

**Foreign PR/Green Card Holding Senior
Officers in the Government of Nepal:
should they be punished?**

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outline

- Treatment of Foreign citizenship in governments of various countries
- The genesis of PR/Green Card issue in Nepal
- The use/abuse of PR/Green Card
- The worry and previous attempts to deal with it
- The recent stance taken by the Minister for General Administration
- A possible forward-looking approach
- Conclusion

If someone is also a foreign citizen...

- **Article 10(i) of the Nepal Citizenship Act 2063 (2006) states , “Any citizen of Nepal who voluntarily acquires the citizenship of any foreign country shall automatically lose the citizenship of Nepal.”**
- **Article 10(1)(e) of Civil Service ACT, 2049 (1993) states that those who are not Nepali citizens shall not be qualified to be candidates for the post of civil service.**
- **Loss of government job is an obvious consequence**
- **Australia allows dual citizenship. Prior to 4 April 2002, Australian citizens who became citizens of another country lost their Australian citizenship automatically.**

Australian citizen have the right to:

- vote and stand for public office (**dual citizens cannot stand for office in the Federal Parliament unless they have taken all reasonable steps to renounce their foreign citizenship.** Most states do allow dual citizens to stand for State Parliaments.
- apply for work in the Australian Public Service or in the Australian Defence Force
- apply for an Australian passport and re-enter Australia freely
- receive help from an Australian official while overseas
- register children born overseas as Australian citizens by descent.

Dual citizenship in India

- The Constitution of India does not allow holding Indian citizenship and citizenship of a foreign country simultaneously.
- Recently, the GoI decided to grant Overseas Citizenship of India (OCI) commonly known as 'dual citizenship'.
- Given to **PIOs who migrated from India and acquired citizenship of a foreign country other than Pakistan and Bangladesh.**
- OCIs **do not have voting rights, can't hold Constitutional posts** such as President, Vice President, and Judge of Supreme Court/High Court etc.
- OCIs shall be entitled to following benefits:
 - (i) Multiple entry, multi-purpose life long visa to visit India;
 - (ii) Exemption from reporting to Police for any length of stay in India;
 - (iii) Parity with NRIs in financial, economic and educational fields except in the acquisition of agricultural or plantation properties.

The genesis of green card/PR issue

- Prior to 1990 holding of residential visas of foreign countries by Nepalese people were rare.
- There was no need for a law prohibiting (or endorsing) such actions. No issues!
- As the US opened DV loteries for Nepalese people in the 1990s a lot of senior government officials also applied for it and many got it.
- How did they use the visa is at the heart of the stance taken by Minister Lal Babu Pandit

Three different intentions

- **Migrate for a better life:** Induced by many push factors, some did quit job in Nepal and moved overseas hoping for a new, safer and better life in a foreign country, such as USA
- **To shift ill-gotten wealth:** Use DV green card/PR to get established overseas and shift all ill-gotten wealth. This group used all sorts of leave provisions to get established first, returned and worked until retirement and is or planning to spend retired life overseas.
- **Contingency plan:** Officers involved in human rights abuse during the conflict period, who are still in the job, have acquired residential permits to ensure an escape just in case.
- The last two groups fall into our subject matter.

Why worry?

- Top officers do get access to sensitive information
- If they do hold residential permits of foreign countries then they may not consider it necessary to keep national secrecy as secret,
- It is not unreasonable to question and vet their security clearance especially when they fail to declare their interests,
- It is believed that the government has been concerned with the behaviour of some officers holding PRs/GreenCards and is investigating the matter further.

The history of law making

- During Gyanendra's time (2005), an ordinance was used to amend the Civil Servant Act. This Act required all government officials to quit their job should they wish to take PRs/green cards of foreign countries.
- This ordinance was not tabled and therefore not endorsed by the reinstated parliament after the movement of 2005-06, as a result it did not become the law.
- According to Madhav Basnet (Nepal Weekly, April 20, 2014) -
 - Then chief Secy Bhoj Raj Ghimire, and Secys including Madhav Prasad Ghimire, Trilochan Uprety and Ramchandra Man Singh were responsible for not tabling this ordinance
 - Their family members were living in the US at that time
 - They have migrated to the US as soon as they retired and now they come to Nepal once a year to collect their pension.
- Whether the persons named above were responsible or not, Nepal, as a result, does not have any law prohibiting civil servants from holding PRs and Green cards of other countries.

The amended C S Act of 2062(2005)

61. Removal or dismissal from service:

- (1) A civil employee may be removed from serve, without being disqualified for government service in the future, in any of the following circumstances:
 - ...
 - (h) If he/she is proved to have taken a permanent residence permit of a foreign country.
 - Provided, however, that in the event that any civil employee had **obtained such permit prior to the commencement of this clause**, that employee must **submit** information, along with the evidence, as to **whether he/she is to renounce or maintain the permanent residence permit obtained by him/her no later than sixty days after the commencement of this clause**.
 - Inserted by the Second Amendment.

The death of the ordinance

Thursday, May 17, 2007

- **Apex court activates 1992 Civil Service Act**

The Supreme Court on wednesday said that the Civil Service Act, 1992 has automatically been activated, as the Civil Service Ordinance-2005, which had amended the Act, has ceased to remain in force.

Issuing a verdict, a division bench of Justices Bal Ram KC and Pawan Kumar Ojha said: “Since the Ordinance was not turned to an Act as per the provision of the 1990 Constitution — under which the Ordinance was promulgated — the 1992 Act comes into force automatically.”

- (<http://nepallaw.blogspot.com.au/2007/05/apex-court-activates-1992-civil-service.html>)

Clever Bureaucrats are frustrating the government in managing them

- Civil Service Act was amended twice by the new parliament but this PR/GC clause remained missing. Can be said that **this vacuum was deliberately created by crafty bureaucrats.**
- Around October last year, Chief Secy Lilamani Poudel asked the secy of General Administration to prepare a list of all staff who hold PRs and green cards and submit it to his office
- At the same time, the PM's office also issued a circular to all ministries instructing everyone to declare if they are holding PRs or Green Cards of foreign countries. No one responded!
- In December, this notice was also published in daily news papers. No response!!
- Clearly, the government officers were disobeying and also deliberately creating a vacuum in the legal provisions.
- Chief Secy Poudel or few of his collegies couldn't do anything!!

The Stance: what did the Minister do?

- Last month Minister Pandit declined to endorse the recommendation of the PSC to promote two joint secys because they have PRs/GCs.
- He claimed holding PRs/GCs while in the government service is against the oath they have taken. (He is also quoted as saying it is against the constitution. Truth: there is no law that prohibits government officials from holding PR).
- In the mean time he is working on the fourth amendment of the Civil Service Act to deter government officers from holding PRs/GCs.
- To avoid offending ordinary NRNs, he may need to refrain from giving statements that go beyond his portfolio.

Support from the party

- CPN-UML Chairman Jhulanath Khanal said his party fully supports Minister for General Administration Lal Babu Pandit for his mission to punish all senior government officials who are holding green card and permanent resident status of foreign countries.
- “मन बिदेशमा र शरिर नेपालमा राखेर राष्ट्रसेवक बनिदैन” – Khanal
- Is the Cabinet standing behind the minister? It is not clear yet.

Few questions

- Is the minister right?
- Given that there is no such law that prohibits government officers from holding PRs, is it fair to punish those who currently hold PRs?
- Should public servants be prohibited from holding PRs/GCs of a foreign country?
- While NRNs are asking for dual citizenship, why should PRs be considered as a sin?

Is punishment fair where law is silent?

- Normally punishment for doing something that is **NOT** prohibited by the law is **NOT** fair;
- Given that the PR-holding-bureaucrats have been derailing the law making process, and
- Have not been declaring their residential status when requested,
- Given this history, in my view, withholding their promotions and perks is fair, waiting for the due process of the law that is in the making.

Should public servants be banned from holding foreign PR/GCs?

- Nepal does not allow dual citizenship; the minister indicates that this will be so in the future,
- Every country can make its own laws on these matters, Nepal can require that government employees do not hold PRs and make such provision in the law. (the world is full of countries with diverse laws).
- This will be determined by lawmakers of Nepal...

Globalisation and measure of loyalty

- The world is now integrated and we are facing challenges emerging at global level. The country needs skills to deal with that.
- Nepal has now become a labour exporting nation.
- It is natural for those working in foreign countries to take PRs/Green Cards and even citizenship. They may also return to Nepal within their working life and work for the Government.
- The argument that people holding Nepali citizenship only, irrespective of how corrupt they are, are more loyal to the country than those with PRs/GCs or citizenship is flawed. Need to decide on a case by case. Transparency in dealings of all PS staff is the key.

A Forward-looking Approach

- Naturally, people working in the PS need Nepali citizenship. This is a common practice.
- Like India, Nepal needs to reconsider its stance on dual citizenship with the possibility of Bhagwati tax.
- Naturally, people holding dual citizenship will have limited rights; it's again a global practice.
- But, a tough security clearance should be made mandatory for all gazzatted PS jobs, which may not be available or can be made even tougher to someone who has foreign PRs/GCs/citizenship, (provided the vetting agency is vetted, has integrity).

Conclusion

- The country needs a dynamic legal framework to deal with new issues continually emerging in this ever changing world.
- Crafty manipulation by some top bureaucrats with PRs/GCs had put the country in a limbo on this matter for some time.
- Minister Pandit has taken the political risk and has shown the courage to take a strong stance against the 'code of silence' imposed in the bureaucracy. He deserves a salute.
- Hope he succeeds in amending and implementing the Act in full including the 'Conduct' section to discipline the PS.
- At this time it may, however, be worthwhile to be a bit more forward-looking and explore possibilities of making the legal framework sufficiently powerful in dealing with emerging issues for decades.
- It is time to introduce security vetting in the Public Service at least for all gazetted staff and the ones handling sensitive information rather than worrying just on their PR/GC status.

Thank you

Comments welcome!