Legal Status of Refugees in India: State and Society

Shahid N P
Assistant Professor,
Department of Political Science,
Lovely Professional University.

Abstract

India is a country with long history of sheltering refugees. India and other countries of South Asian did not party the 1951 ‘United Nations convention on refugees status of 1951 and ‘the protocol on status of refugees in 1967’ (Acharya 2004). The legal status of refugees no different from the law related to ordinary aliens. The absence of a national legal mechanism on the status of refugees has also means that no particular codified protection and assistance is offered to refugees. The status of refugee mainly governed by administrative political decision rather than any codified model of conduct. This paper sets itself the following objects to explain, the first, the legal status of refugees’ lives in India, secondly, practical aspects of refugees’ rights enjoying in India.

Keywords: India, Refugees, Legal Status, Rights, Refoulement

Legal Protection of Refugees in International Law

1951 convention relating to refugees’ status considered as the base of international refugees’ law. The convention defined the word refugees and sets minimum standard for the handling of persons where are found to quality for refugee status. The principles of non-refoulement are a refugee right to protect against forceful return, refoulement is set out in the 1951 refugee convention (Acharya 2004). The rights are crucial to refugees protection are also the fundamental rights stated in 1948 ‘Universal declaration of human rights’. The leading international agency to deal refugee protection is the office of the ‘United Nations High Commission for Refugees’ (UNHCR). The definition of refugees was introduced in the 1951 ‘United Nations Convention relating to the status of refugees’. The definition of a refugee was extended in the 1967 Convention's protocol and regional conventions in Latin America and Africa and to include persons who had bolted war or other violence in their home country. According to international law, “refugees are individuals who, are outside their country of nationality or habitual residence, have a well-founded fear of persecution because of their religion, nationality, race, membership in a particular social group or political opinion, and are unwilling or unable to avail themselves of the protection of that country, or to return there, for fear of persecution” (UNHCR). Rights of the refugee under the Convention and Protocol consist of two primary apparatuses. First, the principle of non-refoulement, secondly relates to those rights available to the refugee which affects his/her day to day life in the host country. Under the international law, the principle of Non-refoulement is the practice of a country not forcing refugees or asylum seekers to return to home country in which they are liable to be subjected to fear of
persecution (Seline 2014). India is not formally obliged to follow the principle of non-refoulement due to the formal duty or lack of specific statute for dealing with refugees under international documents. Two other international human rights related treaties have a specifically significant role in international refugee law, first, ‘the convention against torture and other cruel’, degrading, inhuman treatment or punishment, secondly ‘the convention on the rights of the child’.

**Legal Status of Refugees in India**

India has been a regular host of refugees since its Independence. According to the UN Refugee Agency (UNHCR) more than 200,000 refugees were living in India by 2014. UNHCR estimated that there are 65,700 Sri Lankan refugees, 109,000 Tibetan, 14,300 Rohingyas, 746 Somali, 10,400 Afghan and 918 other refugees who are registered with the agency in 2014. 39 Syrian refugees and 20 asylum seekers were registered by 2015 (Ahmed 2017). Expert in the field of international law Prof. B.S Chimni defined; few reasons are most often advanced for India not becoming a party to the 1951 convention. The first reference made to the euro centric definition of reference contained to the 1951 convention. Secondly, the regime not suite for 3rd world perspective of practice of refugees, thirdly on the article 35 of the convention, NHRC can access to refugee camps and detention centers which act on the behest of west donor countries. The fourth which do not in to account the problems faced by the poor country in addressing the concern of refugees, fifth, it concerns the protection of Indian national security interest, terrorism and other criminal elements, finally Indian context not a particular reason for it to accede to the 1951 convention (Chimni 2000).

The refugees in India are decided mainly based on the ‘foreigner’s Act’ drafted in 1946, he rules framed there under the Passport Act of 1967, emigration Act of 1983 and above all Constitution of Indian Article 21. The ad hoc nature of the Indian government’s policy on refugees has led to varying treatment of diverse refugee groups. But there are three indirect mechanisms to retain the refugee on his arrival in the Indian territory. Firstly, working of international and national legal mechanism like the NHRC and UNHCR and which prevent the return of legal refugees to their home countries. Secondly, under Article 21 by laying down that the State shall not return or expel a refugee in any manner, when his or her life or freedom would be threatened. Thirdly, the Constitution of India ‘Article 51’ automatically integrates the international rule of non-refoulement into India’s national laws. Foreign citizens are given some degree of constitutional protection of their rights while in India. These include ‘the article 14’, protection of the equality clause and ‘Article 21 the life, liberty’, due process provisions of the Indian Constitution. India is a party to ‘the UN declaration on territorial asylum, 1967’. India has accepted the ‘Bangkok Principle of formulated in 1966‘ for guidance of member states with respect to matters regarding treatment and status refugees. India ratified the two ‘international human rights covenants on civil and political rights’ as well as ‘international covenant on economic, social and cultural rights in 1976’ (Nair 2007). India also ratified the ‘UN convention on the right to child’ and ‘convention on the
elimination of all form of discrimination against women’ (CEDAW). India is the party to the convention against torture and other cruel, but not ratified.

Practical Aspect of Refugees Rights in India

The types of ‘refugees’ living in India may be explained under three heads. First, those who receive full security according to the standard set by India Government e.g. Jumma people from Bangladesh, the Sri Lankan Tamil refugees. Secondly, whose presence in Indian territory is approved by the UNHCR and protected under the doctrines of ‘non-refoulement’ e.g. is that of Afghan, Sudanese, Somalians and Burmese etc. Thirdly who have entered India and have integrated into their communities, their presence is not acknowledged either UNHCR or by the Indian Government e.g. Nagas from Burma, tribal refugees. The Government of India have followed a different approach of granting refugee status to various groups though some groups have not been recognized and some other groups have been recognized (Sengupta 2013). In case of ‘Tibetan refugees’, they have been granted loans and other facilities for self-employment. On the other hand, asylum-seekers who are not given the direct protection can apply for refugee status with the UNHCR. Indian Citizenship Act in 2003 amendment which does not make any distinction between refugees and other foreigners. The ‘foreigners’ act of 1948 also restricts the entry of foreigners into Indian Territory at given entry points without proper authorization. The Indian judiciary has also ruled in favor of harmonious relation between international and domestic law when it is consistent with protection of fundamental rights “(Visakha vs State of Rajasthan, 1997 [6] [SCC] 241)”. In 2006, the Supreme Court of India ruled that the personal liberty and right to life as protected in Indian constitution which also protects refugees from forced repatriation. India is a member of UNHCR executive committee which reviews and approves the agency's programs and budget, and advises on international protection.

Conclusion

India approach to treat refugee under the Indian law applicable for all foreigners but ordinary foreigners are quite different from other categories, they can be temporary resident as tourist or travelers. India ad hoc nature of the government policy has resulted treating different categories of refugee groups differently in the country, and administrative decision based on political and security consideration without specific legislative enactment. It is politically more convenient on the basis of bilateral relations. Some groups are enjoyed all full range of benefit, on the other hand, others are criminalized and denied basic life facilities. India neither party to1951 refugee convention and nor the 1967 protocol. The developing countries have argued that the burdens of asylum and refugees are not shared equally while they host millions different categories of refugees.

References


