

**Legal Status and Rights of Tibetan Refugees in India:  
A Study of Sikkim and Darjeeling**

A Dissertation Submitted

To

**Sikkim University**



In partial fulfillment of the requirements for the

**Degree of Master of Philosophy**

**By**

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Department of Political Science

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# सिक्किम विश्वविद्यालय SIKKIM UNIVERSITY

(भारत के संसद के अधिनियम द्वारा वर्ष 2007 में स्थापित और नैक (एनएएसी) द्वारा वर्ष 2015 में प्रत्यायित केंद्रीय विश्वविद्यालय)  
(A central university established by an Act of Parliament of India in 2007 and accredited by NAAC in 2015)

Date: 07/ 02/2020

## DECLARATION

I, **Sonam Yangden Pradhan**, hereby declare that the research work embodied in the dissertation titled “**Legal Status and Rights of Tibetan Refugees in India: A Study of Sikkim and Darjeeling**” submitted to Sikkim University for the award degree of Master of Philosophy, is my original work and it has not been submitted earlier to this or any other University for any degree.

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## CERTIFICATE

This is to certify that dissertation titled “**Legal Status and Rights of Tibetan Refugees in India: A Study of Sikkim and Darjeeling**” submitted to the Sikkim University for partial fulfillment of the degree of Master of Philosophy in the department of Political Science, embodies the result of bonafide research work carried out by Ms Sonam Yangden Pradhan under my guidance and supervision. No part of the dissertation has been submitted earlier to this or any other university for any degree.

All the assistance and help received during the course of investigation have been duly acknowledge by her.

I recommend this dissertation to be placed before the examiners for evaluation.

  
Dr. Durga Prasad Chhetri

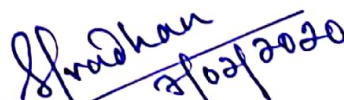
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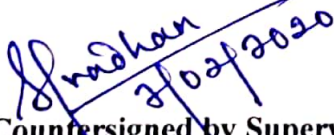
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**“Legal Status and Rights of Tibetan Refugees in India: A Study of Sikkim and Darjeeling”**

Submitted by **Sonam Yangden Pradhan** under the supervision of **Miss Swastika Pradhan**, Assistant Professor of Department of Political Science, School of Social Sciences, Sikkim University.

  
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## **Abbreviations**

|        |   |  |
|--------|---|--|
| CBSE   | : | Central Board of Secondary Education                                   |
| CERD   | : | Convention on the Elimination of all forms of Racial<br>Discrimination |
| COI    | : | Certificate of Identification  |
| CTA    | : | Central Tibetan Administration   |
| CTRC   | : | Central Tibetan Relief Committee                                       |
| ICCPR  | : | International Covenant on Civil and Political Rights                   |
| ICESCR | : | International Covenant on Economic, Social and Cultural Rights         |
| IDP    | : | Internally Displaced Person  |
| NGO    | : | Non- Governmental Organizations  |
| NHRC   | : | National Human Rights Commission                                       |
| RC     | : | Registration Certificate   |
| TGiE   | : | Tibetan Government-in-Exile  |
| UDHR   | : | Universal Declaration of Human Rights                                  |
| UN     | : | United Nation  |
| UNHCR  | : | United Nation High Commissioner on Refugee                             |

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## Preface

Refugees all over the world are governed under the UN convention of 1951 and 1967 protocols. But however India was not a party of UN convention on Refugees. India follow its own refugee policy.

India receive refugees from different neighbouring countries, like Bhutan, Bangladesh, and Tibet etc. Among them Tibetan refugees are regarded as most successful refugees all over the world. And for the resettlement of the refugees from Tibet the Government of India had provided them various settlement in different states. With the changes of time and modernization of the society and its effect on Tibetans also created lots of changes in the lives of the Tibetans. Still there are lots of new problems faced by Tibetan refugees which is related to their identity. Thus the study made an attempt to understand the legal status and rights of Tibetan refugees in India especially in Sikkim and Darjeeling.

The first chapter looks into the 1951 UN convention and its 1967 protocols, regarding the status of refugee and what kind of policy are adopted by the India towards refugees. Further it has also look into the statement of the problems, review of literature, scope, objectives, research questions, research methodology which has been used for the study and also the chapterization.

The second chapter deals with the historical background of Tibetan refugees. Further this chapter will also explain in detail as how Tibetan refugees was created and how they came to India what was the reason behind their migration and also how they were resettled in India. And after rehabilitation what was the impact of Tibetan refugees on host population in India.

The third chapter deals with the various rights of refugees under the international law as well as national laws. Further this chapter also analyse the Citizenship Act of India and Tibetan refugee's citizenship policy

The fourth chapter is the core of the study as it deals with the Tibetan refugees in Sikkim and Darjeeling, and based on the field survey conducted in Kunphenling settlement, Self Help Center and Tashiling settlement and some part of Gangtok the legal status and rights of Tibetan refugees. It also deals with the initiatives taken by the government

of India and Central Tibetan Administration (CTA) for the legal status and rights of the Tibetan refugees in India. In addition this chapter also highlights the problems that are faced by the Tibetan refugees regarding their identity and rights in India particularly in Sikkim and Darjeeling Tibetan settlement along with the various issues concerning Indian Citizenship and its impact on the identity of Tibetan refugees in India. Further the outcome of the field survey and the analysis of those findings are also included.

The fifth chapter is dedicated to the conclusion where the brief summary of all the chapters are discussed, along with the suggestions.

# CHAPTER 1

## Introduction

### 1.1 Introduction

The migration of people has been an old phenomenon but with the birth of territorial and nation-state forcing of people from their original habitat emerged on the grounds of religious, racial or ideological character and identity. In the very process of the emergence of such identity, minorities and those groups of people who refuse to conform to the ideological or religious identities of the dominant nation-state were persecuted and pushed out by the new, aggressive state (Muni & Baral, 1996). As a result, those people who are forced to move out from their own country are termed as 'refugee' that are persons seeking shelter in a foreign country from danger or trouble.

The term "refugee" is commonly used for displaced person. However, it does not explain whether they fall within the category of internationally displaced or internally displaced person as there are mainly two types of displacement that take place. Therefore, one should know that if the displaced person has crossed an international border and falls under one of the relevant international legal instruments, they are considered as a refugee. And if a forced migrant who left his or her home because of political persecution or violence, but did not cross an international border is commonly considered as Internally Displaced Person (IDP).

The term refugee has been used in different context based on the several factors from which they are created but the most common is that they are displaced from their country of origin to the new countries and are not able to return to their country because of certain reasons.

The United Nations Convention on Status of Refugee and its 1967 Protocol under Article 1 A (2) of 1951 defines refugee as

Any person who as a result of fear of being offended for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or owing to such fear (Sai, 2011) or for reasons other than personal convenience, is unwilling to avail him or

herself of the protection of the country or who not having nationality and are outside the country of his or her former habitual residence, is unable or owing to such fear or for reasons other than personal convenience, is unwilling to return to it (UNHCR Resettlement Hand Book, 2011).

Under this Convention, the refugees were given right to fair treatment. This refugee status is accorded to the people 'persecuted' by the states and also to such victims who have to cross international borders in order to save themselves from the 'persecution' involved (Muni & Baral, 1996).

Ghosh (2011) has talked about several factors which are responsible for the creation of refugees and some of them are as follows

- Failure in Nation-Building

Failure in the process of unification of people within the nation which led to the war between the people and thus generate refugees. The Bangladesh refugees, the Lhotshampas, the Kashmiri refugees can be considered as an example of the failure in nation-building.

- Statelessness

According to the United Nation, any person who is not considered as national by any state under its law then they are termed as stateless. The Indian Tamil of Sri Lanka, Bihari's of Bangladesh, Chakma's of Arunachal Pradesh falls within this category.

- Inter-Ethnic Conflict

Conflict between the two or more ethnic group within a society also create refugees and the Sinhalese-Tamil of Sri Lanka to India is an example.

- Development and Environmental refugees

Those people who have been forced to leave their traditional habitat because of mass environmental interruption by naturally or by people. Like the Bangladeshi refugees who are a victim to it.

- External Intervention

Intervention of foreign country. While discussing the external intervention the case of Tibetan refugees in India and Nepal and Afghan refugees in Pakistan and India can be seen as an example.

Now with regard to the UN Convention and its sanctions then it is worth mentioning here that even though almost all the countries signed the UN Convention on the Status of Refugee except the South Asian countries (Oberoi, 2006) but despite this it is also to be noted that most of the South Asian countries have been receiving and generating refugees including countries like India, Pakistan, Nepal, Bhutan, etc.

India falls within the category of refugees receiving country. Its easily accessible borders have contributed a lot towards it becoming a more of a refugee receiving country rather than that of a refugee generating country in relation to almost all the neighbors. Pakistan is also a refugees receiving country but Pakistan does not have a common border with any other South Asian countries except India and Afghanistan. And most of the refugees received by Pakistan are from Afghanistan than that of India, due to the geographical proximity and socio-cultural identity of Pakistan. Srilanka's island status has spared it from being a host to asylum seekers. Bangladesh is the most refugee generating country and there are Bangladeshi refugee all over South Asia like India, Nepal, and Pakistan. Similarly Nepal, which has been a source of migrants to India and to a much smaller extent Bhutan, also received refugees from Tibet as well as migrants from India (Muni & Baral, 1996).

### **1.1.1 Indian Policy towards Refugees**

India is not a party to the 1951 UN Convention and its 1967 Protocols (Rastogi, 2016) as India argues that the Convention and the Protocol are "historically Eurocentric and not responsive to the needs of developing countries" (Oberoi, 2006 ). However, it is also a fact that despite it not being a party, India has provided protection to refugees and asylum seekers and while doing so it claims to have followed its own refugee policy though it's not constituted officially. So, even though there is no specific law for refugees in India yet in the absence of such refugee laws, India has been able to provide protection and fulfill some of the needs of refugees who have fled from their country into the Indian Territory.

In India, there are refugees from different nations such as Bangladeshi refugees, Tibetan refugees, Srilankan-Tamil refugees, Afghan refugees etc. India is treating differently with refugees belonging to different countries. The Bangladeshi refugees that are the Chakmas were provided with inadequate facilities as confined by the

National Human Rights Commission (NHRC) and repatriated in 1988. Tibetan refugees also received far better treatment in comparison to other refugee groups. With regard to Srilankan-Tamil refugees, an official refugee's determination process had been practiced and the principle of non-refoulment has been complied with. Similarly Indian government has issued valid residence permits to most of the Afghan refugees. The majority of the Afghan community holds resident permits, many Afghans are able to work in the informal sectors.

Around 80,000 Tibetan refugees fled from China among which 56,000 refugees took shelter in India. Tibetan refugee's influx into the Northern part of India in 1959 was India's second experience of mass refugees in India after the partition (Oberoi, 2006). When China invaded Tibet in 1959, the spiritual leader of Tibetan Buddhism, the Dalai Lama along with a large number of Tibetans fled to India and sought asylum in India. Tibetan refugees did not seek asylum in a land that was unknown to them. The relationship between the people of the territories comprising modern-day Tibet and India can be traced back to ancient times. It has been said that 'for centuries Tibetans had traveled to the Buddhist temples in India and Nepal, and Indians and Nepalese had, in turn, gone on the pilgrimages of Mount Kailash, the holy mountain of Tibet' (Forbes,1989). Tibet had acquired the foundation of its culture from the Indian Schools. Due in part of this historical connection on 30 March 1959, the Government of India granted asylum to the Dalai Lama followed by a large number of Tibetans who came and settled in India. To rehabilitate the Tibetan refugees several resettlement camps were opened by the Government of India. Among them, the following are important (Desai & Raha, 2011)

- Bylakuppa in Karnataka,
- Buxa, Kalimpong, and Darjeeling in West Bengal,
- Changlang, Tezu in Arunachal Pradesh,
- Dehra Dun in Uttarakhand,
- Dharamsala in Himachal Pradesh, and
- Ravangla in Sikkim
- Chandragiri in Orissa
- Majnu ka Tila in New Delhi etc



In India the Tibetan refugees are covered under the Foreigner's Act of 1939, the Foreigners Act of 1946 and the Foreigners Order of 1948, the right of the refugees to reside in India is governed by the government law as well as written law. The civil rights are given to all the people in India whether they are the citizen of India or foreigners. And the Tibetan refugees are given residence permits as well as travel documents too.

The Indian government and the Tibetan community in exile were well aware that the repatriation is not possible or alike in the near future. So India had to provide protection and assistance to the Tibetan refugees and India had to treat them in accordance with the international standards.

As India was not a party of 1951 Convention relating to the Status of Refugees and 1967 Protocol, which defines a refugee according to international law, outlines certain rights and services which the host countries have to provide to the refugees (Banerjee, 2012) therefore India has no national refugee law and no regional agreement on the refugees based on the said Convention. However, India time and again argues and claims that it has a law pertaining to the rights and protection of the refugees in accordance with the international norms.

In India, the protection to the asylum seekers are granted under the following (Rastogi, 2016)

1) National Treatment

The national treatments to asylum seekers or refugees are the same as the citizens of India and it is guaranteed in the Constitution of India as follows

Article 14 – Equality before law or equal protection of the law

Article 20 – Right to protect in respect of conviction of offenses

Article 21 – Protection of life and personal liberty

Article 22 – Right to protection under arbitrary arrest

Article 25 – Freedom Religious

Article 32 – Right to approach the Supreme Court for enforcement of Fundamental Rights and

Under part III of the Constitution of India the educational rights and right to social security are also guaranteed.

- 2) Treatment which is allocate to the foreigners (under UN convention on refugees of 1951)

Article 13 – Right to Property

Article 15 – Right to form an association

Article 17 – Right to employment and profession

Article 21 – Right to housing

Article 26 – Freedom of residence and movement

- 3) Special Treatment (under UN convention on refugees of 1951)

Article 28 – Identity and Travel document

Article 3(1)-Exemption from penalties

The only mention of foreigners in the Indian law is found in the Registration of Foreigners Act of 1939, the Foreigners Act of 1946, and the Foreigners Order of 1948, all of them used the term foreigner and define it as a person who is not consider as a citizen of India. The 1946 Act and the 1948 Order allows the government to limit employment opportunities, freedom of association, and a foreigner's possessions and it also restricts movement inside India and prohibits select activities that are political in nature. In fact, Tibetan refugees are only allowed in India on the condition that they will not do any political protests against China – here it can be clearly seen the suppression of their right to the political expression which was afforded by the Universal Declaration of Human Right (UDHR). This political suppression was particularly evident during the 1991 visit of the then Chinese Prime Minister Li Peng, during which Tibetan refugee leaders were arrested and placed under police surveillance to curtail protests. A similar occurrence was witnessed during Prime Minister Wen Jiabao's 2010 visit. Human rights law grants refugees fundamental civil

and political rights, yet the Indian government denies these rights to the Tibetan refugees (Artiles, 2012)

India's lack of legal obligation allows it to make its own refugee policies which also reflects its political interests. The Tibetans who arrived in 1959 with the Dalai Lama as refugees were granted legal asylum. The Indian government allotted land and housing which was not accorded to other foreigners and one that would later be denied to newly arriving Tibetans. More importantly, the refugees were given a Registration Certificate (RC) and according to the Tibetan Government-in-Exile (TGiE), the Central Tibetan Administration (CTA), the RC is a legal document issued by the Indian authorities that allows Tibetan refugees "the right to enjoy all the privileges enjoyed by any Indian citizen except the right to vote and work in Indian government offices" (Immigration and Refugees Board of Canada 2009).<sup>1</sup> The RC allows Tibetans to legally travel and work within the country; it serves as an identity document and is prior for the Identity Certificate, which is necessary for international travel.

However, even those with the Registration Certificate continue to struggle with their refugee's status. Unable to gain Indian citizenship, they cannot vote, work for local or federal governments, carry an Indian passport, or legally purchase land. Although Tibetans possessing an RC can legally work in pre-approved segments of the economy, many employers often discriminate against them in favor of Indian nationals. This resentment originates from the belief that Tibetan refugees are adversely affecting job opportunities and that they benefit from elevated standards of services not accorded to Indian nationals. While it is believed that communal relations between the Tibetans and the Indian host community have been improving, there have been isolated reports of aggression and discrimination that have largely gone uninvestigated by local police. To further exacerbate this issue, Tibetans are not represented in the local and central legislature and thus do not have readily available avenues for redress (Artiles, 2012).

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<sup>1</sup> Immigration and Refugee Board of Canada. 2009. "China/India: Residency Rights of Tibetans Residing in India; Requirements for Tibetans to Obtain and Retain Permanent Residence in India." Available online: [Canada: Immigration and Refugee Board of Canada, China/India: Residency rights of Tibetans residing in India; requirements for Tibetans to obtain and retain permanent residence in India, 7 July 2009, ZZZ103171.E, available at: https://www.refworld.org/docid/4a7040b81c.html](https://www.refworld.org/docid/4a7040b81c.html). Accessed on 23/11/2018.

In 1949, when the United Nations debated legal protection versus material assistance for refugees, India argued that "the guarantee of legal rights without concomitant material assistance was a hollow concept" (Oberoi, 2006). However, it has become clear that as Tibetans continue to cross the border, India has not only decreased the rights afforded to these newcomers, but also the services provided to them. Claudia Artiles has stated that the repatriation for this refugee's community does not appear possible in the immediate future, India needs to concern itself with improving its policy toward this population thereby affording refugees the proper protection and treatment per international standards. Signing the 1951 Convention would be the best avenue by which to accomplish this as it will lessen the burden on India by affording its assistance and services from the United Nations High Commissioner for Refugees (UNHCR) and member states. Above all, India's lack of legal obligation should not be understood as an absence of Tibetan refugees' entitlement to proper services and protections (Artiles, 2012).

As the Tibetan refugee population grew, India agreed to the establishment of a UNHCR branch office and consequently developed a working relationship with the UNHCR. However, this relationship was challenged when China joined the United Nations (UN), and in 1975 the UNHCR discontinued its assistance to India. Then, four years later, the UNHCR reopened its office in India to provide basic needs to the Afghan asylum seekers. Although India refused to formalize the UNHCR status, it did request membership to the UNHCR Executive Committee, which was granted in 1995 (Oberoi, 2006). Tibetan refugees who arrived between 1959 and the 1970s also benefited from services provided by the UNHCR in spite of its bad relationship with India it had a temporary presence in the country. But those Tibetans who arrived after the 1970s faced many problems due to the change in Indian policy. In 1963, the Indian government ceased to legally recognize the arriving Tibetans as refugees in order to preserve Sino-Indian relations. Particularly, those arriving after 1979 (including some arriving in the late 1960s) have had greater difficulty acquiring RCs. The newer process to acquire an RC was a very difficult process but RC was more important for the refugees because employment, residency rights, and international travel were provided upon that document. The Indian government provided land to the earlier refugee's community, but deny to give land to the Tibetans who arrived later and the Indian law also prohibits foreigners from purchasing land. Additionally, the UNHCR closed its office in New

Delhi and discontinued its aid to Tibetan refugees in 1975. As a consequence of the Indian government's lack of assistance, the CTA has had to shoulder the burden of providing for these refugees. Although the CTA is able to cover basic needs, they are overwhelmed and are unable to effectively address the broader social welfare of this developing community (Adams, 2005).

## **1.2 Statement of the Problem**

The Tibetan refugees arrived in India as an asylum seeker in 1951 after the invasion of China on Tibet. As compared to traditional Tibetan society in Tibet, India is very different for them and it was very difficult for the Tibetan refugees to adjust in such an unknown society (Roy, 2011). However, the Government of India and the Central Tibetan Administration (CTA) had provided them with some facilities and helped them with several rehabilitation programs. As a result of which the Tibetans, after 60 years of asylum in India are well established in the field of economy, culture, society and in other fields as well. Although they are successfully rehabilitated in India, they are facing new challenges. Such challenges are the difficulty in traveling abroad and educated but unemployed. The Tibetans used to travel abroad through the identity certificate which has been provided to them by the Government of India but with that travel document, they faced many problems like when they used to travel abroad many immigration officials at the airport are unfamiliar with the travel document which they carry. On the other hand, they are facing challenges of getting jobs. According to their qualifications and skill, the younger generation of Tibetan refugees are not willing to do the same occupation of sweaters selling in Tibetan markets or running seasonal business like their older generation. Further, Tibetans do not have the right to get the licence for doing business are they allowed to own or buy land. Due to these problems, Tibetans started applying for Indian citizenship. The Supreme Court on March 2017 stated that all the Tibetans who are born in India between January 26, 1950, and July 1, 1987 are eligible for the Indian citizenship by birth under the enactment of the Indian Citizenship Act (Amendment) of 1986. The Supreme Court also directed the Ministry of External Affairs to issue them Indian passports. allows Tibetans to get Indian citizenship but under the following conditions: i) The Registration Certificate (RC) and Identity Certificate are required to be canceled; ii) they should not be staying in Tibetan refugee settlements; iii)

they should not be enjoying the benefits offered by the Central Tibetan Administration; and, 4) they should no longer enjoy any privileges, including subsidies (Choedon, 2018). As per the Indian rule, a person can hold only one identity document of a particular country but few Tibetan refugees in India are having both the Indian as well as the Tibetan identity document which is not legal in India.

Because of the above mention conditions, the Tibetan Community had a strong feeling that taking Indian citizenship would weaken their movement for free Tibet and give up their hope for Tibet. As one of the main reasons why Tibetan refugees sought refugees in different countries is not just for their safety but for their culture and religion which they tried to preserve and protect as it was not possible under China's rule. But now after 60 years in exile, Tibetan refugees are facing a dilemma about whether to take Indian citizenship or not? Therefore here arise a problem to the Tibetan refugees as if they want to take the Indian citizenship then they will not be able to remain as Tibetan they will lose their identity as Tibetan and if they do not so then they will not be able to enjoy the political rights and opportunities that the citizens of Indian are enjoying.

Thus this work analyze the issues of taking Indian citizenship by Tibetan Refugee particularly of Sikkim and Darjeeling, as well as it also see the consequences of not taking Indian citizenships. In this sense this work is an attempt to understand the issues regarding their identity and rights in India. Further this work also try to see that whether the initiative and policies which are taken by the Government of India and Central Tibetan Administration (CTA) for the Tibetan refugees is it really helping the Tibetan refugees for gaining their identity in India or it is just for the political reason or interest.

### **1.3 Review of Literature**

Mamta Desai & Manish Kumar Raha (2011) in their book *The Tibetans - Their Life in Exile in India* had discussed the Tibetan refugees in India and their adaptation in India. The main focus of this book is the changes along with ecological adaptation among the Tibetan refugees. Apart from this the authors also discussed the various problems faced by the Tibetan refugees in India and the changes in their lives and

activities due to their interaction with to host population. But the authors failed to discuss the refugee's policy in India.

SD Muni & Lok Raj Baral (1996) in their book *Refugees and Regional Security in South Asia* had discussed the definition of refugees, refugees in South Asia and factors behind the refugee's generation along with the Tibetan refugees in South Asia and their rehabilitation and impact on the host country. However, this book failed to discuss the refugee policy in South Asia and the historical background of Tibetan refugees.

Pio Oberoi (2006) in his book *Exile and Belonging - Refugees and policy in South Asia*. He mainly focuses on the history of refugee policy-making in South Asian states since 1947. This book highlights the large forced population movement into the region from neighboring states and it concentrates on the six major instances of mass refugee movement in the region. But this book failed to discuss the Tibetan settlement in India and their problems.

Claudia Artiles (2012) in her article Tibetan Refugees Rights and Services in India describes that there is an absence of a national legal framework for refugees. But however with the flow of Tibetan refugees in 1959 India granted them the legal asylum and they were also given a Registration Certificate (RC) through which Tibetan refugees can also enjoy their rights similar to all the other citizens of India except the right to vote and work in Indian Government office.

Amal Roy (2011) the Socio-Economic Life of The Tibetan Refugees: A Study in Darjeeling and Sikkim Region article had tried to highlight that how Tibetan refugees are adjusted with the new social-cultural arena, the routes of migration and settlement of Tibetan refugees, rehabilitation and adjustment of Tibetan refugees socio-cultural life and changes in the economic condition of Tibetan refugees.

Yeshe Choedon (2018) in her article The Unintended Consequences of India's Policy on Citizenship for Tibetan Refugees briefly highlight the Tibetan refugees in India along with the challenges faced by the Tibetan refugees in two aspects: 1) educated unemployment, and 2) problems in travelling overseas. Further, it also deals with the issue of Indian citizenship along with the policy options.

### **1.3.1 Research Gap**

From the above review of literature, it is clear that all the books and articles have some research gaps. There are only few article and books available on the legal status and rights of Tibetan refugees in India. And those book which deal with the Tibetan refugees in India it only talk about Tibetan refugee's peaceful adaptation in the new settlement areas. And there are only few articles which deals with the topic but it is also not able to explain the things in detail. Therefore there is lack of studies from the legal perspectives covering the Legal status and rights of the Tibetan refuges and the problem regarding their identity in India. Thus this work is an attempt to fill up that research gap and also to find some possible solutions so as to deal with the legal status of Tibetan Refugees in India.

### **1.4 Conceptual Framework**

The Indian law do not recognize Tibetans as refugees. The Registration Certificate (RC) which has given to Tibetan refugees as an official document is not the "Refugee Card". Under the Foreigners Act of 1946 and the Registration of Foreigners Act of 1939, Tibetans are listed as "foreigners". This is a broad and legal definition which includes all types of refugees.

Two national laws govern the legal status and rights of Tibetans in India that is the Foreigners Act (1946) and Registration of Foreigners Act (1939). Accordingly to these statutes, Tibetans are "foreigners," which refers to everyone except Indian citizens. The same two law allows 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. The Tibetan refugees in India remain "foreigners" within the meaning of the Foreigners Act (1946) and the Registration of Foreigners Act (1939).<sup>2</sup> As foreigners, Tibetans generally cannot become citizens, travel freely, either within India or internationally, own property in their own name; hold government or other public jobs, or qualify for resident rates at most government-funded schools. Therefore, Tibetan refugees started

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<sup>2</sup> 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, February 6, 2006.



applying for Indian citizenship so that they could at least enjoy the rights and opportunity which the Indian citizens are enjoying.

According to Simon Duffy (2010) in the article Citizenship Theory of Social Justice, he stated that Citizenship can be understood as something that society itself can describe it is not a naturalistic concept rather it is a social concept. Instead, the Citizenship Theory encourages society to make a positive meaning of citizenship, one that can be used to ensure the positive inclusion of those who are most likely to face discrimination or disadvantage. The basic principles of the Citizenship Theory are:

1. A fair society is one where all the members treat each other with respect, that is, as equal citizens
2. A fair society ensures that the grounds for respect are established in such a way that everyone can achieve citizenship, and thus be respected as an equal
3. A fair society organizes itself so that everyone gets maximum support to be able to achieve citizenship.

Citizens are of two types: natural born and naturalized. On the one hand, Natural born citizens are those who are the citizens of a state by virtue of their birth or blood relations. On the other hand, Naturalized citizens are those foreigners who are granted the citizenship of the country on the fulfillment of some conditions laid down by the respective country. A person who desires to be a citizen of a foreign country has to give up the citizenship of his native country. No person can be a citizen of more than one country at the same time. Any person can acquire the citizenship of a foreign country after having fulfilled the condition laid down by that country for this purpose.

In this sense, justice for them is in the context of Social justice, which means justice in terms of the distribution of wealth, opportunities, and privileges within a society. Refugees have been emerging as a social justice issue for nearly a century. It was Cicero, who elaborated the concept of social justice, when he declared, “we are born for justice, and that right is based, not upon man’s opinion, but upon nature”. Apart from that John Rawls also talk about Social justice in his theory of justice, where he provides a framework that explains the significance, in a society assumed to consist of free and equal persons, of political and personal liberties, of equal opportunity, and

cooperative arrangements that benefit the more and the less advantaged members of society (Garrett, 2005).

The legal status of refugees also can be analyzed through the motivational approach. Motivational approach on refugee mainly focuses on why refugees are influenced to enter into the states which they find suitable for their rehabilitation. The motivational approach is a decision-making process through which the individual chooses the desired outcomes and sets in motion the behavior appropriate to them. According to Kunz, he believes that refugee is created by the push factor rather than the pull factors. He classified refugees into three categories:

**Anticipatory refugee:** Those refugees who leave their home country before the deterioration of a military or political situation and thus arrives in the second country of settlement prepared, usually with some language, finance, and skills.

**Acute refugee:** Those refugees who flee their country or region either in masse or in bursts of individual or group escapes, and their primary purpose is to reach safety in a neighboring or nearby country which will grant asylum.

**Intermediate type:** There are certain intermediate movements embodying characteristics of both the anticipatory and the acute refugee flight-arrival patterns.

Therefore, the majority of Tibetan refugees in India come under the acute refugees as the majority of them were forced out of their countries due to situations that included war (Kunz, 1981).

Tibetan refugees in India are mainly the majority identified refugees who are forced to flee due to the political situation in their homeland which caused the majority of them to flee from their homeland. But still, the majority of them indicate that they still retain a strong attachment to their homelands and to their people including relatives, friends and countrymen and women who still live in their former countries. But the majority also indicated strong opposition to the current Chinese Government of their homeland which is similar to what Kunz's had described, that these refugees identify themselves with the Nation, but not with its Government.

India has been generous to the Tibetan people. India has allowed Tibetans to enter India and, with respect to the first wave of arrivals, to develop settlements, schools, and medical facilities. Yet the majority of Tibetans residing in India lack a defined legal status. They do not qualify as refugees in any legal sense. India is not a part of the 1951 convention and its 1967 protocol related to the status of refugees. Nor it has adopted any national legislation for the protection of refugees. Without a “refugee” designation, Tibetans in India are considered to be foreigners under domestic law, regardless of how long they have resided in India. At the same time, few Tibetans have been able to acquire Indian citizenship and most remain ineligible for naturalization. Tibetan refugees, as foreigners, are subject to a host of limitations affecting their ability to travel freely, either domestically or internationally, to own property in their own names, to qualify for government jobs or seats in educational institutions, and to vote in Indian elections. However, accepting of Indian citizenship is also an issue for them. Thus there is a problem regarding their identity and dilemma to accept or refuse the Indian Citizenship by the Tibetan refugees.

### **1.5 Rationale and Scope of the Study**

The study focused on the conceptual framework of the legal status of the Tibetan refugees in India. This study also tried to highlight the initiatives undertaken by the government of India and Central Tibetan Administration (CTA) for the legal status and rights of the Tibetan refugees in India. Apart from that this study also examine the problems faced by the Tibetan refugees regarding their identity and rights, particularly in Sikkim and Darjeeling and the issues concerning Indian Citizenship and its impact on the identity of Tibetan refugees in India. However due to the time constraint and availability of few literature, the study is primarily confined into the present legal status and rights of Tibetan Refugees in India particularly Sikkim and Darjeeling Tibetan settlement by analyzing data conducted from the field study.

### **1.6 Objectives**

Some of the objectives of this study are as follows;

- To analyse the initiatives taken by the Government of India and the Central Tibetan Administration (CTA) for the legal status and rights of the Tibetan refugees.

- To examine the problems faced by the Tibetan refugees regarding their identity and rights in India with special reference to Sikkim and Darjeeling.
- To explore the various issues concerning Indian Citizenship and its impact on the identity of the Tibetan refugees in India.

### **1.7 Research Questions**

On the basis of the above objectives the following Research questions were framed accordingly;

- What are the initiatives taken by the government of India and the Central Tibetan Administration (CTA) for the legal status and rights of the Tibetan refugees?
- What are the problems faced by the Tibetan refugees regarding their identity and rights in India with special reference to Sikkim and Darjeeling?
- What are the various issues concerning regarding Indian Citizenship and its impact on the identity of the Tibetan refugees in India?

### **1.8 Research Methodology**

The study is descriptive under which the observational and survey methods is employed and it is empirical and analytical in nature as it try to describe the legal status and rights of the Tibetan refugees in India accurately what is been observed. The method for the proposed study is based on both primary as well as secondary. The primary data is collected from the field work and from the Government reports and proceedings etc. The secondary data is collected from the books, articles, journals, newspapers and the other online available sources.

#### **1.8.1 Area of the Study**

The Government of India had provided different settlements to the Tibetan refugees but for this study the area like Kunphenling settlement at Ravangla (Sikkim), some part of Gangtok (Sikkim), Self Help Centre (Darjeeling) and Tashiling Tibetan Settlement at Sonada (Darjeeling) had been surveyed. At present the total number of Tibetan refugee population in Sikkim is 1089 (CTRC, 2015), 650 in Darjeeling and approximately 540 in Sonada. The hill areas like Sikkim and Darjeeling has been chosen for the study because of its location and geographical factors as both are the hill

area which is somewhat similar to that of the Tibet and both are located near the China occupied area of Tibet and one of the major fact that cannot be neglected is that only in Sikkim and Darjeeling area the Tibetans were allowed to make the voter card for the bank account and for other purposes as earlier the government of Sikkim and west Bengal did not recognize the Tibetan Registration Certificate and without the document of the area they were not allowed to open an account on banks so it was made exceptional for the Tibetans living in Sikkim and Darjeeling to make document of the region along with the Tibetan Green Book. Whereas this is not case in other settlements area.

The sample size is 100 of which 50 respondents were from Sikkim and 50 from Darjeeling Tibetan refugee settlement which includes 45 common Tibetan refugees and 5 Tibetan officials' respondent from both Sikkim and Darjeeling Tibetan refugee settlement accordingly. The sample technique of this study is both Purposive as well as Simple Random sampling. Purposive sampling because for this study only Tibetan refugees is selected from the both Tibetan settlement area and it is be based on Simple random sampling because the respondents which is selected for the study will be random wise, where each element have equal and independent chance of being included in subsequent samples. Both questionnaires and schedules is used to collect the information's. The study is also based on the content analysis of various news reports and media broadcastings about legal status and rights of Tibetan refugees.

## **1.9 Chapterization**

The study is divided into five chapters

The first chapter of this study is “**Introduction**” which contains the conceptual framework of the legal status of Tibetan refugees in India. This chapter briefly discusses the factors behind the creation of refugees, refugee's situation in South Asia, refugee's policy in India along with the statement of the problem, review of literature, scope of the study, objectives, research questions, research methodology and chapterization.

The second chapter is “**Tibetan Refugees in India**” which deals with the historical background of Tibetan refugees and factors related to Tibetan Refugees migration along with the migration and settlement, rehabilitation and adjustment of Tibetan refugees in India and impact of Tibetan refugees in host population in India.

The third chapter is “**Legal Framework on Refugees in International and National Level**” which deals with the various rights of refugees under the international law as well as national laws. Further this chapter also analyse the Citizenship policy of Tibetan Government in Exile.

The fourth chapter is “**Legal Status and rights of Tibetan refugees in India: A Study of Sikkim and Darjeeling**”. This chapter is primarily based on field work that deals with the initiatives taken by the government of India and Central Tibetan Administration (CTA) for the legal status and rights of the Tibetan refugees in India. In addition this chapter also highlights the problems that are faced by the Tibetan refugees regarding their identity and rights in India particularly in Sikkim and Darjeeling Tibetan settlement along with the various issues concerning Indian Citizenship and its impact on the identity of Tibetan refugees in India. Further the outcome of the field survey and the analysis of those findings are also included in this chapter.

The fifth chapter is “**Conclusion**” which is based on brief summary and suggestions.

## CHAPTER 2

### Tibetan Refugees in India

#### 2.1 Introduction

Every phenomenon that occurred in the society have their own history or in other words it is rooted in the past. Therefore, understanding the historical background becomes imperative even in this case so as to get a better notion about the real issue pertaining thereon regarding the Tibetan refugees. Thus this chapter while mainly focuses on the historical background also touches upon the various routes of migration and settlement, rehabilitation and adjustment of the Tibetans as well as their impact on the host population.

#### 2.2 Historical Background of Tibetan Refugees

The Tibetan plateau represents the world's largest and highest land mass. As a country Tibet has been quite isolated from the rest of the world mainly due to geographical, cultural, social, economic and political reasons and compulsions.

Map No-2.2.1: Tibet Region Before 1959



Source: tibetnetwork.org

The Himalayan Kingdom (Tibet) occupies a total area of about 4, 71, 700 square miles. It has high elevation ranging from 9,000 to 20,000 feet above the sea level. It is referred as the 'roof of the world'. It is also known as the 'land of snow' as it is always covered with snow. Earlier this plateau was known as 'stod-bod' meaning 'high-bod' and gradually it changed into 'To-bot' which means 'upper- part' and finally from thereon it was called as 'Tibet' (Chopra, 1989). The capital of Tibet is Lhasa which means the land of God. There are no such authentic data about the early history of Tibet. It was almost unknown to the world till the 5<sup>th</sup> Century A.D. The whole world came to know about Tibet only after the Chinese invasion.

**Map No-2.2.2: Tibet Region After 1959**



Source: [tibetmap.com](http://tibetmap.com)

Tibetans can be divided into different population groups like Khampa, Amdo and U Tsang whom in some book referred to as Bodpo. This is basically a geo-demographic division. There are no racial differences among these population groups, but some cultural differences do exist. If we look at the western part of Tibet we find the khampa people mostly residing while on the North-East region, adjoining China, Amdo people resided. The Amdo people are reputed to be very clever businessmen and traders. More than the people of other regions the Amdos have had a close contact with the Chinese and there has been a strong impact and influence of the Chinese culture



upon them. In the central regions, which includes the capital region of Lhasa, where the Bodpo people resides (Desai & Raha, 2011).

It is not easy to recall the historical events of the country in any proper manner due to the absence of any systematic history of Tibet except for the myths which have been used by the Tibetans to explain the history.

Five hundred years before Buddha Shakyamuni came into this world that is circa 1063 BCE there was an empire name Shangshung which comprised of all the parts of Tibet. It has been said that there was eighteen Shangshung kings who ruled that empire. But later on the empire got divided. After the decline of Shangsung Empire, Bod Empire came into existence under the rule of King Nyatri Tsenpo who started the age of religious kings.

During 7<sup>th</sup> Century AD, King Song- Tsen- Gampo ruled the region. Bod Empire became stronger and united all the parts of Tibet under King Song-Tsen Gampo. He was a great and powerful king, and a religious reformer. His armies attacked the neighbouring countries and reached Central Asia. He promoted Buddhism in Tibet. He had three wives, his first wife was a princess from Sangshung King, his second wife was a princess of Nepal and he took a Chinese princess from Chinese empire as his third wife. Due to the influence of the latter two wives, the king not only adopted Buddhism but also established it in the country and built the Potala palace at Lhasa (Praag, 2018).

Another great King of Tibet was Song De-Tsen who invaded China and captured its capital and also ruled some part of India as far as the Bay of Bengal. During his time the first monastery of Samyae was founded by Guru Padma Shambhava. Guru Padma Sambhava, became the saint of that monastery was also known as Lo-Pen Rinpoche (the Precious Teacher). Thus, we find the original Buddhism of Tibet, known as the Red Hat Sect (Desai & Raha, 2011).

However, after being ruled by many Kings the Tibetan empire later got disintegrated into many small pryncedoms.

In 1073 CE, Sakya Monastery was founded by Konchong Gyalo. Later his son Sakya Kunga Nyingpo, began the Sakya sect by formulating the tantric traditions. The

Sakya lamas became more powerful that around twenty Sakya lamas ruled Tibet. The first Mongol emperor of China, Kublai Khan visited the high priest of the large Tibetan monastery of Sakya during 13th century, the high priest converted the emperor to Buddhism, and received in return the sovereignty of Tibet. Thus, it led to the beginning of the priest-kings rule in Tibet (Bell, 1928).

In 1358 Tsong-Ka-Pa was born in the North-Eastern Tibet, 'the Man from Land of Onions'. He founded Ganden, the first Gelugpa monastery in 1409 and began the Gelug lineage. Monastic discipline was tightened up where he initiated a movement by which the priesthood was not allowed to marry or to drink wine. His followers were known as the Yellow Hats, which distinguish them from the Red Hats who were the priesthood. Tsong-Ka-Pa died in 1474 and his son Gan-den Truppa became his successor.

Sonam Gyatso was born in 1543, he was a great spiritual scholar and most eminent lama of that time. He converted Mongol chieftain Altan Khan to Buddhism and received the title of Dalai Lama (Ocean of Wisdom) in 1578 and hence the name Dalai Lama originated (Desai & Raha, 2011).

During the reign of the 7th Dalai Lama the Chinese were able to increase their influence in Tibet, and the invasion by Gurkhas further consolidated the process. In 1760 the ruler of Gurkha succeeded in establishing his power in Nepal (Praag, 2018). And twelve years later these Gurkhas captured Shigatse, the large town half a mile from Tashi Lhumpo in Tibet. The Chinese Government send an army composed partly of Chinese and Tibetans, which was able to push back the Gurkhas to Nepal. By this the Chinese influence over Tibet was for a time greatly strengthened by the presence of the Ambans in Lhasa during 1792. The British power during that period was tremendously increased in Bengal and throughout India, so the Chinese took the precaution of closing Tibet to the Europeans.

During the 13th Dalai Lama, Thupten Gyatso (1875-1933) Britain had setup her protectorate over Sikkim and opened a trade market in Tibet, at Yatung in the Chumbi Valley around 1893. Russia, several of whose Mongol nationalities (Kalmuks, Buriats) were Buddhists, had an influential advocate with the Dalai Lama. Britain tried to restore the balance, and decided to wage a war and finally occupied Lhasa in 1904. During that

phase, Russia's attention was absorbed by her war with Japan. A treaty was signed between Britain and China where the former recognized the latter suzerainty over Tibet and China opened up Tibet for trade with Great Britain.

China tried to reorganize and modernize Tibet in order to claim her position. There was armed intervention in Kham. Tibet brought in Britain aid, but it was not helpful at all. The Chinese army extended on Lhasa and the Dalai Lama fled to India in 1910. But revolution broke out in China, and with it a period of anarchy started. The Chinese army had to withdraw from Tibet, and the Dalai Lama went back to Lhasa. Upon his return he declared himself free from China and looked upon himself as a sovereign. But China declared that Tibet formed a part of it. Then the Sino-British treaty of 1914 concerning the status of Tibet was signed between Great Britain, China and Tibet which provided for the division of Tibet into two parts: central Tibet from Ladhak to Chamdo, under the Dalai Lama's administration, with a Chinese representative accompanied by a small escort, at Lhasa; and the eastern part, Kham, under the Chinese administration, with the Dalai Lama control over the monasteries. However, the Chinese never ratified this treaty.

China regained powers under the communist rule in 1949 and by May 23, 1951 they occupied Tibet and established its control. Then the 17-point agreement was signed on May 1951 between the Central Peoples' Government of China and the Tibetan religious Government at Peking. The most important point was that of incorporating Tibet in the People's Republic as an ethnic minority enjoying internal autonomy, maintaining the privileges of the Dalai Lama, and the Panchen Lama, and respecting religious tradition. From July 1951, events took a quick passage and the Dalai Lama returned with his whole court to Lhasa (Praag, 2018).

In circumstances that are not wholly clear, an armed revolt broke out in 1956 by the Khampas (proud warriors) who had opposed China many times. And afterwards, the Lhasa insurgency of 10 March 1959, the Dalai Lama fled to India with his cabinet, soon followed by thousands of Tibetans seeking asylum in India.

On 30 March 1959, the government of India granted asylum to the Dalai Lama, who was officially welcomed at Tezpur in Assam (Desai & Raha, 2011).

Early studies or reports tried to highlight the cases of genocides in Tibet which led to the mass exodus in 1959. In the report of the International Commission of Jurist<sup>(3)</sup> which was based on interviews with the selected groups of refugees in India, highlighted several cases of religious persecution, torture, forced sterilization, destruction of families and so on, which directly led to the forced migration.(Muni & Baral, 1996)

### **2.2.1 Factors related to Tibetan Refugee migration**

There were different reasons for the Tibetan Refugee migration to India with religious, political, educational, social and economic factors involved. A researcher named Palakshappa had conducted a study among the Tibetan refugee settled in Karnataka with a view of knowing the factors for their migration in India. Through his study he found out that people had given different reasons for leaving their homeland Tibet. Amongst them he found five common reasons for their migration in which first was related with growing concerns about the future of their religion and culture under the Communist regime. They were afraid that they would not be allowed to practice Buddhism, and maintain their way of life. Secondly, many Tibetans had heard about the torture and humiliation of the Tibetans inflicted by the Chinese in Lhasa when they refused to follow the Chinese Communism. Thirdly, the Chinese authorities were forcing Tibetans to take a bride or a groom from the Chinese (which was aimed at destroying their race of which the Tibetans are so proud). Fourthly, they heard that their leader Dalai Lama had escaped to India. Fifthly, the property of the Tibetans were taken by the propertied classes. Chinese had created a sense of insecurity and this insecurity in their daily life was the main reason behind their migration (Muni & Baral, 1996).

In 1980s, after the opening of Tibet for trade and tourism the second wave of Tibetan migration took place due to the growing political oppression. Some of the reasons related to the flow of Tibetan refugees in India in 1980s are some of them came as pilgrims to see the Dalai Lama or to bring their child to receive Tibetan education in India. Others stay longer in India, seeking religious or secular education and therefore are forwarded to Tibetan monasteries and schools in other places of India. Very few

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<sup>(3)</sup> International Commission of Jurist (1959), *The Questions of Tibet and the Rule of Law* (Geneva, 1959); International Commission of Jurist, *Tibet and the Chinese People's Republic* (Delhi: Sterling Publishers, 1966).

come to join their family or friends. Further the economic opportunities and freedom of speech, religion and education in general also draw Tibetans towards India (Grent, 2002).

### **2.3 Migration and Resettlements in India**

After the Chinese invasion on Tibet, the 14th Dalai Lama and his followers decided to leave Tibet and they preferred those routes which were closer to Tibet. The 14th Dalai Lama started his journey from Lhasa to India. He first arrived at Bomdila of Arunachal Pradesh after that he was escorted to Tezpur of Assam and later he was taken to Mussorie through West Bengal (Moraes, 1960). It is hard to discuss as which was the main route for the arrivals of the Tibetan refugees in maximum number. Since 1959, new arrival of Tibetans in different region of India was not an uncommon thing.

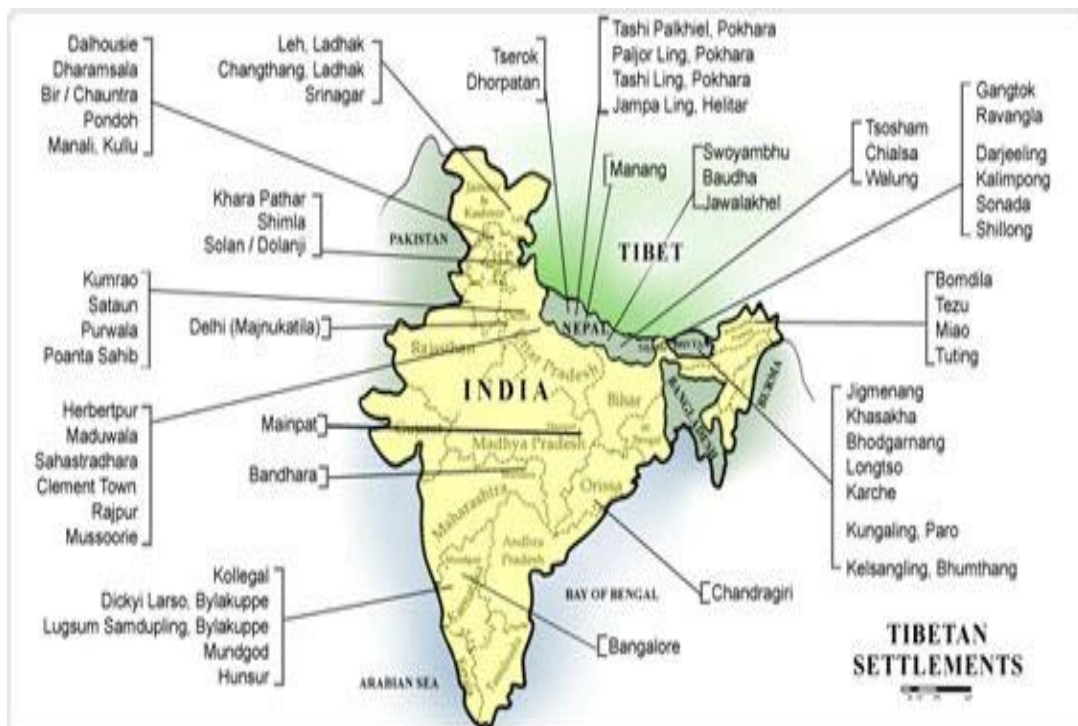
When Tibetan refugees came to India they faced many problems and difficulties like psychological fear related to uncertainty whether they will reach India safely or die on the way; physical exhaustion related to the distance they travel from Tibet to reach India as those Tibetans who were resided in far areas of Tibet like Kham, Amdo, Lhasa faced many difficulty to reach India; difficulties of language- communication problem with the host population; lack of resistance to the tropical diseases, climatic changes, apart from this they also faced many health problems like tuberculosis, cholera, malaria, etc. (Muni & Baral, 1996).

After the arrival of Tibetan Refugees in India the main problem for the Indian Government was to provide land for the settlement. The 14th Dalai Lama requested to the then Prime Minister of India, Pandit Jawaharlal Nehru to provide non-cultivable land in the hill and cold weather places in different states for the Tibetan refugees. Accordingly, some hill areas in South India, Northern India along with the areas of Darjeeling and Sikkim were accorded to them (Desai & Raha, 2011).

In India, the Tibetan refugees are found to be living in various places concentrated in the rehabilitation settlements that evolved and developed over the years through various programs. The important refugees' resettlements regions in India are as follows

- The South Region: Karnataka
- The Central region: Madhya Pradesh, Orissa, Maharashtra.
- Northern Region: Uttar Pradesh, Himachal Pradesh, Jammu and Kashmir.
- Eastern Region: Sikkim and West Bengal.
- North -Eastern Region: Arunachal Pradesh.

**Map No-2.3.1: Tibetan Refugees settlement in India and Nepal**



Source: [www. Tsemrinpoche.com](http://www.Tsemrinpoche.com)

In India 37 Tibetan settlements are there out of which 14 are agricultural settlements, 9 are handicraft-based communities and remaining are agro industrial and scattered communities (Roy, 2001). According to the Report of Refugees Population in India, 2007<sup>4</sup> the total number of scattered Tibetan communities are 70 which indicates that out of the organized settlements a large number of Tibetan refugees managed a shelter at their own capability. Actually Government of India distributed some hill areas and in some cases the places were full with jungle or forest, where Tibetan could

<sup>4</sup> Report of Refugee Populations in India, Nov 2007. Human Rights Law Network (HRLN), New Delhi.

establish their settlement with the direct help by the government. The main objective behind separate settlement for the Tibetans was not to integrate them but to keep the Tibetans separated from the mainstream political activities of the country. For that reason Tibetan refugees got the opportunity to preserve their culture, distinct language, history and traditions along with a strong sentiment of Tibetan nationalism.

## **2.4 Rehabilitation and Adjustment of the Tibetan Refugees**

India's policy towards Tibetan resettlements was also largely affected by her relationship with China. India had faced difficulties with the Chinese claim of suzerainty over Tibet. As Indian Government had to arrange the basic necessities for the Tibetans on the ground of the violation of human rights in Tibet and the failure of Chinese to extend regional autonomy to the Tibetans. Thus, the Tibetan refugees were given shelter by the Indian Government on humanitarian grounds.

For the rehabilitation process the Government of India set up the 'Central Relief Committee for the Tibetan Refugees' on 4<sup>th</sup> April, 1959. It was set up by the non-official Indians through which extra food, medicine, etc., were distributed. Different non-governmental agencies came forward to help the Tibetan refugees and many foreign countries dispatched gifts and aids for the Tibetan refugees in India (Roy, 2011).

Similarly, to organize and to represent the Tibetan refugees and their interests the Tibetan refugees settled in India and abroad, in 1960, the Dalai Lama established a Parliament-in-exile with judiciary, executive and legislative branches and a different group of official and independent new organizations which was Central Tibetan Administration (CTA) and also known as Tibetan Government in Exile. He established a representative government among the Tibetan refugees and the members of the Assembly of Tibetan People's Deputies were elected by ballots cast in all the Tibetan settlements throughout the Indian subcontinent. The 'khasang' or the highest executive body looks after the activities of the CTA. This administration "exists only as a non-political and private organization devoted mainly to the cultural development, rehabilitation and general welfare of Tibetans refugees" and also serves as a consultant

to the government of India in the execution of its Tibetan refugees policy.<sup>5</sup> Under CTA there are seven working departments which are as follows:

1. Department of Religion and Culture- It promotes and preserves the Tibetans spiritual and cultural heritage.
2. Department of Home- which is responsible for the overall rehabilitation schemes for Tibetans (Asfuroglu, 2012).
3. Department of Education- Controls and supervise schools which are located in India, Nepal and Bhutan
4. Department of Security- it ensures or responsible for the security of His Holiness the Dalai Lama. Further, it also looks the reception centers located in Kathmandu, Delhi and Dharamsala along with the transit camps.
5. Department of Finance- Is responsible for generating revenues for running the administration.
6. Department of Health- Looks after the primary health centers and hospitals located at different rehabilitations centers.
7. Department of Information and International Relation- Keep relations with the office of the Tibetan refugee settlement located in countries all over the world.

Considering the request of the Dalai Lama the Government of India provided three forms of settlements in India for the Tibetan refugees that is:

- 1) Land based settlement,
- 2) Agricultural based settlement, and
- 3) Handicraft based settlement

Primarily the planning and implementation of the relief measures to provide aids to the refugees were in the hands of three agencies,

- 1) The Central Relief Committee, as the authorized channel to accept and distribute the international aids.

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<sup>5</sup> <http://www.gktoday.in/academy/article/tibetan-refugees-in-india-and-rehabilitation-policy-2014>.



- 2) The Government of India along with the state governments.
- 3) The Central Tibetan Administration (CTA) or the office of Dalai Lama for Home and Rehabilitation.

These three agencies were interlinked while discharging their duties. The CTA was responsible to select the refugees to be settled on various projects. This made the division of work among the refugees settled in India. It was found that nearly 80-85 percent of the refugees came from the agricultural and pastoral backgrounds, so they were provided with agricultural lands (Desai & Raha, 2011)

For India it was not an easy procedure to give rehabilitation to vast numbers of Tibetan refugees. The social, cultural, political, along with the climatic condition of India was totally different as compared to the traditional Tibetan society and Tibet as well. This made the initial years of Tibetan refugees in India very difficult for survival and earning money. In the very initial stage Tibetan refugees were engaged in road constructions and other labor works mainly in the Northern states of India. The unfavorable climatic and poor economic condition, further added to their struggle for living in exile. Many Tibetan refugees died due to various health problems like tuberculosis, malaria etc. In 1959, 167 children and 65 adults died at the two camps at Buxar of West Bengal and Misamari of Assam (Norbu, 2001). They also faced language problems and other general uncertainties and complications. Initially they faced the problems of both physical as well as cultural adaptation but soon they started interacting with the local people to get some advantages and benefits. Tibetan marriages started taking place with the locals. They also learned the local languages which was very helpful for them to communicate with the local masses especially the Indian people of the regions. For occupation they faced many problems especially the aged people because they had their family and they were not able to get job easily, though later on they came over from their inefficiency of work according to the demand of the region. For social adjustment they tried to follow their own religious practices, cultural activities, food and dresses (Roy, 2001). They were able to adjust in the Indian society through their hard work. The relations between the Tibetan and Indian community have been peaceful and both have adjusted very well with each other. Now after 60 years of their exiled life in India as refugees the Tibetans are considered as one of the most successful refugees in the world.

## **2.5 Impact of Tibetan Refugees in Host population of India**

In India, Tibetan refugee settlement had been provided by the Government of India (Separate settlement and delegated authority) in such a way as to recreate the Tibetan society so that the refugees will continue their life in exile.

However there are impact of refugees on the host country India and that can be measured from identifying the relationship between the refugees and the host population. As stated earlier one of the reasons behind the forced migration of Tibetans was the fear that their cultural identity and religious institutions were in danger under the Chinese rule. And most of the Indians sympathized with that. But the creation of separate settlements for Tibetan was in fact meant for maintaining a cultural boundary from the host society. Which also means that the relationship between the refugees and the host population is limited to economic transactions in the market.

The refugee settlements have been economically beneficial to many people of host population. As it provided jobs to the local people in agricultural field and many members of host population were employed by Tibetan refugees in other spheres too. Most of the Tibetan settlement were in remote parts of India and earlier that part did not received much attention from the Government of India in terms of development and funds but with the establishment of Tibetan settlement they started getting benefits like establishment of schools, hospitals, irrigation canals, etc., similarly foreign charity organization also sponsored similar scheme to the local villagers as well (Desai & Raha, 2011).

However, despite the local people getting benefits from the Tibetan settlement yet there are issues and conflicts related with their relation. Sometimes the main reason behind the conflict was due to lack of communication and the language barrier which also led to the minor issues or misunderstanding between local people and the Tibetans. Another important reason for the clash between Indians and Tibetans is the rapid progress of the Tibetans. The local Indians wrongly feel that the progress of the Tibetans is because of the use of their resources. Thus, the Indians were always jealous of Tibetans progress and on little things they used to provoke (Muni & Baral, 1996). However, these incidents were overlooked by the Tibetans and they looked forward.

But the impact is not uniform across the entire host society. As in Himalayan states, according to the Ladakhi intellectual the Tibetan refugee controls six important monastic institutions in Ladakh priests and those Tibetan refugees in that area have not learned Ladakhi. This kind of development and thinking resulting from the Tibetan settlements in the sensitive Himalayan region is not conducive for the security reason (Desai & Raha, 2011).

There are some scholars who tried to analyze the tension between the refugees and host elites, even though there are rare cases of host-refugees conflict in India. According to Stobdan, there are two reasons for the host-refugee tension in the Himalayan region. Firstly, the growth of the Tibetan refugees and at the same time the economic difference between them. Secondly, the preservation of the Tibetan cultural and religious domination in the Himalayan region.

It has been seen that tensions between the host and refugees are different. The Himalayan region seems to have witnessed more tension than in the Indian plains. This may be explained as Tibetan refugees in the Himalayan states share a number of racial, linguistic, religious and cultural commonalities with most of the host populations except the Nepalis. Due to the commonality there might be chances of political interference by the refugees.

Saklani in his book “The Uprooted Tibetans in India”<sup>6</sup> conducted a field survey where it has been found that 76.92 percent of Indian attitude was positive towards the Tibetan refugees whereas 85 percent of Tibetan attitude was positive towards the Indians.

## **2.6 Conclusion**

From the historical part of Tibet it is clear that Tibet was a land which was far away from the social interaction of any other countries. It was mostly dominated by the religious beliefs and practices. It is understandable that when China invaded Tibet they did not fight but instead they tried to move away from that situation as they were not that advance like China. After the invasion, the Tibetans entered into India from different routes as it was the closest country near them during that period. The

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<sup>6</sup> Girija Saklani, 1984. *The Uprooted Tibetans in India: A Sociological Study of Continuity and Change*. Sterling Publishers, New Delhi.

Government of India accepted the Tibetans as asylum seekers in their country and also accepted to give them settlement areas. Some hill areas and some places which were full with jungle or forest, were given to them where the Tibetans could establish their settlements as much similar to their homeland. With that step, Tibetan refugees got the opportunity to preserve their culture, language, and traditions along with a strong sentiment of Tibetan nationalism. The Government of India had arranged the settlement areas for the Tibetan refugees so that they can get a job and earn wages for their survival. And after the settlements they learned the nature of the local activities and adjusted themselves. Many handicraft centers were also open for them which boost up their economy. However, some problems used to take place with the host population most probably because of the economic reason but later they were able to tackle that problems and manage to be friendly with the host population because of which they are one of the successful refugees in India.

## **CHAPTER 3**

### **Legal Framework on Refugees in International and National Level**

#### **3.1 Introduction**

There are various rights and protection for the refugees at the international level, but at national level there is no uniformity as many countries have not yet signed the United Nation Convention on the Status of Refugee 1951 and hence have developed their own refugee policy. Thus this chapter seeks to understand the various legal laws for the protection of refugees at international and national level along with the citizenship policy of Tibetan Government in Exile.

#### **3.2 Rights of refugees under the international law**

With regard to the protection of refugees there are few International Institutions which deals with the rights of the refugees at the international level. The United Nation High Commission on Refugee was created on 14 December 1950 for a period of three years but later on it was extended. The main function of UNHCR is to provide international protection to refugees and assist governments in finding durable solution for the refugees. The UNHCR was created till the time when there will be no refugee problem in the world (UNHCR Resettlement Hand Book, 2011). Some of the Refugee Protection under the International Legal Framework are as follows;

##### **Universal Declaration of Human Rights (1948)**

The General Assembly of the United Nations adopted the Universal Declaration of Human Rights (UDHR) on 10 December 1948. The General Assembly declared it as a common standard of achievement for all peoples and all nations (Jaswal & Jaswal, 2012). It states that human rights and fundamental freedoms should be universally recognized and observed by all member states.

The rights and freedoms set forth in the Universal Declaration is applicable to everyone, without any distinction on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2) (Banerjee, 2012; UNHCR, 1995). While the declaration provides the rights and freedoms to all human beings, there are specific provisions that address the refugee

protection, such as Articles 13 in which it is stated that: a) everyone has the right to freedom of movement and residence within the borders of the states and b) everyone has the right to leave and return to the country, including his own country (UN General Assembly, 1967); Article 14 which stated that: a) everyone has the right to seek asylum in other countries and b) This right may not be applicable in the case of trials arising from non-political crimes or from the opposing acts to the principles of the United Nations (UNHCR, 1995; UN General Assembly, 1967); and Article 15 which stated that: a) everyone has a right to nationality and b) No one shall be subjectively deprived of his nationality nor denied the right to change his nationality (Jaswal & Jaswal, 2012). These rights are universally accepted and enforced by all state parties, regardless of whether they have signed the 1951 Convention or the 1967 Protocol. Other important rights that the declaration advocates are the right to life, protection of the law, movement and employment, in addition to the right against torture, slavery, and arbitrary arrest and detention (Zutshi, Satpute & Tahir, 2011).

### **Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949)**

The Geneva Convention Relative to the Protection of Civilian Persons in Time of War and it was adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August 1949 came into force on 21 October 1950.

The Geneva Conventions and their Additional Protocols is a body of Public International Law, also known as the Humanitarian Law of Armed Conflicts, whose purpose is to provide minimum protections, standards of humane treatment, and fundamental guarantees of respect to individuals who become victims of armed conflicts. The Geneva Conventions are a series of treaties on the treatment of civilians, prisoners of war and soldiers who are incapable of fighting. The first Convention was initiated by what is now the International Committee for the Red Cross and Red Crescent. This convention produced a treaty designed to protect wounded and sick soldiers during wartime. The Swiss Government agreed to hold the Conventions in Geneva, and a few years later, a similar agreement to protect shipwrecked soldiers was produced. In 1949, after World War II, two new Conventions were added, and the Geneva Conventions entered into force on 21 October 1950. While the 1949 Geneva

Conventions have been universally ratified, the Additional Protocols have not. Within the Geneva Convention Relative to the Protection of Civilian Persons in Time of War there are two Articles which deals with the refugees they are:

#### **Article 44**

In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality de jure of an enemy State, refugees who do not, in fact, enjoy the protection of any government.

#### **Article 70**

Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war.

Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.<sup>7</sup>

#### **Convention Relating to the Status of Refugees (1951)**

The 1951 Convention on refugees is a key legal document which defines the term refugee. It is rectified by 145 states and it also provide a framework to the rights of the displaced people and the States duties to protect them. The main principle of this convention is the non refolement which states that if a refugee is facing threat of their life and freedom in their original country they should not be forced to return back to the same country by the refuge country and this is reflected as a rule of ordinary international law. The UNHCR assists as the protector of the 1951 Convention on

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<sup>7</sup> The Geneva Convention Relative to the Protection of Civilian Persons in Time of War. Retrieved from <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtectionOfCivilianPersons.aspx>. Accessed on 14/10/2019.

refugee and its 1967 Protocol. Accordingly States are expected to cooperate, respect and ensure to protect the rights of refugees (UNHCR, 1951).<sup>8</sup>

### **International Covenant on Civil and Political Rights (1966)**

The International Covenant on Civil and Political Rights is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and came in force from 23 March 1976.

The provisions of this covenant that can be specifically applied to refugees include Articles 2, 12 and 13 which has been discussed in details below (Banerjee, 2012)

#### **Article 2**

1. Each State Party to the Covenant accepts to respect and to ensure all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant without any distinction such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (UNHCR, 1995).
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
  - a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, even if the violation has been committed by persons acting in an official capacity (UNHCR, 1995);
  - b) To ensure that any person claiming such a remedy shall have his right there to determine by experienced judicial, administrative or legislative authorities, or

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<sup>8</sup> UNHCR (1951). Convention Relating to the Status of Refugees. Retrieved from <https://www.unhcr.org/1951-refugee-convention.html>. Accessed on 14/10/2019.



by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

- c) To ensure that the competent authorities shall enforce such remedies when granted.

## **Article 12**

1. Within the territory of a State everyone shall have the right to movement and freedom to choose his/her residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are reliable with the other rights recognized in the Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country (UNHCR, 1995).

## **Article 13**

An alien lawfully in the territory of a State Party to this Covenant may be expelled only in the enactment of a decision reached in accordance with law and shall, exclude where considerable reasons of national security otherwise oblige, is allowed to submit the reasons against his/her expulsion and to have his/her case reviewed by, and be represented for the purpose before, the competent authority or the person especially designated by the competent authority (UNHCR, 1995).<sup>9</sup>

## **Protocol Relating to the Status of Refugees (1967)**

The Protocol was taken note of with approval by the Economic and Social Council in resolution 1186 (XLI) of 18 November 1966 and was taken note of by the General Assembly in resolution 2198 (XXI) of 16 December 1966. In the same resolution the General Assembly requested the Secretary-General to transmit the text of the Protocol to the States thereof, with a view to enabling them to accede to the Protocol came into force on 4 October 1967. The State Parties to the present Protocol,

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<sup>9</sup> The International Covenant on Civil and Political Rights (ICCPR). Retrieved from <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>. Accessed on 14/10/2019.

considering that the Geneva Convention related to the Status of Refugees of 28 July 1951 covers those persons who become refugee due to the events occurred before 1 January 1951, considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention, considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951. The protocol relating to the status of refugees include 11 articles such as: Article 1 is the General provision; Article 2 that deals with the Co-operation of the national authorities with the United Nations; Article 3 deals with the Information on national legislation; Article 4 is on Settlement of disputes; Article 5 focus on Accession; Article 6 deals with Federal clause; Article 7 is on Reservations and declarations; Article 8 discuss the Entry into Protocol; Article 9 focus on Denunciation; Article 10 discuss the Notifications by the Secretary-General of the United Nations; and Article 11 is on Deposit in the archives of the Secretariat of the United Nations.<sup>10</sup>

### **Declaration on Territorial Asylum (1967)**

Declaration on Territorial Asylum was adopted by UN General Assembly on 14th December 1967. The Charter of UN General Assembly proclaims to maintain international peace and security, and to develop a friendly relations among all the countries to accomplish international mutual aid in resolving international problems in economic, social, cultural or humanitarian field and encouraging in respect of human rights and fundamental freedoms for all without any distinction on the ground of race, sex, language or religion. The General Assembly also declared that without any bias to present mechanisms dealing with the status of refugees, States should practices following principles:

#### **Article 1**

1. Asylum approved by a State under its sovereignty, to the persons is allowed to appeal article 14 of the UDHR and it should be respected by all the States.

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<sup>10</sup>Protocol Relating to the Status of Refugees. Retrieved from <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolStatusOfRefugees.aspx>. Accessed on 10/09/2019.

2. The right to seek asylum may not be raised by the person who are consider as committed a crime contrary to peace, a war crime or a crime against humanity.

3. To grant the asylum the power shall be rest with the State (UN General Assembly, 1967).

### **Article 2**

1. The situation of persons mentioned in article 1, without any bias should be followed by the sovereignty of States and are concern to the international community.

2. If State finds any difficulties in granting asylum, States itself or through the United Nations shall reflect appropriate methods to reduce the burden of that State (UN General Assembly, 1967).

### **Article 3**

1. No person, shall be subjected to any actions of rejection even if he/she already entered the territory to seek asylum, they should not compulsory return to any State where he may be subjected to persecution.

2. Exemption can be made on the previous principle only in regard of national security or in order to safeguard the population.

3. State will decide whether the exception to previous principle would be justified, it shall consider the possibility of granting to the person temporary asylum or otherwise, of going to another State (UN General Assembly, 1967).

### **Article 4**

States shall not permit asylum to the persons who have received asylum to engage in the activities which are contrary to the principles of the United Nations (UN General Assembly, 1967).

### **American Convention on Human Rights (1969)**

American Convention on Human Rights was signed by the Organization of American States on 22 November 1969 came into Force on 18 July 1978.

The signatory of the convention recognize that the essential rights of man are not derived from ones being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states. Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, (UNHCR, 1995) and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope. In accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights; and considering that the Third Special Inter-American Conference (Buenos Aires cited in American Convention on Human Rights) approved the incorporation into the Charter of the Organization itself broader standards with respect to economic, social, and educational rights and resolved that an Inter-American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters.<sup>11</sup>

### **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)**

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNHCR, 1995) was adopted by the General Assembly of the United Nations on 10 December 1984. The Convention entered into force on 26 June 1987 after it had been ratified by 20 States. This Convention is an international human rights treaty which mandates a global prohibition on torture and other acts of cruel, inhuman treatment or punishment and creates an instrument to monitor governments and hold them to account. The absolute prohibition on torture and other acts of cruel, inhuman, or degrading treatment or punishment is also accepted as a principle of customary international law. The Optional Protocol to the Convention was adopted on 18 December 2002 by the UN General Assembly and entered into force on

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<sup>11</sup> American Convention on Human Rights. Retrieved from <https://original.religlaw.org/content/religlaw/documents/amerconvhr1969.html>. Accessed on 22/09/2019.

22 June 2006. Its aim is to prevent torture by opening up places of detention to external scrutiny by independent bodies. There are two important articles related to refugees under this convention are Articles 2 and 3 (Banerjee, 2012).

### **Article 2**

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

### **Article 3**

1. No State Party shall expel, return "refouler" or extradite a person to another State where there are possibility that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the experienced authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.<sup>12</sup>

### **Convention on the Rights of the Child (1989)**

In 1989, against the backdrop of a changing world order world leaders came together and made a historic commitment to the world's children. They made a promise to every child to protect and fulfil their rights, by adopting an international legal framework that is the UN Convention on the Rights of the Child.

Specific to the refugee context, the convention provides that a child seeking refugee status (either unaccompanied or accompanied) shall receive protection and

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<sup>12</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Retrieved from <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>. Accessed on 15/09/2019.

humanitarian assistance for the enjoyment of rights stated in the convention and international human rights or humanitarian instruments. In other words, a state that is party to CRC but is not a signatory to any instrument relating to refugees, is still obliged to provide adequate protection and assistance to the refugee child. Article 22 also provides for the state party to cooperate with the United Nations, or any related organisation, to protect such child and to trace family members of the refugee child in order (UNHCR, 1995) to facilitate family reunification (Banerjee, 2012).

### **Declaration on the Elimination of Violence against Women (1993)**

On 20 December 1993, the UN Declaration on the Elimination of Violence against Women was adopted by the UN General Assembly. It covers physical, sexual and psychological violence at home and elsewhere in society. The definition of violence against women that the UN presents in the Declaration is currently the most widely accepted definition:

‘Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.’

The Declaration states three categories of violence against women: violence perpetrated by the state, such as violence against women in custody and as part of warfare, violence occurring within the general community, including rape, sexual harassment, trafficking in women and intimidation at work, and violence in the family and in the private sphere, for example incest and selective abortions.<sup>13</sup>

### **Guiding Principles on Internal Displacement**

The Guiding Principles on Internal Displacement established the 30 principles which provide the framework for the rights of Internally Displaced People (IDP). The guiding Principle guarantees the protection and assistance to IDPs during displacement until they return, rehabilitate or settle in the country. It also cover protections against

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<sup>13</sup> Declaration on the Elimination of Violence against Women. Retrieved from <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ViolenceAgainstWomen.aspx>. Accessed on 3/09/2019.

arbitrary displacement. Irrespective, of the cause of their displacement it emphasize on the responsibility of national governments to protect and assist all the IDPs (GP 20, 2018).<sup>14</sup>

From the above conventions and protocols related to the refugees it is clear that the International Human Rights law and the Refugee law are closely linked with each other. (International Justice Resource Centre).

### **3.3 Rights of refugees under the national law**

Under the UN Convention on the Status of Refugee it has been clearly mentioned as who can be termed as refugee. However, India did not signed that convention on refugee and it has no national legislation concerning refugee, their legal status and rights. But India is a host to many refugee group and they provide hospitality to that refugee groups even in the absence of the national law concerning refugee.

In India refugees fall under the category of foreigner. There are three sets of laws that deal with foreigners in India. They are: The Registration of Foreigners Act, 1939, dealing with all the foreigners, the Foreigners Act, 1946, empowering the state to regulate the entry, the presence and departure of aliens in India and the Foreigner's Order 1948. Under Section 2 of the Registration of Foreigners Act 1939, the term foreigner is defined as "a person who is not a citizen of India", which can be refer to the aliens of any kind including immigrants, refugees and tourists. Similarly the Foreigners Act of 1946 and the foreigner's order of 1948 also use this definition of a foreigner (Bose, 2000).

India has no national refugee law specifying the rights and governing the treatment of refugees (Anantachari, 2001). As a result, India can make its own decision regarding refugees and can treat different refugee communities with varying standards of protection. India's treatment towards asylum seekers has always been a political decision, a direct result of the country's relation with the refugee's country of origin (Mitra, 2008) hence the government of India deals with the refugee matters administratively and accordingly to humanitarian consideration.

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<sup>14</sup> GP 20, 2018. Fact Sheet on Guiding Principle on Internal Displacement. Retrieved from <https://crowd360.org/fact-sheet-on-the-guiding-principles-on-internal-displacement/>. Accessed on 10/09 2019.

India did not signed the 1951 Convention or the 1967 Protocol. Several observers have argued that the reason for India's refusal to sign the convention was that it was very Euro-centric and India viewed it and the United Nations High Commission for Refugees (UNHCR) as instruments of the cold war (Sen, 2003).

India's refusal to join the Refugee Convention of 1951 does not mean that it is completely against the protection of refugees as it has some basic commitment to humanitarian protection of refugees. The right of refugees to non-refoulement has been recognized, with some reservations, as a part of customary international law (Chimni, 2007). Thus, one of the directive principles of state policy declare that the state will attempt to foster respect to the international treaty and laws while organizing peoples with one another.

In addition to that India has signed various human rights instruments that deals with the protection of refugees. India is a party to the Universal Declaration on Human Rights (UDHR) 1948. It has also joined the International Covenant on Economic, Social and Cultural Rights (ICESCR-1966) and International Covenant on Civil and Political Rights (ICCPR-1966) since 1979. It is also a signatory to the Convention on the Elimination of all forms of Racial Discrimination (CERD-1965) and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Torture Convention-1984).<sup>15</sup>

### **Constitutional Rights**

The Indian Constitution guarantees certain fundamental rights to all persons including citizen of India and non-citizen of India. In India, almost all the basic refugee rights have got constitutional recognition (Bhattacharjee, 2008). Chapter III of the constitution, under Article 14-35, deals with the fundamental rights of the citizen of India. However, all these fundamental rights are not available to aliens and at the time of emergency, due to war and external aggression, the enforceability of the fundamental rights other than right to life can be suspended by the state. The constitution of India provides following fundamental human rights and fundamental freedoms to refugees, legally admitted to India or to all the persons, including asylum-seekers and refugees:

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<sup>15</sup> Human Rights of Refugees and Refugee Laws in India and Globally, 2018. Retrieved from <https://legaldesire.com/human-rights-refugees-refugee-laws-india-globally/>. Accessed on 23/09/2019.



Right to Equality before Law (Article 14): In India territory, any person equality before law or equal protection of the law shall not be denied by state. This right entails that there shall not be any discrimination between people or classes of people without reasonable classification by the legislature between different classes (Bhattacharjee, 2008).

Protection of Life and Liberty (Article 21): Any person shall not be deprived of his/her life or personal liberty except according to due procedure established by law. In the specific context of refugee protection, it means that while earlier, the courts merely had to consider whether the decision to deport complied with the procedure laid down in the Foreigners Act, it had now to consider whether the procedure was fair, just and reasonable. It covers a variety of rights which are provided to refugees' aliens and non-citizens in India: Right to live with human dignity; Right to livelihoods; Right to Shelter; Right to Education; Right to Social Security and Protection of the Family; Right to Health and Medical Assistances; Right to Privacy; Right to Free Legal Aid and Right to Speedy Trial: This also entails the right to be produced before a magistrate within 24-hours of arrest. These rights put a refugee and a citizen of India on the same base as far as liberty is concerned; and Right against Inhuman Treatment (ibid).

Protection against Arrest and Detention (Article 22): The Indian Constitution guaranteed protection against arrest and detention in certain cases. It embodies procedural safeguards against arrest or detention which are available in the following two cases:

- a) Where the arrest or detention is made under the ordinary law relating to commission of offences;
- b) Where the detention is made under a law providing for preventive detention.<sup>16</sup>

Practice and Propagate Own Religion (Article 25): offers that subject to public order, morality, health and other fundamental rights, all persons are equally eligible for freedom of conscience and the right to freely profess, practice and propagate their religion (Bhattacharjee, 2008).

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<sup>16</sup> Human Rights of Refugees and Refugee Laws in India and Globally, 2018. Retrieved from <https://legaldesire.com/human-rights-refugees-refugee-laws-india-globally/>. Accessed on 23/09/2019.

The judiciary of India has also played a very important role in protecting refugees. Court orders in many cases have provided humanitarian protection to refugees (Parikh 2001). Indian courts have allowed refugees and Non- Governmental Organizations (NGOs) to file cases before them. Further, the courts have interpreted provisions of the Constitution, existing laws and provisions of international law to offer protection to refugees and asylum seekers.

In a number of cases, Indian courts have protected the rights of refugees to non-refoulement and have protected them where there are substantial grounds to believe that their life would be in danger by allowing them to be granted refugee status by the UNHCR (Vijaykumar, 2000) and in some cases, it has been recognized that the constitutional protection of life and liberty must be provided to refugees.

In addition to that, the National Human Rights Commission (NHRC) has also functioned very effectively as a watchdog for the protection of refugees. The judiciary has also upheld a refugee's right to leave the country (Dhavan 2003).

Thus, the legal framework for protection of refugees in India has been characterized by a heterogeneous interaction of administrative ad-hocism and judicial assertion of constitutional rights. The Constitution provides certain fundamental rights to all persons in which refugees are also included. The legal status of the refugees is thus no different from those ordinary aliens whose presence is regulated essentially by the Foreigners Act of 1946.

There is no clearly defined category of refugees under Indian law. Foreigners generally are a classified category which can be further sub-divided as per the Foreigners Act regime, but no such sub-classification has been made for refugees. As such, refugees, like other foreigners, are generally subject to deportation with minimal due process. Therefore, the status of refugees is presently determined by the extent of protection they receive from the government of India which in turn has been influenced more by political equations than by humanitarian or legal obligations (Bhattacharjee, 2008).

### **3.4 Citizenship policy of Tibetan Government in Exile**

The Charter of the Tibetans of 1991 was drafted by the Constitution Redrafting Committee. It was adopted on 14 June 1991 by the Tibetan Parliament-in Exile. Under the Charter the Tibetan refugees are provided with the Fundamental rights and duties by the Central Tibetan Administration or the Tibetan Government in Exile as it is the law that govern the functions of the CTA.<sup>17</sup>

The Charter is based on fundamental nature of UDHR and under its all the Tibetans refugees are guaranteed or enjoy the rights and freedom without any discrimination on the ground of sex, religion, race, language and social origin etc as well as equality before the law. It also provides separation of power between the three organs of the government that is the legislature executive and the judiciary.

Before the constitution of the Charter, the CTA was functioning roughly as there was the draft circulated by His Holiness the Dalai Lama on 10 March 1963 on democratic constitution for future Tibet which was followed by the Central Tibetan Administration.<sup>18</sup> The Charter of 1991 is bind and enforceable on all Tibetans under the jurisdiction of the Tibetan Administration-in-Exile.

The Charter of Tibetans in Exile is divided into eleven chapters consisting of 115 Articles. The chapters of the charter contains the Fundamental Principles under which comes the Article 1-8 which deals with the Commencement, Jurisdiction, Nature of the Tibetan Polity, Principles of the Tibetan Administration, Validity of the Charter, Recognition of International and Local Law, Renunciation of Violence and the Use of Force, Citizen of Tibet; Fundamental Rights and Duties<sup>19</sup> from Article 9-14 which discusses the rights and duties of the Tibetans in exile those rights are Equality Before the Law, Religious Freedom, Right to Vote and Nomination of Candidates for the Assembly and Other Fundamental Rights and Freedoms along with the Duties or Obligations; Directive Principles of the Tibetan Administration from Article 15-18 which deals with the Achievement of the Common Goal and the Social Welfare of the

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<sup>17</sup> Constitution- Central Tibetan Administration. Retrieved from <https://tibet.net/about-cta/constitution/>. Accessed on: 24/08/2019.

<sup>18</sup> Constitution- Central Tibetan Administration. Retrieved from <https://tibet.net/about-cta/constitution/>. Accessed on: 31/01/2020

<sup>19</sup> CHARTER OF THE TIBETANS-IN-EXILE (1991). Retrieved from <https://tibet.net/wp-content/uploads/2011/06/Charter1.pdf>. Accessed on 01/02/2020.

Tibetans-in-Exile, such as Education and Culture and Health; The Executive from Article 19-35 discusses the power of executive, executive head, election of the executive head, tenure of the executive head, members of the executive, election of the members, tenure of the members, salaries, meetings, obligations and removal of the members. Further it also discuss about the Council of Regency which will look after the office on behalf of His Holiness and the CTA, the Chief Regent of the Council of Regency, Duties and Powers of the Council of Regency, Dissolution and Removal of the Council of Regents, Term of Office and Salary of the Council of Regency; The Legislature which include Article 36-61 discuss the Legislative Power, Composition of the Tibetan Assembly, Qualifications for Membership, Duration, Sessions, Special Sessions of the Tibetan Assembly, Standing Committee, The Speaker and Deputy Speaker of the Tibetan Assembly, Voting in the Tibetan Assembly, Salaries and Allowances of Members, Introduction and Passing of Bills, Annual Budget of the Tibetan Administration, Dissolution and Removal of a Member; The Judiciary include Article 62-70 which discuss that the Tibetan Supreme Justice Commission shall be vested with judicial powers, it also discuss the Chief Tibetan Justice Commissioner, A Committee of Jurors consist of three citizens to assist the Chief Tibetan Justice Commissioner, the judicial proceedings, Salary, Jurisdiction and Tibetan Local Justice Commission; The Administration of Tibetan Settlements from Article 71-80 which deals with the Tibetan Administrator and Assistant Tibetan Administrator of the Tibetan Settlements, Election, Appointment of the Tibetan Administrators, Removal of Appointed Tibetan Administrators, Tenure of the Tibetan Administrators, Duties of the Tibetan Local Administrators and Assistant Local Administrators, the Tibetan Local Assembly of Tibetan Settlements, Members and Duration, the Speaker and Deputy Speaker of the Tibetan Local Assembly; The Tibetan Election Commission include Article 96-99 discuss the Tibetan Central Election Commission, The Chief Tibetan Election Commissioner and Functions of the Commission, Salary of the Chief Commissioner, Tenure of the Chief Commissioner; The Public Service Commission under Article 100-105 discuss the Composition of the Public Service Commission, Duties and Powers, Rules of Procedure and functions, Salary and Term of Office of the Public Service Commission; The Tibetan Audit Commission include Article 106-110 regarding the Tibetan Audit Commission its Composition, Duties and Powers and also the Salary and Allowances, Tenure of the Auditor General; Amendment of the Charter and Transitional Provisions from Article 111-115 deals with the Amendment procedure

of the Charter, Referendum, Transitional Provisions, and Infrastructural Reorganization.

Out of all the Articles from the Charter of the Tibetans in Exile of 1991, Article 8-14 are the most important as it discuss the eligibility or conditions to be the citizen of Tibet or Tibetans in exile. Article 8 comes under chapter one of the Charter that is The Fundamental Principles and Article 9-14 comes under Chapter two of the charter that is the fundamental rights and duties. Article 8-14 are discussed in detailed below

**Article 8 - Citizen of Tibet**

(1) All the Tibetans who are born in Tibet and others countries shall be eligible to be citizen of Tibet. Any person whose mother or father is Tibetan decent has the right to be citizen of Tibet (Asfuroglu, 2012); or

(2) Any Tibetan refugee who has adopted citizenship of any other country under any persuasive circumstances may retain Tibetan citizenship after the fulfill of the provisions mentioned in Article 13 of the Charter; or

(3) If a person formally a citizen of other country and legally married to a Tibetan national for more than three years, then according to their wish they can become a citizen of Tibet, with regard to laws passed by the Tibetan Assembly.

(4) The Tibetan Assembly shall frame laws of citizenship in order to impose the above Articles.

**Article 9 - Equality before the Law** under this article all the Tibetan citizens will be equal before the law and will enjoy the rights and freedoms without any discrimination on the basis of place of birth, sex, race, religion, language, lay or ordained status, social origin, rich or poor.

**Article 10 - Religious Freedom:** This article states that all religious values are equal before the law. Every Tibetan shall have the freedom of thought, conscience and religion (UNHCR, 1995). These religious rights comprise the freedom to one's beliefs in one manifest, to receive initiation into religious traditions, and practice religious vow such as preaching or worship of any religion, either alone or in community with others.

**Article 11** - Right to Vote and Nomination of Candidates for the Assembly Subject to laws depriving the right to vote: Under this article all Tibetan citizens who are eighteen years shall be allowed to vote and all Tibetan citizens who are the age of 25 will be allowed to be a nominee.

**Article 12** – This Article relates to other Fundamental Rights and Freedoms Subject to any law imposing restrictions in the immediate and ultimate interest of the Tibetan people, the benefit of the public, and subject to legal restrictions imposed by the Tibetan Assembly during the tenure ship of a civil servant. All the Tibetans shall be entitled to the following rights and freedoms (Choedup, 2015): i. Freedom of life, liberty and property; ii. Freedom of speech and expression; iii. Freedom of movement; iv. The right to publish and distribute newspapers, periodicals, articles and other writings; v. Freedom to assemble peacefully without arms; vi. When charged and required to appear before a court of law; vii. The right to form and become a member of any religious, cultural, economic, or trade union and other associations; viii. Freedom of employment in CTA, or other institution under it according to qualification; ix. With according to the law of the respective countries, the right to practice any profession or carry out any trade or business occupation including acquisition of property; and x. The children rights under which it is stated that the children in the age of 14 years should not be employed in any labor.<sup>20</sup>

**Article 13** - Duties of Citizens: All Tibetan citizens should fulfill the following duties: i. Bear true allegiance to Tibet; ii. Faithfully obey and observe the Charter and the laws enshrined therein; iii. Attempt to achieve the common goal of Tibet; iv. Pay taxes imposed in accordance with the laws; and v. perform such duties as may be imposed by law in the event of a threat to the interest of Tibet or other public disaster. (Asfuroglu, 2012)

**Article 14** - Implementation of Fundamental Rights and Duties Subject to limitations imposed by law, indicated in Article 12 of this Charter, in the process of violation of rights all Tibetans have the right to approach to the Tibetan Supreme Justice

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<sup>20</sup> CHARTER OF THE TIBETANS-IN-EXILE (1991). Retrieved from <https://tibet.net/wp-content/uploads/2011/06/Charter1.pdf>. Accessed on 01/02/2020.

Commission and Tibetan Local Justice Commissions. The above Justice Commissions are eligible to issue orders which is essential to protect the rights as specified therein<sup>21</sup>.

The above Charter of the Tibetans in Exile of 1991 clearly discuss the important rights that a Tibetans enjoy in exile. Along with the international and national laws.

### **3.5 Conclusion**

There are various international regimes that seek to protect the refugees all over the world but it is not fully adopted by the countries like India. The above discussions clearly show that government of India's law and practices are not able to give full protections to refugees. The government of India's law and practices are failed to recognize different types of refugees and has been treating all as foreigners. Even though there is an absence of legal laws on refugees, government of India has been assisting protection to refugees.

India has dealt with the situation of huge refugee groups without a refugee law but with a large population of refugees and asylum seekers who may not be repatriated in the near future, need a uniform law that will allow the government to maintain the huge non-citizen population with more accountability apart from allowing them to enjoy the basic rights and privileges. The International legal regime have been accepted by the Indian Legal System to provide people with better laws on human rights which are reflected in many decision of Indian Courts.

Indian Judiciary also plays an important role in protecting the basic rights of refugees by interpreting Constitution of India with the principles of international law and Human rights. Further United Nations High Commissioner for Refugees, has played a significant role in the protection of refugees in India. The current watch dog of India's refugee policy, the National Human Rights Commission of India, has made numerous recommendations advising the formulation of such a law, in accordance with the articles of the convention.

The Tibetans in India has enjoyed preferential treatment from the Indian state. Tibetans are regarded generally as model refugees (Haimendorf, 1990) due to their

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<sup>21</sup> Constitution- Charter of Tibetans in Exile (1991). Retrieved from <https://tibet.net/about-cta/constitution/>. Accessed on 01/02/2020.

nonviolence nature or character and they attempts to create self-sufficient communities. They are at the advantage position as compared to the other group of refugees. They are protected by the Government of India and Tibetan Government in Exile.



## CHAPTER 4

### Legal Status and Rights of Tibetan Refugees in India

#### 4.1 Introduction

Legal status is a status defined by law. Rights in modern sense, it refers to an entitlement to act or be treated in a particular way (Heywood, 2004). Some rights are laid down in the law or in a system of formal rules and so are enforceable and others exist only as moral or philosophical claims. Thus to describe the legal position of any individual in a society the main focus will be their citizenship status, legal rights, etc.

Thus, to look into the legal status and rights of Tibetan refugees in India especially in Sikkim and Darjeeling the main focus is given to the education, occupation, citizenship etc. And for that purpose the area like Kunphenling settlement at Ravangla (Sikkim), some part of Gangtok (Sikkim), Self Help Centre (Darjeeling) and Tashiling Tibetan Settlement in Sonada (Darjeeling) was selected for the study.

Before moving on to the study area it is very important to know the historical background of the area especially Tibetan Refugees in Sikkim and Darjeeling.

When China invaded Tibet in 1959, the large number of Tibetans came to India and took shelter. Apart from India, countries like Nepal, Bhutan also received refugees from Tibet. To enter India, Tibetans used many routes like Lhasa-Phari-jalepla-Kalimpong route, Tachien-Lu-Lohit-Assam, LhasaTawang-Assam, and Tachien-Lu-Chamdo-Leh-Srinagar, via Nepal to India, and Tachien-Lu-Chamdo- Leh-Simla or Hindustan Tibet Road (Subba, 1990). It was difficult to say which route was most followed by the Tibetans but it is said by the scholars that the Lhasa-Phari-Jalepla-Kalimpong route was followed by most of the Tibetans to enter India. As a result of which Darjeeling and Sikkim Himalaya had a good number of Tibetan refugees who took asylum.

Sikkim shares its border with Nepal in the west and Bhutan in the east, with the Tibetan plateau rising from its northern border. It was once a princely state ruled by monarch and part of the Silk Route to China. There were close relationship between Tibet king and the Sikkim king from ancient times. It has also seen that Tibet was

traditionally an ally of the Chogyals, and shared a close bond by way of marriages and other relationships. Another notable reason for the establishment of settlement in the region is that though it was different in many cases but the climate was little similar because of hill area.

On 16th may 1975, Sikkim became the 22nd state of India. Sikkim has been divided into four districts that is East West North and South.<sup>(22)</sup> Sikkim was not a part of India during 1959 (when there was invasion of china on Tibet), it was one of the princely state. It has been seen that some of the Tibetan refugees entered Sikkim during 1969, which was also a period of king rule and the king also accepted them due to the historical background and relationship between Sikkim and India (as it has been said that the kingship in Sikkim was established by three monks from Tibet) and one of the reason was that the king was also a Buddhist so he established a Tibetan monastery known as Nor Gumpa and provided few lands to Tibetan which at present is known as Tibetan colony. And right after the merger of Sikkim with India on 1975 in 1978, the government of India established one of the Tibetan settlements in Sikkim which is known as Kunphenling settlement at Ravangla, South Sikkim. The Ministry of Home and Rehabilitation of the government of India provided the necessary assistance to rehabilitate 1000 Tibetan refugees in Sikkim (Desai and Raha, 2011). Afterward many Tibetan started settling in and around the Gangtok region also. So, in 1975 Tibetan Welfare Office was established to look after the welfare of Tibetans particularly those who are residing in an around the region.

During the entry of Tibetan refugees in India, Darjeeling was one of the area from the Indian state which was selected for the Tibetan refugee settlement area. Darjeeling which is a hillside had a special significant for the Tibetan refugees as it was the place where the thirteenth Dalai Lama spent his exile in India from 1910 to 1912 following the Chinese aggression on Tibet at that time. The Tibetan refugees were able to get a land which was around four acres on lease. On that land they established the Tibetan Refugee Self Help Centre which was started on October 2, 1959 in the Darjeeling district of West Bengal. The ten member committee was formed in to organize that rehabilitation center. The members were also responsible for the

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<sup>(22)</sup> A brief history of Sikkim, 6 June 2011.  
<http://www.facebook.com/notes/sikkim/a-brief-history-of-sikkim>.

development and management of the center. They started raising funds through donations, charity shows and exhibition etc. They also received fund from different organisations like the Central Relief Committee India, Catholic Relief Services, National Christian Council, the Red Cross, as well as individuals etc in the form of food grains, clothes etc (TRSHC, 2007). Production of handcrafted items is the main activity of the center and it's earning sources. Hand crafted items like woolen shawls & carpets, carved wooden crafts, leather jackets, coats and lots of other items. They have a training center that imparts skills to the new workers. They used to export the items to many countries. They also have one monastery and one school which was established on June 1960.<sup>23</sup> The Tibetan settlement in Sonada is known as Tashiling Tibetan Settlement, it is also located in Darjeeling. On a total area of 21.537 acres of land it was established in 1965.

#### **4.2 Brief Profile of the Survey Area**

To look into the legal status and rights of Tibetan refugees in India, Sikkim and Darjeeling Tibetan settlements are selected because of its location and geographical factors as both are the hill area which is somewhat similar to that of the Tibet and both are located near the China occupied area of Tibet. The survey had conducted in Kunphenling settlement at Ravangla (South Sikkim), few parts of Gangtok (East Sikkim), Self Help Centre and Sonada Tashiling Tibetan Settlement of Darjeeling. All these settlement was also selected as it was similar to Tibet in respect of eco-logical set up.

#### **Sikkim**

Kunphenling settlement is located 66km away from Gangtok. When it was established the total number of population was 814 and at present the total number of population is 1089 (CTRC, 2015). More than half of the Tibetan populations of Sikkim are settled at Ravangla. There are other sites which are chosen for the resettlement colony such as Temi Kewzang tea estate, Nor Gumpa and Rognas settlement. The Tibetan Colony at Rongay was given by Chogyal or king of Sikkim to the Tibetan

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<sup>23</sup> Tibetan Refugee Self Help Center Darjeeling (2007). Retrieved from <http://trshc.blogspot.com/>. Accessed on 12/09/2019.

refugees as a part of monastery land. Apart from this there are Tibetans who are living scattered in different part of Sikkim (Desai and Raha, 2011).

Kunphenling settlement is divided into seven villages which they referred as seven camps with average of 30-40 families in each village. And each camp is headed by one leader whom they called as “Gyakpay”. The Settlement Officer “Kongela” is charged with overall control of running affairs and the welfare of the settlement people. Under him there are Office Secretary “Thongeyla” and other workers.

In Gangtok there are Tibetan Refugees who are scattered in different parts of the Gangtok. The Tibetan Welfare Office in Gangtok take care of Tibetans residing around the different regions of Gangtok. Similarly there are one settlement officer whom the people call as “Kongela” is charged with overall control of running affairs and the welfare of the Tibetans in Gangtok. Under him there are Office Secretary “Thongeyla” and other workers.

### **Darjeeling**

The Tibetan Refugee Self Help Center and is located in Gandhi road, at present the total number of population is around 650. Similar to that of the Gangtok Settlement it also have a Tibetan settlement office and one settlement officer who is charged with overall control of running affairs and the welfare of the Tibetans in Darjeeling. Under him there are Office Secretary and other workers.

Tashiling Tibetan Settlement in Darjeeling is located in Sonada 17 km from Darjeeling town. It have also one Tibetan Settlement Office which is under CTA and a cooperative society which is under the Government of India. The present population of the settlement is approximately 540.

### **4.3 Data Analysis**

In Kunphenling settlement there are seven camps and each camp consists of 30-40 households. From that seven camps five camps were selected for the study purpose and collected information from seven households of each camp. The total sample size is 100 respondents and out of which, 50 respondents are from Sikkim and among that 50, 45 are common Tibetan refugees and 5 are Tibetan officials respondents.

From the total sample size that is 100, 50 respondents are from Darjeeling. Out of 50 respondents 30 are from Tibetan Refugee Self Help Center and 20 are from Tashiling Tibetan Settlement Sonada. Within those 50 respondents from Darjeeling, 45 are common Tibetan refugee and 5 are Tibetan Officials respondent.

**Table 4.3.1: Total Number of the Respondents**

| Respondent              | Sikkim | Darjeeling |
|-------------------------|--------|------------|
| Common Tibetan refugees | 45     | 45         |
| Tibetan Officials       | 5      | 5          |
| Total                   | 50     | 50         |

Source: Field Survey

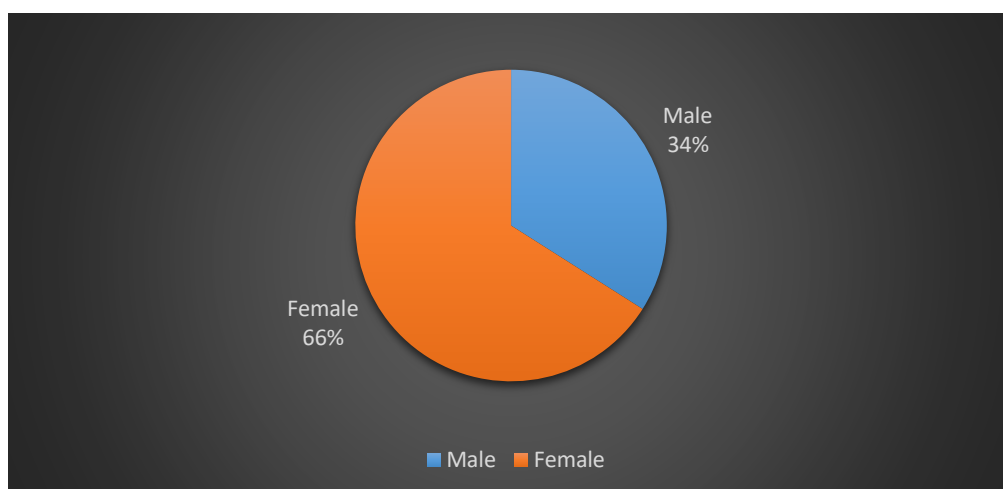
The necessary information on the legal status and rights of Tibetan refugee in particular area are presented on the following tables and figures.

**Table 4.3.2: Gender Profile of the Respondents**

| Sex    | Number of Respondents | Percentage (%) |
|--------|-----------------------|----------------|
| Male   | 34                    | 34             |
| Female | 66                    | 66             |
| Total  | 100                   | 100            |

Source: Field Survey

**Figure 4.3.2: Gender Profile of the Respondents**



Source: Field Survey

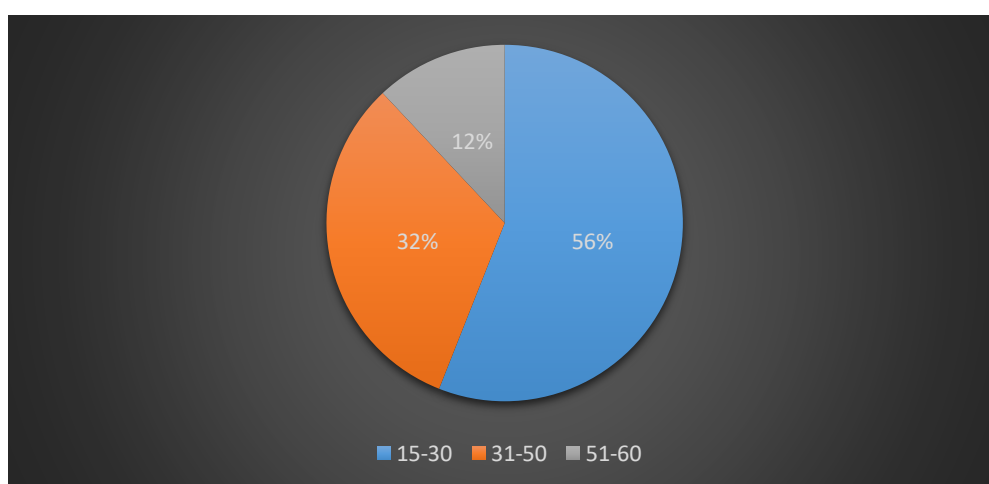
Table 4.3.2 and figure 4.3.2 shows the gender profile of Tibetan refugees in which the number of female respondents is 66% out of that 34% of female respondent are from Sikkim and 32% are from Darjeeling which are more than the male respondents of 34% in which 16% are from Sikkim and 18% are from Darjeeling. This point out that, in both area the female respondent is higher than that of the male respondent and it also represent that the Tibetans society is dominated by female member rather than male and it is basically due to the work, which the male member do that keep them away from their home.

**Table 4.3.3: Age Group of the Respondents**

| Age Group | Number of Respondents | Percentage (%) |
|-----------|-----------------------|----------------|
| 15-30     | 56                    | 56             |
| 31-50     | 32                    | 32             |
| 51-60     | 12                    | 12             |
| Total     | 100                   | 100            |

Source: Field Survey

**Figure 4.3.3: Age Group of the Respondents**



Source: Field Survey

Table 4.3.3 and figure 4.3.3 displays that the people within the age group of 25-30 years old are higher in number than that of the other age group. As it shows among the 56% respondents both from Sikkim and om Darjeeling falls within the age group of 15-30

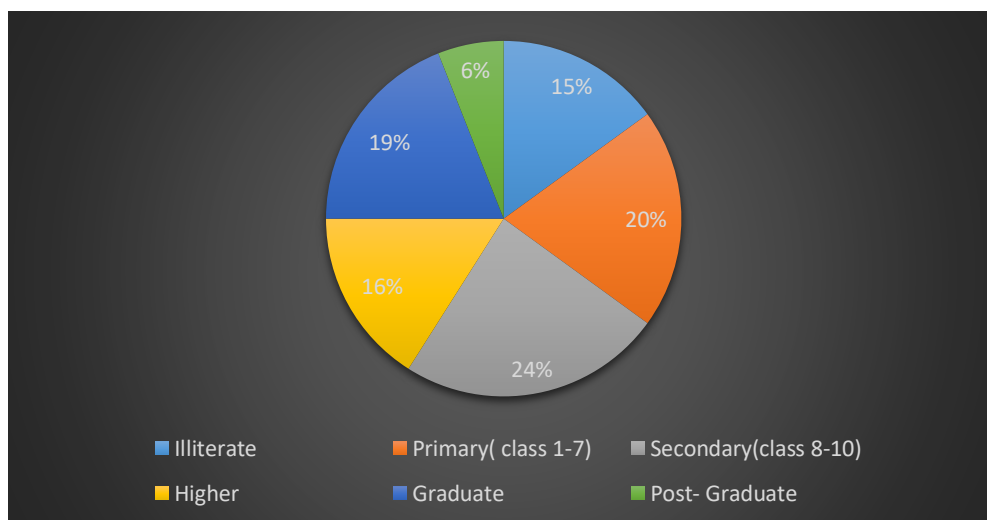
years old, 32% respondent between the age of 31-50 years old and 12% of respondents between the age of 51-60 years old. It indicates that majority parts of the samples are in 15-30 years age group in both the area, they are found more suitable and convenient for the study.

**Table 4.3.4: Educational Qualification of the Respondents**

| Educational Qualification | Number of Respondents | Percentage (%) |
|---------------------------|-----------------------|----------------|
| Illiterate                | 15                    | 15             |
| Primary( class 1-7)       | 20                    | 20             |
| Secondary(class 8-10)     | 24                    | 24             |
| Higher                    | 16                    | 16             |
| Graduate                  | 19                    | 19             |
| Post- Graduate            | 6                     | 6              |
| Total                     | 100                   | 100            |

Source: Field Survey

**Figure 4.3.4: Educational Qualification of the Respondents**



Source: Field Survey

The secondary level educational qualification is higher among the Tibetan refugees, which is 24% from the total number of respondents among which 6% are from Sikkim and 18% are from Darjeeling followed by the primary level education qualification of respondents that is 20%. Amongst the respondents who have graduate level education

12% are from Sikkim and 7% are from Darjeeling taking the figure to 19%, while 16% have higher level education of which 10 % are from Sikkim and 6% are from Darjeeling. Whereas if we look at the illiteracy rate its 15% out of which 10% are from Sikkim and 5% are from Darjeeling and post-graduate are only 6% including 2% are from Sikkim and 4% are from Darjeeling as shown in the above Table 4.3.4 and figure 4.3.4. It is clear that the younger and present generation of Tibetan refugees are attending schools and pursuing higher education.

The illiteracy rate and primary level education qualification is also a bit higher among the Tibetan refugees particularly in Sikkim than the Darjeeling. It is higher among Tibetan refugees because, earlier those Tibetan who came to India in 1959 and onwards they were not exposed to the outside world before, as in their country they were dominated by the religious beliefs and there was no schools which preaches the western language in Tibet. It has been already seen that one of the major problems of Tibetan refugees in India was language and when they came to Sikkim and Darjeeling they were not able to go to schools as they never went to any schools in their homeland (Tibet), similarly after their residence in Sikkim and also Darjeeling only few people went to school but they also did not fulfill their school course rather they left the course in between as it was difficult for them to understand and study the languages due to unfamiliarity. It was also due to their poor economic condition many of the Tibetan children were not able to continue their education which is reflected from the large number of illiteracy and dropouts. Only few had completed their school courses. This can also be seen as some numbers of respondents are from age group of 31-50 and 51-60, as shown in table 4.3.3 and figure 4.3.3. However, of lately the younger and present generations of Tibetan refugees are attending different schools and colleges, they are acquiring higher education in different fields though it is not possible for all of them to go the Tibetan school and colleges they are applying and attending various other schools and colleges under central government. But still, only small amount of post graduates are there.

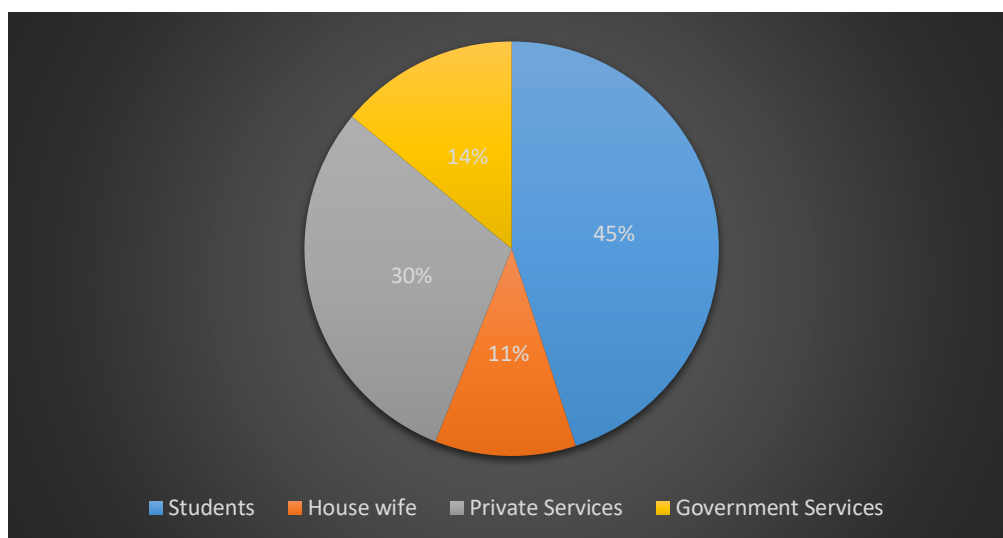


**Table 4.3.5: Occupation of the Respondents**

| Occupation          | Number of Respondents | Percentage (%) |
|---------------------|-----------------------|----------------|
| Students            | 45                    | 45             |
| House wife          | 11                    | 11             |
| Private Services    | 30                    | 30             |
| Government Services | 14                    | 14             |
| Total               | 100                   | 100            |

Source: Field Survey

**Figure 4.3.5: Occupation of the Respondents**



Source: Field Survey

Table 4.3.5 and figure 4.3.5 indicates that the maximum number of respondents that is 45% out of which 21% are from Sikkim and 24% are from Darjeeling, are the students who are attending schools and colleges, 30% among which 15% from Sikkim and 15% from Darjeeling are engaged in private jobs like seasonal business, shops, religious personal etc. 14% of which 8% from Sikkim and 6% from Darjeeling are engaged in government services like the office secretary, accountant, teachers under CTA, Tibetan army, etc. and of the remaining 11% are the house wives. The figure is not convincing as the governmental jobs are not easily accessible to them hence they cannot take advantage. Earlier they were indulged in construction sites, road making and work on

others agricultural fields but now the younger generation of Tibetan refugees do not want to indulge themselves in those jobs.

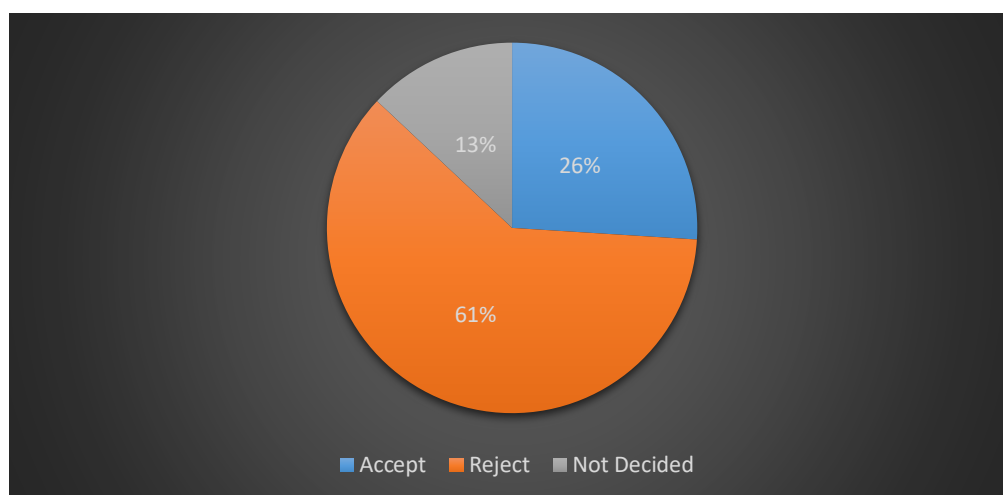
#### 4.4 Tibetan refugees view on the Indian Citizenship

**Table 4.4.1: Tibetan Refugees respond towards Indian Citizenship**

| Indian Citizenship | Number of Respondents | Percentage (%) |
|--------------------|-----------------------|----------------|
| Accept             | 26                    | 26             |
| Reject             | 61                    | 61             |
| Not Decided        | 13                    | 13             |
| Total              | 100                   | 100            |

Source: Field Survey

**Figure 4.4.1: Tibetan Refugees respond towards Indian Citizenship**



Source: Field Survey

Table 4.4.1 along with figure 4.4.1 points out that out of 100% of respondent, 61% of respondents are not willing to take Indian citizenship which includes 33% from Sikkim and 28% from Darjeeling whereas 26% of respondent of which 12% are from Sikkim and 14% are from Darjeeling are willing to take the Indian citizenship. Apart from them 13% are still in a dilemma and are in a fix. It also brings to the fore that majority of the Tibetan refugees respondents from both the area still do not want to apply for the Indian Citizenship though they are all eligible for it because some of them are of the view that they will lose their identity if they accept Indian citizenship, others think, if they take Indian Citizenship then it will be hard for them to protest against China and if in future

Tibet become free then there will be no population for Tibet. On the other hand those respondents who wanted to apply for Indian Citizenship they are doing so for better opportunities, job facilities, to travel abroad for higher studies, to enjoy equal rights that others citizens are enjoying. And the remaining are in a dilemma that if they take Indian citizenship then they will have to withdraw themselves from Tibetan refugees identity and if they do not take Indian citizenship then they will not be able to enjoy the rights similar to the others citizens.

#### **4.5 Facilities Available in the Tibetan Settlement in Sikkim and Darjeeling**

The Tibetan refugees in Sikkim and Darjeeling are taken care by the Government of India, Government of Sikkim and Central Tibetan Administration or Tibetan Government in Exile. As the study had conducted in Kunphenling settlement, Gangtok, Self Help Center, Tashiling Tibetan settlement the Tibetans who are living here do not belong to a well to do family. In both Sikkim and Darjeeling there are Tibetan Settlement Offices, under CTA to look after the Tibetan refugees. Both the areas have basic facilities provided by the government.

In Kunphenling settlement each family had provided a small piece of land for their living and agriculture. There are one Tibetan school that is “Sambhota Tibetan Middle School” up to VIII standard which is under the Department of Education CTA, Dharamsala, India. The school is for the Tibetan children. Along with it there is one hospital which is known as “Men-Tse-Khang” branch of modern allopathic dispensary and Tibetan traditional medical center under the Department of health, CTA and one Tibetan primary health center under Government of India. Though one can notice a number of monasteries all over the area but within the settlement area there is only one monastery for the Tibetan refugees which is known as “Thupten Dhargyaling Monastery”. And within the settlement area there is a multipurpose cooperative society which was established in 1986 under the Indian Cooperative Society Act 1970. The cooperative society provides necessary services like fair price shops, carpet centers, workshops and restaurants and it is also for the sustainable socio- economic upliftment of the Tibetan people and to look after the welfare of the whole settlement.

The Tibetan refugees in Gangtok are scattered in different areas among them few areas are selected for this study that area consist of Rongay, Chandmari, and

Tadong. Those Tibetan refugees who are settled at Rongay they were provided with a small piece of land, whereas those refugees who are settled in Chandmari and Gangtok were denied such benefits hence they lived in rented houses or else they often tend to build up houses in the lands owned by their spouses who are not Tibetans<sup>24</sup>. There is no particular Tibetan school in Gangtok but they went to different private as well as government school for their studies. Likewise there are different monasteries and hospitals where they can go. But what is striking is the fact that the Tibetan refugees are provided with RC and they also have Aadhaar card even though the latter only serves as an ID proof.

On the other hand, the basic necessities that are provided to the Tibetan refugees by CTA in Kunphenling settlement is similar in Darjeeling settlement also. They are provided with housing areas but there is slightly different as they are just provided with a small land for housing purpose only not bigger land like that of kunphenling settlement. Other facilities include hospital, school which is up to class X standard, library, co-operative society but the cooperative society is under the Indian government not the CTA which earlier was run by both.

#### **4.6 Initiative taken by the Government of India**

Right from the beginning the Government of India had taken various initiatives for the Tibetan refugees some of them are the rehabilitation areas along with the basic necessities, registration document, identity documents to travel abroad etc. Of late one of the major initiatives is that those Tibetan Refugees who came to India during January 26, 1950 to July 1, 1987 are allowed to take Indian Citizenship under the law. This particular initiative was taken by the Government of India when there was the case<sup>25</sup> demanding the Citizenship right by the Tibetan refugees in Supreme Court of India.

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<sup>24</sup> According to the Charter of the Tibetans (1991) Article 8 (1) states that all the Tibetans whose mother or father is Tibetan decent has the right to be citizen of Tibet. Under this article it is clear that those Tibetans who are married to the local people their children can also be Tibetans.

<sup>25</sup> Phuntsok Wangyal vs. Ministry of External Affairs, Lobsang Wngyal vs. Union of India, Tenzing Dhonden vs. Union of India and Namgyal Dolkar vs. Ministry of External Affairs.

#### **4.7 Initiative taken by the CTA**

Some of the initiatives undertaken by the CTA recently for the Tibetan refugees are as follows

- Loans are provided for seasonal business
- Projects for various home facilities
- Development of the community hall for the people of settlement
- Scholarship are provided for education
- Tibetan rehabilitation policy 2014.

Tibetan Rehabilitation Policy of 2014 provides additional rights and benefits to Tibetan Refugees. This policy has provided refugees with welfare benefits as par the Indian citizens, subsidies for selected college courses, more job options and easy process in getting documents. However there is no mention about the property ownership, getting government jobs, or travelling freely within and outside India.

However, during the study it was found that despite all the various facilities made available for the Tibetan refugees most of them are only aware of the Tibetan rehabilitation policy of 2014.

#### **4.8 Problems and Challenges faced by Tibetan Refugees in Sikkim and Darjeeling**

Most of the Tibetan refugees are not economically sound and hence faces several problems. Some of them are as follows:

- One of the major problem they are facing is related to jobs or finding a job. They cannot apply for jobs under state and central government and as per the rule they cannot apply for the trade license and other license related to business, vehicles license. So most of them are engaged in agriculture and seasonal business. Therefore, the Tibetans here have no hotel or restaurant business like other settlement area in India. Thus, they are mostly engaged in Tibetan army service under the government of India and seasonal business. Tibetan communities who are spread all over Sikkim, were forced to involve in new jobs and profession for their survival. Many of those who live outside the settlements do so because of better livelihood and employment opportunities. Private trading and services are by far the most important occupations of the scattered

communities. Though Tibetan Administration has been trying to offer jobs for the qualified and educated youth but many of them are still unemployed.

- They are facing problem due to lack of adequate and equal opportunities for higher education. There are only one Tibetan school in the settlement. The new generation of Tibetan refugees are not able to attain in that Tibetan school only few Tibetan children from the settlement have that opportunity other Tibetan children are not so fortunate to go to that school. That Tibetan school is also only up to VIII Standard in Sikkim and X standard in Darjeeling. After completing the school they have to go to other local school and colleges for their higher studies in which they used to teach in Nepali and English language which somehow leading danger to the Tibetan language as it has been seen that due to the influences of host society languages in school as well as in colleges the younger generation of Tibetan refugees are forgetting their own language and they prefer to speak in Nepali and English as well as Hindi rather than their own Tibetan language. Similarly in the case of Gangtok there is no such Tibetan school which teaches in local language that influence the language of Tibetan. The Tibetan children use to go to the other schools (Private or Government) from the childhood due to which they are not able to speak and understand their own Tibetan language and slowly they started forgetting their own language and mother tongue.
- In Gangtok there are many refugees living in scattered Tibetan communities. Among them some are living in rents as they are economically not sound and they are not in the position to build up their own house.
- The handicraft center which was there in Kunphenling settlement earlier had been closed now. Somehow it also affects the Tibetan refugees economically as through that handicraft center the Tibetan were employed and there was increase in their household income.
- The agricultural land which was provided by the Government for resettlement of Tibetan refugees are very small in size and the agricultural product which they grow was not sufficient enough for themselves.
- There is only few shops which are covered under the Cooperative Society which is not enough to give employment to all the other unemployed Tibetans.
- Not able to get permanent job in Central Tibetan School Administration

- No matter how successful Tibetan Refugees are, until and unless there is no specific laws for refugees in India the identity of Tibetan refugees will always remain as foreigners. Even if they are granted with the citizenship right still it has impact on their identity.

The Tibetan refugees were provided with separate settlement in a view that they maintain boundaries from the host population but however they were not completely separated with the host society they had some influences of the host society as well as to the host society. Many changes can be seen as in traditional Tibet it was customary for almost every family to send at least one member to the monastic order. In exile this is definitely declining. Earlier the occupation of Tibetans in Tibet were agriculture, religious personal, herders, traders but it has been changed to business and various other jobs. They are opting for higher education. They are getting the rights that they wanted for a long time in regard to the Indian citizenship.

#### **4.9 Major Findings**

Overall there are changes in the Legal Status and Rights of Tibetan Refugees in Sikkim and Darjeeling. The traditional Tibetan society was completely based and controlled by religion. But however, in Sikkim and Darjeeling after 60 years Tibetan refugees have changed a lot. As compared to the traditional and older generation of Tibetan refugees, the younger generations of Tibetan refugees are much more advance in every fields. Tibetan refugees in India are enjoying civil rights under the Indian government and various others rights under the CTA such basic rights like housing, healthcare, educational rights etc. They also get voting rights under the CTA in which most of them also voted in the election. All Tibetan refugees have or carries Aadhaar cards, they are allowed to make Aadhaar card however they argue that the Aadhaar card is made just to show that the persons live in India and it do not reflect anything else.

The Education qualification of the students is also increasing, the students who belong to the Tibetans family go the secondary and senior secondary schools that are affiliated to CBSE board, New Delhi. More than 60 schools (Department of Education, 2009) <sup>(26)</sup> are there of that kind in India. Apart from the secondary and senior secondary

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<sup>(26)</sup> Department of Education, Central Tibetan Administration, Education in Exile: Building our future through education, 2009.

schools many Tibetan children from the Tibetan refugee family are doing or completed their studies in many colleges and universities all over India and in abroad. They give first preference to get education. The younger generation literacy rate is much higher as compared to the earlier generation of Tibetan Refugees.

There are large numbers of students who are opting for higher education for getting suitable jobs for their future. The Government jobs which are available for the refugees are Tibetan army services which come under the Government of India Service, Teachers, Settlement Office employee etc. Apart from that there are several private jobs available but there is no guarantee of permanent job and job security there. The students are of view that they will opt for Government jobs like district magistrate, army, doctor, writer, nursing, bankers etc than that of the private jobs thought there are students who also want to take private jobs as well but all of them do not want to continue their family business like that of the seasonal business. However, the CTA are not able to provide jobs for all the Tibetan refugees. So some of them are opting or applying for the Indian citizenship. Not only for the Job purpose, one of the reason why Tibetan refugees are applying for Indian citizenship is because of the Indian passport which will help them to travel abroad easily for the job opportunities and for higher studies. As some of the Tibetan refugees travelled outside India like Nepal and Bhutan mainly to visit their relatives, pilgrimage and official work some of them faced the difficulties with their Tibetan documents. They can apply for the identity certificate (Travel Document) only when they reached 18 years old. It is up to the individual whether they want to make identity certificate or not if they wish to travel outside India they can make it and if they do not want to travel outside India then they do need to make it.

According to the Tibetan refugees Indian citizenship is a good opportunity but they do not prefer to take it as it will change the individual identity. Some Tibetan Refugees believed that by taking Indian citizenship it will weaken the movement for free Tibet because the Tibetan refugees will not remain Tibetans thereon as it will prove that they are Indians and Tibet will not be free, they will have to withdraw themselves from the Tibetan Refugees identity, the Tibetan refugees may not take any initiative to return back to Tibet, Later when Tibet become free there will be no Tibetan



population.<sup>27</sup> The majority of the respondents feels that nowadays Tibetan refugees are forgetting and failing to protect their own mother language so how will they be able to keep their interest in Tibet if they get all the benefit as a citizen of a country gets etc. The others are of a view that, by taking Indian citizenship it will not weaken the movement for free Tibet because those who have taken the Indian citizenship they are also active for the cause of Tibet, the care for their culture and language and will remain the same even if they take Indian citizenship from their heart they will always remain Tibetans. The major impact of the Indian citizenship is that their identity in which they are proud of will change and so their status too if they take Indian citizenship but for some refugees they think that though their identity will change but it will not hamper their faith and one can remain Tibetan by heart always.

Almost all the Tibetan refugees, they do fear about their identity as they are well aware that India do not have any refugees' policy so if in future the Government of India change its policy towards Tibetan refugees then they will be left with nothing. Some of them will change their refugee status and become Indian citizens in future only for the sake of their children and their future.

According to an official it is exceptional that in Sikkim and Darjeeling they are allowed to make voter card because in this regions they are not allowed to make bank account, driving license with the refugee certificate and without proper document of this regions where as in other states like Karnataka, Orrisa etc settlements they can make driving license, bank account through their Refugee certificate. However, the other officials are of view that they do not allow Tibetan refugees to make voter card in the region as it is against the rule of India as well as CTA.

With the view of all the respondent CTA do not interfere in the matter of taking Indian citizenship by the Tibetan Refugees. CTA has made it clear that the decision is depend on the individual Tibetan refugees whether they are willing to apply for Indian citizenship or not.

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<sup>27</sup> A country need some amount of population, if in future when Tibet become free and the world government ask for the population of Tibetans then there will not be much population of Tibetans, as the family planning of Tibetan is very weak mainly because lots of the Tibetan refugees become nuns in the monasteries which affect the family planning and if they take Indian citizenship they will no longer remain Tibetan they will become Indian they will not be counted as Tibetan as India do not have dual citizenship like that of the USA. Survey conducted in Darjeeling on 23/09/2019.

The government of India is allowing those Tibetans who fulfill the criteria to become the Indian citizenship and most of the Tibetan refugees' grandparents or parents came in India from Tibet during January 26, 1950 to July 1, 1987 which make them eligible to take Indian citizenship but it is seen that the large number of Tibetan in Sikkim and Darjeeling still do not want to take it because they still hope for the free Tibet even after 60 years of asylum.

## CHAPTER 5

### Conclusion

Refugee has emerged as one of the main problems in the international arena after the decolonization. As it can be seen all over the world like that of the colonial states in the past whether it is created because of failure in nation building, statelessness, external intervention or inter-ethnic conflict etc. Until and unless the interest of the nation grows there will be fight for power and one country will be subordinated by another country which creates disturbance in the society and the creation of refugees. The UN had defined refugees and provided them rights under it. Some of the South Asian countries did not sign the UN Convention on refugee of 1951 and its 1967 Protocol and Indian being one of them. Those countries who have signed the UN Convention on refugees have a procedure for identifying the refugees and provide protection to the refugees. India is providing protection to refugees on the basis of historical relation and on humanitarian basis but India is still lacking in the procedure for determining refugees. In India, there is no such laws and central body to deal with refugees nor have a proper mechanisms to deal with refugee's policy in India. The government of India has not enacted any legal laws and mechanisms for refugees due to this reason there is no proper legal status of refugees in India (Rastogi, 2016).

India is a host to numerous refugees like Bangladeshi refugees, Afghan refugees, Srilankan refugees, etc these refugees were created due to various reasons, one of the important reasons is that of political instability and one such example is the Tibetan refugees from Tibet.

It was from the year 1959 when there was an invasion from China on their home land Tibet which marked the beginning of Tibetan refugee settlement in India. Right after that the Government of India provided the asylum along with the settlement and the basic necessities to the Tibetan refugees and their leader the Dalai Lama.

The preservation of the Tibetan civilization, religion and cultural heritage is what the Dalai Lama and the refugee group articulate as the main purpose for their movement from the Tibet. Maximum efforts has been made for religious reconstruction by the Indian Government and the Dalai Lama's administration along with various relief agencies which helped in rehabilitation of a large number of Tibetan refugees

population and the reconstruction of their economic, social and political life in the host country. The rehabilitation of the refugees in the various settlements in India has played a critical role in preserving the Tibetan way of life so that it can be reestablished when Tibet becomes independent once again.

The Government of India accepted the Tibetans as refugees in accordance with international law and principle of natural justice in 1959. At present, there are Tibetan settlements in Ten Indian States and the largest population is in the state of Karnataka where they are divided into five settlements. The government of India provided several Tibetan settlements to Tibetan refugees in various part of India. The government also established separate schools for the Tibetan children and also allowed the functioning of CTA in India because of which Tibetan refugees are able to maintain their social, economic, cultural and religious institutions in exile. On the basis of their achievements, Tibetan refugees are considered as the ‘most successful’ refugee community in the world (Norbu, 2003; Pahwa, 2018). For them India is considered as their second home.

Three generation of Tibetan refugees can be seen in India. The first generations of Tibetan refugees are those people who came directly from Tibet in the 1950s or 1960s (Choedon, 2018). The second generations of Tibetan refugees are between the age group of 20 to 50 years old and they are mostly born and educated in India. The third generation are the Tibetan refugees below 19 years old (Choedon, 2018; Pahwa, 2018).

There are many facilities provided to the Tibetan refugee in Sikkim and Darjeeling they are also getting sponsorship for education from France, Tibetan Community from Dharamsala and other countries as well. The CTA also provide various scholarships to the Tibetan refugees in Sikkim.

Though there are facilities provided by the CTA with collaboration to the central government and came up with different policies like Tibetan rehabilitation policy 2014 but it is not enough for all the Tibetans and it is not able to fulfill the needs of all the Tibetans in the region.

As it also can be seen that the land are provided to the Tibetan refugees in the regions of Sikkim and Darjeeling but it is not extended for the growing or new generations of Tibetan refugees, which created several problems for them to live and it

also effect on their day to day life. They are also not able to buy land of their own as they do not have “Sikkim Subject” that is COI (Certificate Of Identification), it is some kind of proof that the individual are of Sikkim origin and he/she will have the right to buy a land in Sikkim. And only those persons, who possess it have the right to buy a land in Sikkim. Some Tibetan refugees enlisted themselves as ‘Bhutia’ long back, because Bhutia community is under Scheduled Caste community and get some special facilities in case of government services, educational benefit, and some other benefit from the government (Roy, 2011). It has been stated that all those people who were residing in Sikkim till 1975 have the COI whether they are Sikkimese or not. If that is the case then the Tibetan who are residing in the Tibetan colony will also have COI. But when they were asked about the Sikkimese or Indian document they rejected to have any of them. Further they said that they possess only the green book which is a Tibetan identity document. They were not in the position to accept that they have the COI as they fear that if the Government came to know about it then their all documents will be cancelled. Because in India only one citizenship is allowed not dual citizenship and because of this reason Tibetan were not able to express their views clearly. Apart from that some women’s were also got married with the local man and got settled with them and they also possess both RC as well as COI.

The earlier education system was circulated through the monasteries and Lamas but presently it has been found that a large number of Tibetan children are attending the schools and pursuing higher studies too. The Tibetan refugees is facing employment problems in Sikkim as well as Darjeeling. According to the Second Tibetan Demographic Survey of 2009, there is growth in the numbers of Tibetan youth who have completed their higher studies but the CTA are not able to employ them all. The educated Tibetan youth are not will to do the same occupation of sweater-selling in the Tibetan markets or running seasonal business like their older generation because of which they are facing different challenges of finding jobs according to their qualification and ability (Choedon, 2018).

Some of them also wanted to do their higher education from the foreign countries. Due to this challenges and problems they used to travel abroad but it is very difficult to travel abroad with the travel document made for the refugees in India as the officials were not able to recognize it and being a Refugee it is impossible to get any

Government jobs. So the Tibetans started applying for Indian citizenship. There was both advantage and disadvantage of applying for Indian citizenship. Though the Tibetan refugees living in Sikkim and Darjeeling was capable of getting Indian citizenship but lots of them did not want to apply for it they want to continue their life as Tibetans for the sake of their homeland Tibet.

There is difference in the facilities which are provided to the Tibetan Refugees in the main settlement area and scattered community because the main priority is given to the settlement area than that of the scattered Tibetan community. Though they are facing many problems and difficulties but still they are happy. For the freedom of Tibet they refugee have been showing their unhappiness against china from India as well as from abroad in different forms like rally, gathering, mass gathering, etc.

For Tibetans their identity is the one and only thing that is left with them. Indian citizenship had such an impact on their identity as if they accept it they will lose their identity as Tibetan and if they reject it then they will not enjoy the same rights like that of Indian citizens. This has also put some Tibetans into a dilemma to make any choice regarding the Indian Citizenship.

The Tibet issues has not yet been fully resolved even after 60 years of Chinese rule, though all the countries of the world have recognized China's sovereignty over Tibet. Tibetan refugees are well adapted over here at Sikkim and Darjeeling region from all sides compare to the Tibet. They are somehow happy in their settlement areas, but when they were asked that whether they will go back to Tibet, when Tibet become free once again? Maximum of them replied that they will return back to their homeland Tibet if Tibet becomes free again. Only those who got married with the local people and got settled with them will not return back to Tibet but we cannot deny the fact that the Tibetan refugees are still hoping for a free Tibet.

### **Suggestions:**

The Tibetan refugees were unfortunately removed from their country because of political intervention. They have got rehabilitation in several settlements. In Sikkim and Darjeeling the rehabilitation of Tibetan refugees is somewhat successful with the help of the Government of India, some International Voluntary Organizations and several individuals. However, the living conditions of these refugees are still not so

good and they are also facing several problems like unemployment, extinction of their language, etc. which can be solved with the help of the Government of India the state Government and the Tibetan Government in exile. On the basis of the study the following suggestions are made:

- In Sikkim and Darjeeling the Tibetan refugees are living in different regions they are not living in the same areas. And among them some are living on rents as they are not able to buy their own land due to their economic conditions. Therefore, the Government should at least provide them a land on lease for the construction of houses and the cost of that land should be minimum so that they can pay it easily or they can take away those houses from the settlement whose owners went abroad and there is no one to live on that house and give it to the other Tibetan refugees living in the scattered community.
- For the protection and preservation of the Tibetan language there should be establishment of more Tibetan school. So that all the Tibetan children can be able to go to that school and learn their own Tibetan language along with the colleges and the CTA government can also request to the Central Government to allow the CTA to employ Tibetan teachers and lecturers at the central and the state universities and schools.
- There should be establishment of more handicraft centers. So that it will generate the employment opportunities on the one hand and increase the household income on the other hand and also to support the Tibetan culture and handicraft practice so that it do not extinct.
- Along with shops the cooperative centers should establish new small or large factories that would make other needed products for the export market and for the Indian middle class. So that the educated youth can also be employed as a skilled and semi-skilled workers in this factories. Beside that the Tibetan Government should also train the Tibetan refugees in technology and industrial or technical skills through these cooperative centers.
- Tibetans are applying for Indian citizenship due to the problem that they face in traveling abroad so the CTA should concern this situation with the Central Government and make a new document which can be recognize by all the officials at the airport department so that it would make easier for Tibetans to travel abroad.

- Though the CTA or TGiE have provided and came up with different policies like Tibetan rehabilitation policy 2014 but it is not enough for all the Tibetans. The CTA need to come up with more policies focused on the younger generation needs.
- CTA should make better communication with the central and state Government. Not only central government but the state government should also be intact or make aware with all the decisions taken for the Tibetan refugees.
- CTA should come up with new ideas to get more rights for Tibetan refugees.
- CTA should come up with the new projects for the upliftment of the economy and job opportunities for the Tibetans.
- Indian Government should provide a valid refugee policy for the refugees in India so that it can secure their living and identity in India.

These are the few suggestions through which the changes in the legal status and rights of Tibetan refugees can be made in Sikkim and Darjeeling.

The legal status and right of Tibetan refugees is one of the important issues confronting the Tibetan refugees in exile however the other issue which cannot be neglected is the independence of their mother land Tibet for which they have spent all these years in exile and which seem a distant task even after 60 years no matter how hard they have tried till now.

As like in the old age home the old people always wait for that moment, when their children come and take them back to their home and hope that they will return back to their home one day. Similarly, the Tibetan refugees live their life in exile with a belief and hope that one day their country will be free and they will return back to their own country and live their life like they used to before.



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## Appendix I

### SURVEY SCHEDULE

ON

### LEGAL STATUS AND RIGHTS OF TIBETAN REFUGEES IN INDIA: A STUDY OF SIKKIM AND DARJEELING

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The main objective of this study is to get information regarding the legal status and rights of Tibetan refugees in Sikkim and Darjeeling. The following information request is optional, the returned questionnaires will be treated with utmost confidence and no identities will be included within the final paper.

Date: \_\_\_\_\_

Place: \_\_\_\_\_

#### (Section A)

#### Personal Information of the Respondent:

1. Name of the Respondent: \_\_\_\_\_

2. D.O.B: \_\_\_\_\_

3. Age : \_\_\_\_\_

4. Sex: \_\_\_\_\_

5. Occupation: \_\_\_\_\_

6. Education Qualification: \_\_\_\_\_

7. Phone No: \_\_\_\_\_

8. Language Spoken:

- a) English                      b) Hindi                      c) Nepali                      d) Local dialect

9. Caste:

- a) Khampa                      b) Amdo                      c) Uchang                      d) Others

10. Marital Status:

- a) Married                      b) Unmarried

11. Composition of Family:

| Sl.No. | Name | Relation with the Respondent | Age | Marital Status | Educational Qualification | Occupation |
|--------|------|------------------------------|-----|----------------|---------------------------|------------|
|        |      |                              |     |                |                           |            |
|        |      |                              |     |                |                           |            |
|        |      |                              |     |                |                           |            |
|        |      |                              |     |                |                           |            |
|        |      |                              |     |                |                           |            |
|        |      |                              |     |                |                           |            |
|        |      |                              |     |                |                           |            |

12. Family Occupation:

- a) Farming and Animal Husbandry                      b) Daily Wages  
c) Shops                      d) Cottage Industries  
e) Seasonal Business                      f) Taxi Service  
g) Services                      h) Dairy Business  
i) Other

13. Monthly Income of the family:

|                 |  |
|-----------------|--|
| 0-5000          |  |
| 5001-10000      |  |
| 1000-15000      |  |
| 15001-20000     |  |
| 20001-25000     |  |
| 25001 and above |  |

**14. Facilities available in the area (tick those available)**

- a) Hospitals /Primary Health Centre
- b) Schools
- c) Library
- d) Banks
- e) Industries
- f) Post Office
- g) Co-operative Societies

If yes, how many.....

- h) Shops

If yes, how many.....

- i) Cinema Theatre
- j) Bus Routes and Buses
- k) Mobile
- l) TV
- m) Roads
- n) Others

**15. Who is the head of the settlement area?**

.....

**(Section 2)**

**16. What are the rights that you get as being a Tibetan refugee? And what more would you want the Government to provide?**

.....

**17. Do you have voting rights (on accordance to CTA)?**

- a) Yes
- b) No

**18. How many times you have voted till now?**

.....

**19. Are you satisfied with your current occupation?**

- a) Yes
- b) No

**20. Do you faced challenges of getting jobs?**

- a) Yes, what kind of? .....
- b) No

**21. What kind of job you prefer?(Government / Private)**

.....

**22. Have you ever travelled outside India?**

- a) Yes
- b) No

**23.** What will be/ is the reason for your travelling?

.....

**24.** Do you face difficulty in travelling abroad? What kind of difficulties?

.....

**25.** Do you carry/ have identity certificate?

- a) Yes
- b) No

**26.** Do you have to carry your identity certificate with you all the time while travelling?

.....

**27.** Do you faced difficulty with that identity certificate while travelling abroad?

.....

**28.** How is the reaction of immigrant officials at airport with you?

.....

**29.** Has any member from family came to India during January 26, 1950 to July 1, 1987?

- a) Yes
- b) No

If yes, then who?.....

**30.** Do you have any Indian documents? For example Aadhaar card, pan card etc.

- a) Yes
- b) No

If Yes, then what?.....

**31.** Do you have Indian passport?

- a) Yes
- b) No

**32.** While applying for Indian passports did you faced any problems and challenges as such?

.....



(Section 3)

**33.** What are the issues and challenges that you faced concerning your rights as a refugee?

.....

**34.** What measures should Central Tibetan Administration take to highlight/resolve your problems?

.....

**35.** Do you believe that opting the Indian citizenship will weaken the movement for free Tibet?

If Yes, then why?.....

If No, then why?.....

**36.** What is your view regarding Indian Citizenship?

.....

**37.** What are your underlying concerns regarding it?

.....

**38.** What are its impact on your identity?

.....

**39.** Would you like to take/ apply for the Indian Citizenship?

If Yes, then why?.....

If No, then why?.....

**40.** Are you in a dilemma, whether to take Indian citizenship or not?

.....

**41.** What do you think whether the CTA is helping the Tibetan refugees to get the Indian citizenship or not? How?

.....

**42.** Do you feel CTA want Tibetan Refugees to get Indian citizenship or not?

.....

**43.** Will you always want to remain as Tibetan Refugee or will you change your identity for your children in future?

.....

**44.** Do you feel scared about your identity in a sense that if in future the Government of India change its policy towards Tibetan refugees?

- a) Yes
- b) No

If Yes, then what?.....

**45.** What measures do you think that CTA government can undertake to improve your legal condition?

.....

Thank you for your support and cooperation.

## Appendix II

The following questions have been asked to the Settlement officers of both the Sikkim and Darjeeling Tibetan Settlement along with the Appendix I

1. How many camp are there in Kunphenling settlement? And who control it?  
.....
2. What are the other facilities that are provided for Tibetan refugees?  
.....
3. The land which are provided to The Tibetan refugees are extended or not for the new generation of Tibetan refugees?  
.....
4. Who provide the land for Tibetan refugees in Gangtok?  
.....
5. Who is the head of the Settlement area?  
.....
6. Tibetan school is up to which standard? When was it established?  
.....
7. The primary health center comes under Indian Government or CTA? And men-tse-khang under whose control?  
.....
8. Before Tibetan settlement in Kunphenling from which place the Tibetan refugees came to Sikkim? Where were they before the Tibetan settlement in Sikkim?  
.....
9. Total Population of Tibetan Refugees?  
.....
10. When was Tibetan Settlement Office established?  
.....
11. What are the role of CTA regarding the Indian citizenship?  
.....
12. What are the initiatives taken by CTA and Government of India for the Tibetan Refugees?  
.....

**Appendix III**



**TIBETAN WELFARE OFFICE IN GANGTOK, EAST SIKKIM**



**TIBETAN SETTLEMENT OFFICE IN KUNPHENLING SETTLEMENT  
AT  
RAVANGLA, SOUTH SIKKIM**



TIBETAN SETTLEMENT AREA IN KUNPHENLING SETTLEMENT AT  
RAVANGLA, SOUTH SIKKIM



TIBETAN SCHOOL AT RAVANGLA, SOUTH SIKKIM



SURVEYING HOMES IN KUNPHENLING SETTLEMENT AT RAVANGLA,  
SOUTH SIKKIM



TIBETAN WOMEN IN FRONT OF THEIR HOME



TIBETAN SETTLEMENT OFFICE IN SELF HELP CENTER AT  
DARJEELING



TIBETAN SCHOOL AT DARJEELING



TIBETAN SETTLEMENT OFFICE IN TASHILING TIBETAN SETTLEMENT AT SONADA, DARJEELING



SURVEYING STUDENT AT TASHILING SETTLEMENT AT SONADA, DARJEELING