Act, 1985, The Citizenship (Amendment) Act, 1985, The Citizenship (Amendment) Act, 1986, The Citizenship (Amendment) Act, 1992, The Citizenship (Amendment) Act, 2003.
- ^{vii} Article 19 of the Indian Constitution guarantees freedom of speech, expression, association, movement and occupation.
- ^{viii} The case that marks the turning point is Maneka Gandhi vs. Union of India, 1978. The later cases include Mithu vs. State of Punjab, 1983.
- ^{ix} The Supreme Court passed the judgement on 12/07/2005, in the Writ Petition (Civil) 131 of 2000, Sarbanananda vs. Union of India, available at: <http://www.esamskriti.com/essay-chapters/Supreme-Court-repeals-IMDT-Act,-Assam-1.aspx>>
- ^x Case of NHRC v. State of Arunachal Pradesh (1996) 1 SCC 742
- ^{xi} Madras High Court in P Nedumaran and Dr S Ramdoss v. Union of India, W P Nos.12298 and 12343 of 1992
- ^{xii} Supreme Court in Malvika Karlekar v. Union of India, Cr. W.P. 583/92
- ^{xiii} Karnataka High Court in Digvijay Mote v. Government of India, W.A. 354 of 1994
- ^{xiv} While the refugees who arrived prior to 1979 were issued registration certificates (RC), different authors have noted different cut-off years of Indian government’s no-issuance of RC to Tibetan refugees – Suska (105) suggests that those arriving between 1987 and 1999 were not granted RCs; Routray (81) notes the year as 1979, while according to Houston and Wright (224), those refugees who came to India ‘before or during the eighties’ were issued RCs, but the recent arrivals or not.

From my interviews as well as the various reports in UNHCR and USICR on refugees, the cut-off year seems to be around 1987. The problem of fixing a year arises because it is an unofficial policy of the Indian government not to issue RCs and hence it is by putting together multiple sources such as interviews with CTA officials, reports of various organisations and NGOs that one can suggest a possible year.

xv Information collected from RC section, LS settlement, Bylakuppe, during the fieldwork conducted between July and November 2007. Similar observation has been made by Hess 2006:82,

xvi Information collected from the RC section, L.S.

xvii From 1951-1976, there were a number of questions raised regarding Tibetan citizenship in the Parliament. These debates and discussions can be found in the debates of Lok Sabha and Rajya Sabha.

Ref: Tibetan Parliament Research Centre (2006) : *Indian Parliament on the Issue of Tibet*

xviii **The right to citizenship by birth, as per the amended Sec 3 of the Indian Citizenship Act of 1955 reads:**

'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 1st day of July, 1987;

(b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth;

(c) on or after the commencement of the Citizenship (Amendment) Act, 2003, where

(i) both of his parents are citizens of India; or

(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth.'

xix Immigration and Refugee Boards 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>

xx It may be noted that among the recent arrivals', i. e refugees from Tibet, only a few belong to the second generation. Most of them are youngsters or children.

xxi The Indian Citizenship Act, Sec 6 reads: **'(1) Where an application is made in the prescribed manner by any person of full age and capacity not being an illegal migrant for the grant of a certificate of naturalization to him, the Central Government may, if satisfied that the applicant is qualified for naturalization under the provisions of the Third Schedule, grant to him a certificate of naturalization:**

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 naturalization as from the date on which that certificate is granted'.

xxii See Suska (2008: 105) in footnotes.

xxiii Figures in 2007, data obtained by the author during field visit from the Office of the Representative, L.S and Office of the Representative, TDL

xxiv At the time of my stay, there were five American students and one British scholar in the guest house where I was staying (Sera Jhey). There was also a group of 14 research students in the Sera Mey guest house and 12 students in the Sakya guest house. There are also a few employed by the CTA as doctors, teachers and agricultural consultants, who live in the settlement.

xxv CTA, 'Tibet in Exile', available at: <http://www.tibet.net/en/index.php?id=9>>

xxvi The Tibetans in Bylakuppe were issued ration cards, but these were withdrawn in 2003, without any reason being offered by the Indian government.

xxvii The field work by the authors was carried out in Dharamsala, Himachal Pradesh.

xxviii Cited from interview dated 07/09/07

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Glossary of terms:

UNHCR : United Nations High Commissioner for Refugees

IMDT Act : Illegal Migrants (Determination of Tribunal Act), 1983

CTA: Central Tibetan Administration

RC: Registration Certificate

FRRO: Foreigners' Regional Registration Office

CST: Central School for Tibetans

SEP: Special Entry Permit

IC: Identity Certificate

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