

Human Rights of Refugees: Indian Perspective

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Abstract:

Human Rights of Refugees are one of the major problems of the world. India is a very enormously populated country and is one of the countries experiencing refugees lately. A refugee is any person whose life is under constant threat or the living conditions are not conducive for his healthy survival and he runs for shelter to another nation. However, the exact definition is, any person who “owing to well founded fear of being persecuted 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 unwilling to avail protection of that country”.¹ There are certain lacunae in this definition because it does not include the present-day problems related to refugee protection. India continues and will continue to be the host country since times immemorial for a large number of refugees not only from neighbouring countries but from other parts as well due to its geographic location, democratic government, religious tolerant society and goodwill. India though is not a signatory of the 1951 Refugee convention but it has ratified a number of other human rights treaties which imposes obligations to provide protection to refugees. Many countries in the world have a proper rule governing refugees living in their country and the protection that should be given to them but in India, there is no uniform legal framework. The researcher in the present paper highlights the laws and rights available to refugees in India. Researcher also presents the information about Laws and conventions regarding refugees.

Keywords: Human Rights, Refugees, Convention, Legal framework.

Introduction:

In the well-liked understanding, any person who has left his or her home fearing for life and liberty or due to lack of subsistence is regarded as a refugee.² International law defines refugees, subject to minor variations across different illegal instruments, as persons who have been forced to flee the country of their origin and are unable or unwilling to return there due to the fear of persecution on account of their race, religion, ethnicity, political beliefs, etc. Refugees form a special class of persons different from other migrants or aliens – legal or illegal who voluntarily leave their home country for a host of reasons.³ , India is one of the few international locations to enjoy the refugee state of affairs within the final half century. Indian history is apparent with the aid of big-scale migration of people from one of a kind international

¹ Article 1(A) (2) of the 1951 Refugee Convention. Also see Article 1, 1967 Protocol

² Bose 2000.

³ Sircar 2006.

locations. India hosts the largest population of refugees in all of South Asia. At the end of 2016, there were 207,070 persons of concern in India, out of whom 197,851 were refugees and 9,219 were asylum seekers. India is not a signatory to the 1951 Refugee Convention or to its 1967 Protocol on the Status of Refugees. Therefore, the protection of refugees is confined to ad-hoc measures taken by the Government of India, leaving refugees with little protection for their civil and political rights and virtually no legal provisions for their safety and welfare. Against this backdrop, the Refugee Rights Initiative at HRLN works for the protection of the rights of refugees and to improve their situation in India with a mission to assist asylum seekers, refugees and other displaced populations in realizing their basic human rights and accessing the justice system. India has dealt with the issues of 'refugees' on a bilateral basis. India, as explained in the earlier pages, has been observing a 'refugee regime' which generally conforms to the international instruments on the subject without, however, giving a formal shape to the practices adopted by it in the form of a separate statute. Refugees are no doubt 'foreigners'. Even though there may be a case to distinguish them from the rest of the 'foreigners', the current position in India is that they are dealt with under the existing Indian laws, both general and special, which are otherwise applicable to all foreigners. This is because there is no separate law to deal with 'refugees'.

Constitutional foundation for Refugees:

There are a only some Articles of the Indian Constitution which are equally applicable to refugees on the Indian soil in the same way as they are applicable to the Indian Citizens.⁴ India has ratified a number of International human right treaties which obliges India to provide protection to refugees on humanitarian grounds.⁵ The most important of them all is the equality of law and equal protection under law which guarantees fair and just treatment for all refugees. This is however subjected to reasonable classification and intelligible differentia which differentiates between citizens and refugees. Refugees also have the right to life and dignity and this does not imply drudgery or mere animal existence. In *Louis De Raedt v. Union of India*,⁶ the court held that even non- citizens have the fundamental right to life, liberty and dignity. This right of life is followed by right against arrest and detention. The Court has taken a liberal stance in most of the cases concerning the refugees either by mitigating the punishment or ordering release on compassionate grounds. The Supreme Court of India has consistently held that the Fundamental Right enshrined under Article 21 of the Indian Constitution regarding the Right to life and personal liberty, applies to all irrespective of the fact whether they are citizens of India or aliens. The various High Courts in India have liberally adopted the rules of natural justice to refugee issues, along with recognition of the United Nations High Commissioner for Refugees (UNHCR) as playing an important role in the protection of refugees.

In the case of *Gurunathan and others vs. Government of India*⁷ and others and in the matter of *A.C.Mohd.Siddique vs. Government of India and others*⁸, the High Court of Madras expressed its unwillingness to let any Sri Lankan refugees to be forced to return to Sri Lanka against their will. The Bombay High Court in the matter of *Syed Ata Mohammadi vs. Union of India*⁹ was pleased to direct that "there is no question of deporting the Iranian refugee to Iran, since he has been recognized as a refugee by the UNHCR." The Hon'ble Court further permitted the refugee to travel to whichever country he desired. Such an order is in line with the internationally accepted principles of 'non-refoulement' of refugees to their country of origin. The Supreme Court has taken recourse to Article 21 of the Constitution in the absence of

⁴ The Constitution of India- Articles, 14, 20 and 21.

⁵ Refugee Protection India, http://www.hrhc.net/sahrdc/resources/refugee_protection.htm visited on 05 May 2019.

⁶ AIR 1981 SC 1886, para 12

⁷ WP No.S 6708 and 7916 of 1992

⁸ 1998(47) DRJ(DB) p.74.

⁹ *Syed Ata Mohammadi vs. State*, Criminal writ petition no.7504/1994 at the Bombay High Court

legislation to regulate and justify the stay of refugees in India. In *NHRC v. State of Arunachal Pradesh*, the Government of Arunachal Pradesh was asked to perform the duty of safeguarding the life, health and well-being of Chakmas residing in the State and that their application for citizenship should be forwarded to the authorities concerned and not withheld. The constitutional foundation is based on humanitarian grounds.

India and International Conventions relating to refugees:

It is important to note that India is not a signatory to the 1951 Convention relating to the status of refugees or the 1967 Protocol. This makes India's international position in terms of treatment of refugees disputable. However, it is equally important to note that India is a signatory to various other international and regional treaties and conventions relating to universal human rights and refugees such as the UN Deceleration on Territorial Asylum (1967), the Universal Declaration of Human Rights, and the International Convention on Civil and Political Rights¹⁰. India became a member of the Executive Committee of the High Commissioner's Programme (EXCOM) in 1995. The EXCOM is the organization of the UN, which approves and supervises the material assistance programme of UNHCR. Membership of the EXCOM indicates particular interest and greater commitment to refugee matters. Taking this into account, it is clear that India respects international treaties on the treatment of people residing within its territory; but, it chooses to maintain its own administrative arrangements for dealing with temporarily or permanently settled refugee communities.

Indian practice towards Refugee protection:

In India there is no national legislations concerning refugees, their legal status and rights. They are treated as aliens. In the absence of clear cut guidelines, refugees thus fall under the purview of the legislative framework that addresses all foreigners in India. Further, India's refugee policy is governed by certain administrative regulations. 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 of regulates 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, the term foreigner is defined as "a person who is not a citizen of India", which can refer to aliens of any kind including immigrants, refugees and tourists. The Foreigners Act of 1946 and the Foreigner's Order of 1948 also uses this definition of a foreigner.

The practice of the Indian Government has been to deal with refugees in three main ways:

- (a) Refugees in mass influx situations are received in camps and accorded temporary protection by the Indian Government including, sometimes, a certain measures of socio-economic protection.
- (b) Asylum seekers from South Asian countries or any other country with which the government has a sensitive relationship, apply to the government for political asylum which is usually granted without an extensive refugee status determination subject, of course, to political exigencies,
- (c) Citizens of other countries apply to the office of the United Nations High Commissioner for Refugees (UNHCR) for individual refugee status determination in accordance with the terms of the UNCHR statute and the Refugee Convention.¹¹

¹⁰ *Missing Boundaries: Refugees, Migrants, Stateless and Internally Displaced Persons in South Asia* (New Delhi: Manohar, 2003), pp. 99-107.

¹¹ See, the UNHCR Statistical Yearbook – India, 2003, UNHCR Geneva.

Indian refugee policy is frequently guided by political compulsions, not rights-enabling legal obligations. The first 'foreign' influx of refugees occurred in 1959 from Tibet when the government, politically uncomfortable with China, set up transit camps, provided food and medical supplies, issued identity documents and even transferred land for exclusive Tibetan enclaves across the country for cultivation and occupation along with government-provided housing, healthcare and educational facilities. Perhaps the largest mass influx in post-Partition history occurred in 1971 when approximately 16 million refugees from erstwhile East Pakistan sought safety in India. India's refugee policy is harshly brought out in relation to its treatment of the UNHCR. While no formal arrangement exists between the Indian government and the UNHCR, India continues to sit on the UNHCR's Executive Committee in Geneva. Furthermore, India has not signed or ratified the Refugee Convention. This creates a paradoxical situation.

Role of Indian Judiciary towards Refugees:

The Indian Judiciary has played a major role in protecting the rights of refugees. In 1996, the Supreme Court in *National Human Rights Commission v. State of Arunachal Pradesh*¹² intervened with a liberal interpretation of the law to suggest that refugees are a class apart from foreigners deserving of the protection of Article 21 of the Constitution. The Court held at, "We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit anybody or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so."

In *Ms. Zothansangpuui v. The State of Manipur*,¹³ The High Court (HC) granted the petitioner, a citizen of Myanmar, who was escaping the atrocities of the Myanmar army, a period of 1 month to visit UNHCR and seek asylum in India, though she had to complete her sentence under the Foreigners Act 1946, The HC stopped the relevant authorities from deporting her back to Myanmar. In *B. Sivashankar v. State of Tamil Nadu*,¹⁴ the petitioner was a Tamil refugee from Sri-Lanka who had been in judicial custody under various sections of the Indian Penal code and the Foreigners Act. The petitioner received an order of detention under the National Security Act 1980 and filed a petition challenging the order. The HC held that there was no valid reason given for detention and the detention seemed vicious in character as it lacked cogent material for arriving at this subjective satisfaction. The court held this order to be violating article 22(5)¹⁵ of The Constitution of India 1949 and therefore quashed the detention order.

Thus we can see that the Indian Judiciary has tried to take a humanitarian approach while dealing with refugee cases, also it has tried to include principles like non-refoulement in the realm of article 21 of the constitution.

Conclusion:

Refugee problem in India today is a comprehensive issue. Since India has no uniform code for determining refugee status and no specific vital body deals with the refugees'. The refugees' issues number

¹² (1996) 1 SCC 742

¹³ High Court of Gauhati (Imphal Bench), Civil Rule No. 981 of 1989.

¹⁴ High Court of Madras, Habeas Corpus Petition No. 2718 of 2013

¹⁵ When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

of times crop up before the judiciary. A various lacunae exist in the mechanism for dealing with refugees' policy and the government has not enacted a specific law for refugees. Though India has opened its door to refugees from time to time, it has often failed to provide care and support which was due to them, thus causing them to lead miserable lives. India needs to formulate all-embracing legislation on refugees so that the issues cropping up related to them gets tackled in a much simpler and effective way.

