



HUMAN RIGHTS VIOLATIONS OF THE TIBETANS BY CHINA AND INDIA'S REFUGEE POLICY

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Abstract:

Tibet, a state whose independence and sovereignty has continued to be a matter of dispute since its major turning point in history in the year 1949 when it came under the rule of China. As per international law, Tibet continues to be an independent state and has not lost its statehood. However, being under the illegal occupation of China, the state is incapable of exercising and carrying out its functions and providing its people with the security and stability needed.

Further, in spite of China being a member of the United Nations and signing multiple treaties and conventions including the Universal Declaration of Human Rights, a lot of basic human rights have been taken away from the people of Tibet resulting in extreme violations of such treaties. These treaties are a reflection of the customary international law and include basic rights of freedom of association, right to participate in the cultural life of the community, etc. which have explicitly been taken away the people

India, which is currently the home to many refugee communities, also faced a mass influx of Tibetan refugees entering the country. However, India is a nation with not a single refugee policy set in place in spite of being one of the largest host countries. So what is to stop India from infringing on their rights and how can setting a refugee policy help?

This paper aims to critically analyze the relationship between the two states and the various infringements of Human Rights faced by the Tibetans along with a brief analysis of India's measures taken in order to safeguard and protect the incoming refugees.

Introduction:

Human rights are inherent rights that one possesses from the time of birth till death. These are rights that cannot be taken away from an individual but may be restricted to a certain extent so as to allow each and every other individual to enjoy their human rights as well. These rights are prevalent with a person even if the person moves from one country to another and are continually possessed by the person regardless of their gender, religion, belief, place of birth etc.

Human rights have been recognized by the international community in various treaties and conventions such as The Universal Declaration of Human Rights, 1945, The European Convention on Human Rights, The Human Rights Act, 1998 etc. and member states to such conventions are bound by the protocols established by such conventions.

Before proceeding further, one needs to understand who a refugee is. According to the UNHCR in the Refugee Convention, 1951 a refugee is defined as, "owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events,



is unable or, owing to such fear, is unwilling to return to it.”¹

Background:

Tibet, in 1950 was invaded by armies of communist China ending a long period of self-rule by the Tibetans. These communists wanted to have full control over the land and soul of Tibet. In spite of the promises that China had made to Tibet with respect to their religious institutions and their practices, all seemed to have been in vain. In 1955, Chou Enlai of China made a pledge to Tibet and joined in the declaration stating the five principles of peaceful coexistence among the nations during a conference held at Bandung and even came to agreement with India with respect to the status of Tibet in the year before. Nations of Asia and Africa stated that people were to be free and that imperialism could not have a place in this modern world.

Further, in 1956, His Holiness, the Dalai Lama was even permitted to travel to India so as to celebrate the birth of the Buddhist religion. Being a prominent figure, he was treated as a guest for several months in India and given respect from all over the world by leaders of all faiths. By allowing this celebration of the Buddhist religion, the world seemed impressed by China's tolerance of different religious ideas in contrast to its own doctrine of violence and materialism.

However, what was hidden to the rest of the world, was the communists slowly infringing on the pledge that they themselves agreed upon to respect the local government along with its customs and gradually began

imposing their will. This led to a commune system which entailed slave labor, lots of families being separated, economic hardships, suppression of worship, etc. around the borders of Tibet. Multiple riots and revolts took place by the few Tibetans that were in the area so as to prevent such a scenario across the whole of Tibet.

In March 1959, there were many threatening moves made against the Dalai Lama and as there was a lot of clashes taking place, he fled to India. The Tibetans, in order to help themselves resorted to the use of arms in a cry for liberty. All over Asia, there were a feeling of anger and helplessness to the cries of the Tibetans. However, there was a slight feeling of relief among the Tibetans upon hearing of the escape of the Dalai Lama to India. The Indian government helped by providing asylum and the necessities. There were multiple accusations by the Dalai Lama about how China was interfering in Tibet's affairs, its religion, destroying the properties and monasteries and just creating chaos along with using the Tibetan people as forced labor. However, all his efforts were met with the same mutual contempt from China. From then, till date, Tibet continues to be under the self-declared rule of China which has further led to multiple Human rights infringements of the Tibetan People.

Present Day:

As the importance of Human rights spread across the nations, multiple treaties and conventions were signed and ratified by countries promising to be bound by such principles and establishing the freedoms given to their people. In 1998, China signed

¹ The 1951 Refugee Convention, Article 1(2), <https://www.unhcr.org/3b66c2aa10.html>.



the three covenants which formed a part of the Bill of Rights, however they have not ratified it as of yet.

In spite of being a permanent member of the UN Security Council, and seeking a seat at the Human Rights Council, they are the only member yet to ratify the International Covenant on Civil and Political Rights despite repeated promises to do so. The ICCPR is one of the most crucial covenants that guarantees individuals various rights ranging from the right to trial before and independent and impartial court to freedom of expression and political participation by conducting free elections on a regular basis. China continues to take advantage of the position it has as a permanent member in the UN Security Council and fails to answer when discussions of human rights issue takes place.

China has been clearly violating rights that are clearly provided for by the ICCPR with regards to Tibet and yet no action has been taken.

Tibet has two major legal demands, one being the right to self-determination which is in itself a cardinal principle of modern international law. This principle in simple terms means the right to equal rights and equality in opportunity along with the right to choose their sovereignty and political status without any outside interference.

The right to self-determination in Chapter 1, article 1 (2) of the UN Charter states: “the purposes of the United Nations are: ... to develop friendly relations among nations based on respect of equal rights and self-determination of peoples...” which is what the people of Tibet demand. China

being a member of the UN has been asked to comply with this requirement in spite of repeated defaults.

Along with this, they also demand for the right to territorial integrity which implies that nations should not attempt to promote secession or border changes in the territory of other nations.

Rights that have been infringed by the Chinese

After the occupation of the communist in Tibet, the country resulted in complete turmoil. Most of the Tibetans were tortured and killed, the rich and wealthy were harassed, many parents were separated from their children, some were arrested and detained for no specific charge. Further Tibetans were made to starve and left with no clothes or money. It was very difficult for Tibetans to escape at that time as anyone caught leaving to either India or Nepal was shot and killed at sight. It was estimated that only about 5% of the population actually managed to escape.

= Right to Religion

The concept of religious freedom fails to exist in Tibet. Any form of religion expressed by the people results in brutal punishment. The Dalai lama who is the religious head of the Tibetans is incapable of even visiting Tibet in fear that the Chinese may imprison him. The Tibetans find their solace and comfort in the fact that their holiness is safe in another country, however some feel that only when the Dalai Lama comes to Tibet, will they be able to get their freedom as the people will come together.

China claims that Tibet has the right to practice their religion, however people are



not even allowed to meet their spiritual head. On multiple occasions people who were caught possessing the Picture of the Dalai Lama were sometimes arrested and the images being confiscated. Many monks and protestors self-immolate in protest of such rigid measures by the republic of China. Till date approximately 156 Tibetans have self-immolated in protest against the repressive measures of china and in demand for freedom.² China has stooped to the level of even carrying out religious persecutions. Recently China issued a notice banning the elderly Tibetans and prohibiting them from performing the Kora and other religious observances. Tibetan Buddhism is considered a threat and in addition to being closely monitored, Buddhist monks are evicted and removed from temples.

Right to Culture and Language

In May 2018, Tashi Wangchuk who is a Tibetan language activist was sentenced to imprisonment for a period of five years in spite of already being in detention because he stood up to preserve the Tibetan language from the influence and dominance of the Chinese.³ Just as this situation, many others have been imprisoned or harassed and tortured for the mere fact that stood up to protect their culture and language from outside influence. Tibetan students are forced to learn Chinese in schools such that it is so difficult for the younger generations to even speak in the Tibetan language as they are not

allowed to be taught it. It is as though the Chinese are completely trying to erase any existence of the culture. People who are employed are also further forced to communicate in Chinese rather than in their own mother tongue. Though there are multiple associations that have come up in Tibet to protect and preserve the language and culture, it is difficult as the risk of being exposed and penalized is always there.

Harassment of the Tibetan cultural rights also prevents them from displaying their national flag and singing their national anthem.⁴

Freedom of Movement

According to a Tibetan blogger, “Getting a passport is harder for a Tibetan than getting into heaven. This is one of those ‘preferential policies’ given to us Tibetans by China’s central Government.”⁵ There is a complete restriction on the people to move within the region itself whereby people are stopped at multiple checkpoints and verification of lots of formalities. To travel internationally is in itself a laborious task and many a times Tibetans travelling on Chinese passports to India to attend His Holiness the Dalai Lama’s teaching in January 2018 were coerced to return early else they will face retaliation and their family members back home will suffer. China has also been using the hukou, a passport system, which limits access to public benefits depending the

² *Self Immolation Fact Sheet*, SAVE TIBET, <https://savetibet.org/tibetan-self-immolations/>.

³ *China’s Suppression of Tibet continues: Human Rights Report 2019*, TIBET (Aug. 29, 2019), <https://tibet.net/chinas-suppression-of-tibet-continues-human-rights-report-2019/>.

⁴ *Human Rights in Tibet*, FREE TIBET, <https://www.freetibet.org/about/human-rights>.

⁵ *One passport, Two Systems*, HUMAN RIGHTS WATCH, <https://www.hrw.org/report/2015/07/13/one-passport-two-systems/chinas-restrictions-foreign-travel-tibetans-and-others>.



individual's place of birth.⁶ Further the movement of Nomads is completely restricted such that they are forced to stay within houses rather than move around to different places as their will desires. The Chinese have enforced strict measures in case of any such movement.

Other than these there are many more violations such as the environment being completely utilized for the benefit of the Chinese and destruction of Tibet's rich natural resources. In Driru during the month of May 2018, there was a protest against a mining project on one of the sacred mountains and those who protested and published information on social media was arrested and detained.

China has also enforced multiple restrictions on the freedoms of these minorities in respect to their access to the internet and by banning any source that can circumvent the governments censorship along with social media sites such as Facebook, YouTube, etc where any form of information can circulate.

Status of Tibet:

The status of Tibet as an independent state and that as an occupied region of China is yet to be determined. It can be looked at in two ways. One where Tibet is considered independent and the other when it is a part of China.

Looking at it from the first aspect, Tibet declared its independence in the year 1912 and continued to conduct itself as fully sovereign till the invasion of China. They had

their own army and entered various treaties regarding trade and travel. The people of Tibet claim that the country is still sovereign and that China has illegally occupied the territory. If this claim is accepted then China has also clearly violated the provision of the Geneva Convention, 1949 which prohibits the transfer of a civilian population within a territory that is already occupied. This is a violation of the international protocols set for the member states to the convention. Further they have violated many more rights of the Tibetans such as the right to practice their religion, the right to maintain their own identity, culture and autonomy. In International law, states are also considered to be autonomous till it is otherwise proved. Though an agreement called the 'Seventeen Point Agreement' was signed between Tibet and China, whereby control of the external affairs were given to china, it was held void as it violated Article 52 of the Vienna Convention on the basis that the agreement was signed under duress.

However, if the second aspect is taking into consideration, the claims above fail. The Chinese claim that Tibet throughout all time has also been and continues to be an integral part of its territory. All of these claims are based on official histories of the Chinese that are in the interest of the communists itself and serve their purposes. The Chinese portrayed that all the other countries the emperor had relations with as vassals of the emperor but when a country's sovereignty is to be determined, it is to be done based on its own history and not on the history of the country claiming it.

⁶ Andreas Fulda, *In China, there's no freedom of movement, even between country and city*, CITYMETRIC (Jan. 10. 2017),

<https://www.citymetric.com/politics/china-theres-no-freedom-movement-even-between-country-and-city-2697>.



The Tibetans are a community being brutally harassed by the Chinese and are constantly being monitored. They have been suffering for the past five decades and are under threat. It is for the international community to take a stand now and help in improving the human rights conditions for these people.

Tibetan Refugees and India

Since the invasion of the communists into Tibet, a large number of Tibetans including His Holiness, the Dalai Lama fled towards India. It was quite clear that the option of repatriation was not possible at least for the coming future. It was the need of the time to ensure that these people who were now in India, are given the assistance and protection according to the standards set internationally.

One of the main ways in which India has helped the Tibetan refugees is by creating and allocating settlements along with the construction of monasteries in such a way that the Tibetans are able to protect and keep their core values in place. This was one of the desires of the refugees to have a place where they can freely celebrate and enjoy their culture, tradition, religion and identity which was further even encouraged as a policy by the government along with a form of delegated authority given to the Dalai Lama to have some authority over these Tibetan settlements.

Further the government has also helped by funding schools so that Tibetans may be able to avail the benefits of education free of cost along with a few reservations in universities and colleges. Also there were Tibetan schools created so that the children

were well equipped with the knowledge from the teachings of modern education as well as the traditional Tibetan system thus helping to retain their identity.

The Indian government has made efforts to aid the Tibetans by providing them with a Registration Certificate (RC) which is a legal document permitting them to enjoy all the benefits and privileges that Indians have except for the right to vote and to work at government offices. Although this was initially not a problem, as years passed, from 1963, India stopped recognizing these Tibetans as refugees, making it even more difficult for them to gain access to a RC. This document allows the Tibetans to travel freely throughout India and is used merely as an identity card and is a necessity to obtain the Identity Certificate to travel abroad.

Initially land and housing was also given to the refugees who arrived earlier, but this is not a comfort enjoyed anymore. Further, they lose out on a lot of job opportunities due to their statelessness and also because many employers prefer having their own nationals working in their organization. Hence they are challenged to find an employment that suits their qualifications. Other challenges include not being able to set up business or even taking a bank loan which has led to an overall increase in unemployment of these Tibetans.

The Delhi High Court in 2016 ruled that Tibetans who were born in India on January 26, 1950 to July 1, 1987 are Indian Citizens by birth and should be issued



passports under the citizenship act.⁷ However most Tibetans do not take the Indian Citizenship because they feel it defeats their cause of Freeing Tibet but sometimes it becomes necessary because they have no other means to travel abroad or to be recognized because many face issues at immigration when countries don't recognize the Identity Certificates that are issued. Hence this is also a major challenge.

In 2014 a Tibetan Rehabilitation Policy⁸ was set which laid down certain benefits for the Tibetans such as allocating land as settlements for a period of 20 years as a lease, extending benefits from schemes like NREGA, National Rural Livelihood Mission (NRLM), etc., provision of basic facilities like roads and electricity, economic benefits like permitting the refugees to carry out the business they like by granting the necessary licenses, and other such benefits. However, this policy is just another executive policy for the states and is not a law by any means. There continues to exist a fear among the locals that if such policies are entertained, then all other refugee communities may demand for the same thereby taking away what really belongs to the citizens.

In reality however, in India, these Tibetans are not regarded as refugees rather looked at as foreigners for the mere fact that India refused to sign the 1951 United Nations Convention on Refugees. This is a critical problem as this creates no legal obligation on

India to provide any refugee services or protection as mandated so in the convention. Further, this also becomes a problem because when there are no set policies, it may keep changing based on the current political interests. India argues that its refugee policy is in accordance with the international standards and that they do in fact perform their duties as a host country by providing the required rights and protection to these refugees. Other than the customary law of non-refoulement (which is the practice of not forcing the refugees to go back to the country where they may be persecuted) and the obligation enforced by Article 14 of the Universal Declaration of Human Rights to provide asylum, there are no other statutes or conventions internationally and regionally that bind India to their actions. Further, even the RC is given with a pre-condition that they abstain from any form of protest against china which is indirectly taking away their freedom of expression.

In spite of India claiming to provide the Tibetans with multiple benefits, the number of refugees from the community has spiked down from 1,50,000 to 85,000 according to the government's data.⁹ The Tibetans have been travelling to other countries such as USA, Canada, etc. because getting jobs and surviving in India has become a difficult task with a lot of discrimination and preferences being given to the Indian citizens itself. The rights afforded

⁷ Soibam Rocky Singh, *Delhi HC rules that Tibetans born between 1950-87 in India are Indian citizens*, HINDUSTAN TIMES (Sept. 22, 2016 23:31 PM), <https://www.hindustantimes.com/india-news/delhi-hc-rules-that-tibetans-born-between-1950-87-in-india-are-indian-citizens/story-FYIwTkzcqOI9DakgEkot4O.html>.

⁸ *Tibetan Rehabilitation Policy (2014)*, [https://sardfund.org/wp-](https://sardfund.org/wp-content/uploads/tibetan-rehab-policy-2014.pdf)

[content/uploads/tibetan-rehab-policy-2014.pdf](https://sardfund.org/wp-content/uploads/tibetan-rehab-policy-2014.pdf).

⁹ Rahul Tripathi, *Tibetan Refugees down from 1.5 lakh to 85,000 in 7 years*, INDIAN EXPRESS (Sept. 11, 2018, 3:23AM), <https://indianexpress.com/article/india/tibetan-refugees-down-from-1-5-lakh-to-85000-in-7-years-5349587/>.



to them are scarce as they cannot even purchase land here, nor get the citizenship easily. However, India has been trying their best and the burden can be taken off from them if they ratify to the international convention as they will be able to get a lot of assistance and services from the UNHCR and its member states.

Why should India bring a Refugee Law into force?

As noted before, India currently is not a party to any Refugee Convention and nor does it have any domestic laws to regulate the same. Matters related to refugees are taken care of by the government based on the domestic and bilateral political conditions while also considering humanitarian measures. In spite of India having served through the United Nations High Commissioner for Refugees in 1995, we still do not have any policies set in place for the refugees.

The lack of having a refugee law could be seen as a security threat to the country, given the fact that there is no proper legal structure documenting the presence of outsiders who are not nationals and who may not have a legitimate reason for staying here. Having a legislation will help curb the problems of Illegal migrants and any terrorists by keeping an account of the people who are actually refugees and help in such a distinction. This will also aid in avoiding diplomatic issues that may arise.

Further, since we do not have any laws to regulate refugees, they are governed by various acts such as The Foreigners Act, 1946, The Passport Act, 1920 and 1967, The Extradition Act, 1962 but these acts do not specifically look at the refugees as a different

category of persons that are in need of protection rather they are regarded as foreigners itself. In the Foreigners Act, if any person found in the country carrying no valid documents they may be penalized and the authorities are also empowered to prohibit the entry of such foreigners. This becomes applicable on the refugees as well since there is no other legislation specifically made for them which indirectly could be seen as an infringement of the customary law of non-refoulement. Of course, India being a sovereign nation, has its own right to either take in a person and grant asylum or not to but they still have international obligations to uphold.

India however, The Constitution itself provides various rights to refugees such as the Right to equality (Article 14), Right to life and liberty (Article 21) which includes the right to medical assistance and to live in dignity, Right to protection under arbitrary arrest (Article 22), Protection in respect of conviction of offenses (Article 20), Freedom of Religion (Article 25) and Article 32 which is the right to approach the Supreme Court. Although the fact remains that the Supreme Court and High Court have made multiple attempts to safeguard and protect the rights of the refugees by highlighting that same in multiple cases, along with the National Human Rights Commission they have aided in creating a secure environment to these refugees yet these are not enough and the time has come to set a proper legislation in place given the fact that we are now a home to not only the Tibetans but multiple other refugees such as the Chakmas, Afghans, Sri Lankan Tamils, etc.

By making a law that governs these refugees, they will also get a voice because it



is often not taken into account that these refugees in reality have no country or state to call their own, no nation or party to represent their claims and by giving them a law they will at least get the deserved protection and an increased quality of life.

Further, when there is a legislation in place, one can at least ensure that all refugees are treated at par and there is no discrimination because over time it was seen that there was discrimination even within the same group such as amongst the Tibetans itself and other times it was seen as a case of preferential treatment of refugees which have sometimes lead to violation of human rights. An example of this could be when some groups get benefits like the permit to work while others don't, it in turn leads the less benefitted being put in a position where they may be subjected to harsh exploitation in the unorganized sector.

At least if a law comes into place it will clearly define who a refugee is, set out the rights and duties of the refugees, distinguish them from other persons as well as lay down the responsibilities of the host country. This would be a starting step for the better future of the refugees.

Conclusion

Tibetans are regarded as one of the most successful refugee communities¹⁰ and it is indeed true because in many ways the Tibetans have managed to make themselves self-sufficient and over the past decades they

have managed to live in peace among the locals.

But some might think, that since the rehabilitation efforts towards the Tibetans have been comparatively better than the others, their struggles aren't as significant and hence get undermined. Many don't take into account and undermine the fact that these Tibetan refugees as well had to travel for almost a month just to cross the borders, some of who have even died enroute due to lack of food & water or even excessive fatigue, just to avoid getting tortured by the Chinese. Also, just as many other refugees, they too faced a lot of difficulties just adjusting to a whole new country, to the tropical climate India has, the language barrier etc.¹¹ That being said, every refugee has suffered through some trauma and are in many ways disoriented, hence it becomes crucial to give due importance to all alike by not being subjective and choosing the one who is most affected or who deserves more attention. Help and support should be offered in any possible way by understanding the circumstances and rather, building an environment where such individuals are capable of living a life with dignity.

Further, India being one the largest refugee host must in particular start on the creation of a domestic law which regulates and protects these refugees. What happens to the refugees who are permanently incapable of going back to their country because of which they may have to reside in India itself? Are they going to always be tagged as a foreigner? In addition to a law, India should

¹⁰ Manan Mehra, *World's most successful Refugee Community – The case of Tibetan Refugees in India*, CJP (Feb. 18, 2020), <https://cjp.org.in/worlds-most-successful-refugee-community-the-case-of-tibetan-refugees-in-india/>.

¹¹ Dawa Norbu, *Refugees from Tibet: Structural causes of successful settlements*, 26 THE TIBET JOURNAL, 3-25 (2001), www.jstor.org/stable/43302483



try to accept any aid that it may receive from the international community, UNHCR, NGO's, etc. which benefits not only the country as a whole but the interests of the refugees as well. Indeed, India does play a magnificent role in its humanitarian efforts, yet having a separate law does always carry its own perks.

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