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Immigration and
Refugee Board of Canada

Commission de l'immigration
et du statut de réfugié du Canada

India: Citizenship recognition, including voting rights, for children of Tibetan refugees born in India in the context of the December 2010 and December 2014 Delhi High Court rulings; August 2013 Karnataka High Court ruling; and children born to one Tibetan and one Indian parent; whether citizenship rights have become procedural or if they require legal action [IND105133.E]

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Indian Citizenship Law

According to a 2015 document on citizenship acquisition published on the website of the Ministry of Home Affairs (MHA), pursuant to Section 3 of the *Citizenship Act, 1955* (as amended in 2003 and 2005), citizenship is acquired by birth under the following circumstances:

By Birth (Section 3)

- A person born in India on or after 26 January 1950 but before 1 July, 1987 is a citizen of India by birth, irrespective of the nationality of his parents.
- A person born in India on or after 1 July, 1987 but before 3 December 2004 is considered a citizen of India by birth if either of his parents is a citizen of India at the time of his birth,
- A person born in India on or after 3 December 2004 is considered a citizen of India by birth if both the parents are citizens of India or one of the parents is a citizen of India and the other is not an illegal migrant at the time of his birth.

An illegal migrant is defined in section 2(1)(b) of the Act is a foreigner who entered India

- without a valid passport or other prescribed travel documents; or
- with a valid passport or other prescribed travel documents but remains in India beyond the permitted period of time. (India 9 Feb. 2015)

According to Section 9 of the Act,

9. Termination of citizenship

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

...

(2) If any question arises as to whether, when or how any citizen of India has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf. (India 1955, Sec. 9)

2. 2010 and 2014 Delhi High Court and 2013 Karnataka High Court Rulings

For information on the 2010 Delhi High Court ruling (12179/2009) see Response to Information Request IND103724.

Sources indicate that on 7 August 2013 in Writ Petition No. 15437/2013, the Karnataka High Court ordered authorities to reconsider the request of the petitioner, Tenzin Choephag Ling Rinpoche, for a passport in recognition of his ability to claim Indian citizenship by birth (India 7 Aug. 2013; *Tibetan Review* 30 Apr. 2014; *Deccan Chronicle* 25 Aug. 2013). According to the *Tibetan Review*, an English-language monthly magazine on Tibetan issues based in New Delhi (*Tibetan Review* n.d.), the court ordered authorities to issue the petitioner a passport (30 Apr. 2014). Sources note that regional passport authorities, in consultation with the MHA, had refused the petitioner, who was born in 1985 to Tibetan refugees in India, a passport on the basis that individuals born during 1950 to 1987 cannot automatically be treated as Indian citizens under the *Citizenship Act* and must apply for citizenship under Section 9(2) of the Act (India 7 Aug. 2013, para. 5; *Deccan Chronicle* 25 Aug. 2013). According to sources, the authorities argued that the petitioner had listed "Tibetan" as his nationality while applying for his passport, which prevented them from issuing him an Indian passport (ibid.; India 7 Aug. 2013, para. 7). The Karnataka High Court referred to the 2010 Delhi High Court ruling (12179/2009) in describing the following:

[w]hen a person is born in India to the Tibetan nationals, who are settled in India and if no passport is issued to such person for the purpose of identification, the identity certificate would be issued to such person to enable the stay of such person in India. ... the issue of a passport to a person would thereafter identify his status in India and therefore the surrender of the identity certificate in such circumstances is necessary. (India 7 Aug. 2013, para. 9)

The Court further found that the fact that an individual might hold an identity certificate would not preclude them from making a claim for citizenship by birth (ibid., para. 10).

The Karnataka High Court followed the 2010 Delhi High Court ruling and found that the petitioner, born between 1950 and 1987, was entitled to claim the status of an Indian citizen by birth under the *Citizenship Act* (ibid., para. 12). Information on whether a passport was issued to the petitioner could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

In December 2014, in the case of petitioner Phunydok Topden, W.P.(C) 1890/2013, the Delhi High Court ordered authorities to process Topden's application for a passport within two weeks (India 16 Dec. 2014). According to the court, it was not disputed that the petitioner, born in 1979, is an Indian citizen and it held that authorities could not withhold the issuance of his passport on the basis of the Tibetan origin of his parents (ibid.).

According to the UK-based daily newspaper *Daily Mail*, in July 2011 Phunydok Topdens' request to "facilitate the surrender of his [refugee identity card] and issue [an Indian] passport" was ignored (*Daily Mail* 28 April 2014). Following this, in September 2011 "the court directed the [passport] authorities to decide on [his] application within three weeks," after which his passport application was again rejected and a "contempt case" was filed against the authorities in February of 2013 (ibid.).

Information on whether a passport was issued to the petitioner following the December 2014 ruling could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3. Voting Rights

Sources state that the 2013 ruling by the Karnataka High Court prompted the Elections Commission of India (ECI) to direct all states to include eligible Tibetans in the voter registration list for the 2014-2015 elections (*The Hindu* 17 Mar. 2014; *Asia Times* 17 Feb. 2015; *I Am in - DNA of India* 22 Jan. 2015). Eligible Tibetans are those born in India between 1950 and 1987 (*ibid.*; *Tibetan Review* 3 May 2014; Rediff News 9 April 2014); specifically those born between 26 January 1950 and 1 July 1987 (*ibid.*). Media sources report on the voting behaviour and eligibility of Tibetans during the 2014 general elections and 2015 state assembly elections as follows:

- Approximately 48,000 Tibetans in India would be eligible to vote (*India Today* 7 Apr. 2014; *The Guardian* 7 May 2014).
- The *Asian Age*, an Indian newspaper with editions in Delhi, Mumbai, Kolkata and London (*The Asian Age* n.d.), reports that 200 of 608 Tibetans in the Majnu Ka Tilla Tibetan colony voted in the 2015 Delhi Assembly polls (*ibid.* 8 Feb. 2015). In contrast, *I Am in - DNA of India*, an online platform seeking to "enlighten, engage and empower citizens of India in getting involved in the cause for better governance" (*I Am in - DNA of India* 29 Sept. 2013), reports that of the 300-350 families in Majnu Ka Tilla [New Aruna Nagar], "only 45-50" Tibetans voted in the Delhi Assembly elections (*ibid.* 22 Jan 2015), while Rediff News, an Indian news website, reports that about a dozen families in the colony registered to vote (Rediff News 9 Apr. 2014).
- On 7 May 2014, of the 14,000 Tibetans living in Dharamshala, 217 voted in the general election (*Hindustan Times* 17 May 2014).
- Of the Tibetans living in the state of Himachal Pradesh, "just over 1,200 people of Tibetan origin had registered to vote" and those that sought to register "but failed to meet the conditions was three times that" (*The Guardian* 7 May 2014).

3.1 Response by Authorities and Tibetan Community to Voting Rights

Sources state that the MHA is against the decision by the ECI to grant voting rights to Tibetans born in India (*Asia Times* 17 Feb. 2015; *The Guardian* 7 May 2014; *I Am in* 22 Jan. 2015). Media sources state that the MHA has written to the Ministry of External Affairs (MEA) requesting the MEA to challenge the ECI directive (*ibid.*; *India Today* 7 Apr. 2014). *India Today*, an English-language weekly news magazine (India Today Group n.d.), quoting an official from the MHA, states that "[w]e have made it clear that if Tibetans want to vote they must apply for Indian citizenship...they can't have the status of refugees and citizens at the same time" (*India Today* 7 Apr. 2014). A September 2014 article by the *Tibetan Review* similarly states that

[a] paradoxical situation thus remains that Tibetans who voted in the recent general election have their voter's I-card as proof of their Indian citizenship, but are still left holding their Foreigner's Registration Certificate (RC) which they must renew periodically if they wish to be allowed to continue to live in India. (24 Sept. 2014)

An article in *Hindustan Times* also indicates that a Tibetan voter still possessed their RC after having voted (17 May 2014).

Sources indicate that some Tibetans in India are against registering to vote (PTI 18 Jan. 2015; Al Jazeera 7 Apr. 2014). According to Rediff News, few Tibetans enrolled for voter ID cards because of a "shortage of time" and a lack of proof of residence (Rediff News 9 April 2014). According to the *Tibetan Review*, many Tibetans did not pursue their registration to vote, or wanted to withdraw their voter registration, "upon learning that enrolment meant accepting Indian citizenship and surrendering their Foreigners' Registration card" (1 Apr. 2014). The *Hindustan Times* similarly noted that Tibetans feared that their RCs, which need to be renewed each year, would be revoked if they registered to vote in the 2014 elections (17 May 2014).

3.2 Benefits of a Voter ID-Card

Without providing further information, an article by the Press Trust of India (PTI), an Indian news agency, states that possessing a voter ID card would "help" Tibetans acquire Indian citizenship (PTI 18 Jan. 2015). The *Tibetan Review* stated that some Tibetans enrolled to get a voter's identity card as it would entitle them to "basic civic amenities" (1 Apr. 2014). Further and corroborating information, including specific benefits that are accessible to those who hold a voter ID card, could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

For information on residency rights, including social services and employment, for Tibetans in India, see Response to Information Request IND105009.

4. Citizenship Recognition

Sources state that the 2013 Karnataka High Court ruling "paved the way" for granting Indian citizenship to Tibetan refugees (UN n.d; PTI 22 Dec. 2014). In contrast, other sources state that there has been no indication as to whether the Indian government will recognize the citizenship status of all Tibetans born in the country (Asia Times 17 Feb. 2015; *Tibetan Review* 3 May 2014). The US Department of State's *Country Reports on Human Rights Practices for 2013* similarly states that "[e]thnic Tibetans sometimes faced difficulty acquiring citizenship although they met the legal requirements" (US 27 Feb. 2014, 33).

According to the *Guardian*, the voting rights issue "highlights the contradictions within Indian policy towards the Tibetans" (*The Guardian* 7 May 2014). According to Dibyesh Anand, an associate professor in the Department of Politics and International Relations at the University of Westminster in London, as quoted in the 2014 *Guardian* article, there is often a tension between the approaches of the MEA and the MHA with regard to Tibetans, with the former having a "more accommodative approach and the latter a sceptical one" (ibid.). The same source notes that "individual Tibetans have had to fight at every level through the court system to get limited rights and recognition within India and [the voting rights] issue is part of that struggle for recognition" (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4.1 Response by the Tibetan community in India

According to sources, some Tibetans are not in favour of acquiring Indian citizenship rights (*Tibetan Review* 1 Apr. 2014; PTI 18 Jan. 2015). Sources indicate that some Tibetans are concerned that making a claim to Indian citizenship would signify a lack of commitment to the Tibetan cause (ibid.; Al Jazeera 25 Jan. 2015; *Tibetan Review* 3 May 2014). According to an article in the *Meghalaya Times*, a daily newspaper in the state of Meghalaya (*Meghalaya Times* n.d.), the Tibet Settlement Officer for Shillong noted that no Tibetans have applied for Indian citizenship since he assumed his post (ibid. 8 June 2014). Without providing further details, the January 2015 PTI article states that the 2010 ruling by the Delhi High Court resulted in "some Tibetans ... [are] using this case as a precedent to apply for Indian citizenship" (PTI 18 Jan. 2015). Further and corroborating information, including the number of Tibetans using voting cards or case precedence to apply for Indian citizenship, could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Oral sources: Attempts to contact the following were unsuccessful within the time constraints of this Response: Central Tibetan Administration; India – Delhi Regional Passport Office, Offices of the Chief Electoral Officer for Delhi, Karnataka, and Himachal Pradesh; Tibet Bureau; Tibet Justice Center.

Internet sites, including: Amnesty International; British Broadcasting Corporation; Canada Tibet Committee; Central Tibetan Administration; India – Ministry of External Affairs, Ministry of Home Affairs; Phayul; Tibet Bureau; Tibet Justice Center; Tibetan Political Review.

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