



Research Paper

“Critical Assessment of Indian Perspective of Refugees and it`s Legal Framework”

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“There is no greater sorrow on earth than the loss of one’s native land” – Euripides

Abstract

Refugee is a person who has fled his/her country 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/her nationality, and is unable or, owing to such fear is unwilling to avail himself/herself the protection of that country. UN Convention relating to the Status of Refugees, 1951.

Refugees have certain rights under the 1951 Convention and 1967 Protocol. However, even in countries that have not signed the Convention/Protocol, these rights are by and large, respected as they may be part of a national legislation on refugees in those countries, or guaranteed in the Constitution of that country. In brief, the rights of refugees include:

- i. The right not to be returned to a county where they are likely to face persecution (the principle of non-refoulement)
- ii. The right not to be expelled, except under certain strictly defined conditions
- iii. Exemption from penalties for illegal entry into the territory of a contracting state
- iv. Freedom of religion and free access to courts
- v. Freedom of movement
- vi. The right to identity papers and travel documents
- vii. The right to public education

India is the follower of the Specific Adoption Theory according to which an international law to be applied under its municipal laws it requires the adoption of its principles through a relevant legislation passed by the Parliament of India.

Rohingya refugees who migrated to India from Bangladesh did not enjoy a harmonious welcome, as some conflicts arose to their legal status of their stay in India. The absence of well-established laws with respect to refugees acts as the sole reason for the conflict of Rohingya refugees.

Keywords- Refugees, Status under International Law, Status in India, Rohingyas, Need for legislation for Refugees.

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I. Introduction

Every human being is having the Right to live with dignity and to be given a nationality status. It is a Universal obligation of every nation that no individual should be left in a condition of statelessness. The concept of nationality acts as a vital link between an individual and a nation. It enables the person to ensure certain rights and duties and to be secured by a particular nation to which he belongs. But in the case of Refugees, it does not happen so because Refugees are the ones who has left their native country due to various reasons as established by the international law. They migrate to another country where they will be either or not given protection and rights depending upon the municipal laws of that country to which they have migrated.

India is one of the few countries that welcome refugees with hospitality and has also ascertained certain rights over them for their security. Over the past 5000 years India has given protection and shelter to various refugees from different countries like Americans, Persians, Syrians, Palestinians, Ethiopians, Afghans and Christians. India has no specific legal framework for the status of refugees but still has extended certain essential

fundamental rights over them. India is not a signatory member to the United Nations Refugee Convention 1951 and its protocol of 1967.

On the other hand, though steps have been taken under the international laws for the protection of the rights of the refugees, those rights are not effectively implemented among the nations due to the variations in the implementation of the international laws within their territory. India is the follower of the Specific Adoption Theory according to which an international law to be applied under its municipal laws, requires the adoption of its principles through a relevant legislation passed by the Parliament of India.

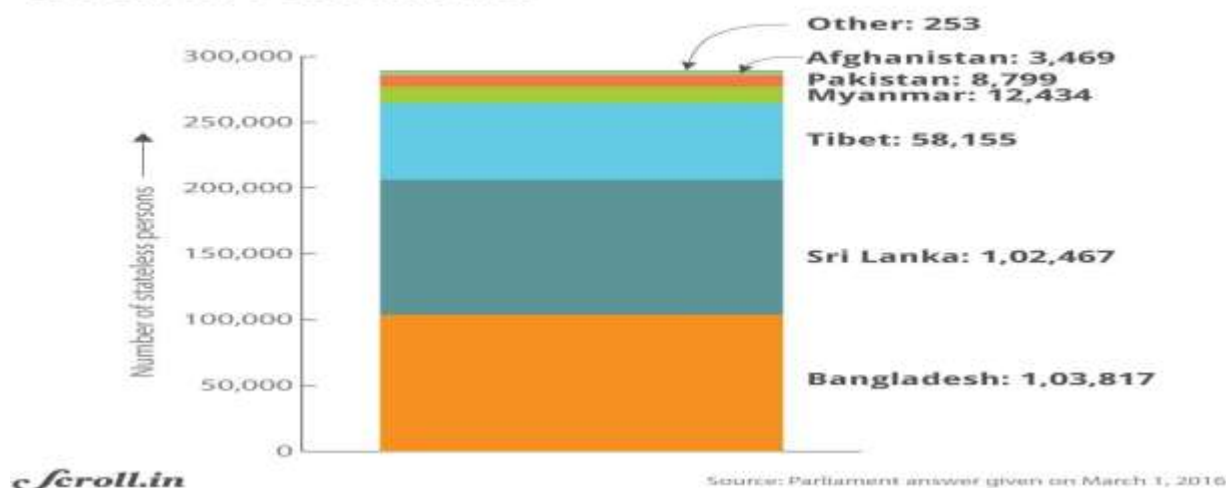
Indian Perspective of Refugees

India is a follower of various principles like non-violence, integrity, security etc. The features like security, social welfare, integrity, democracy etc. are embedded in the Preamble of Indian Constitution.

The various principles of United Nations Declaration of Human Rights 1948 have been established under various fundamental rights like Right to Life and Liberty under Article- 21, Right against Unlawful Detention under Article-22, Right to Privacy which was extended under Article-21 etc. The education of Human Rights is embedded under Article-26 of the Indian Constitution (Choudhury). Even the ancient Vedas of Hindu mythology in India insist on Human Rights (Sastry). Human Rights also form the essential product of Democracy. The remedies are established under Article-32 and 226 of the Indian Constitution. The concept of protection of refugees falls under the ambit of human rights. To provide Protection for the refugees on international level the United Nation Convention on Refugees of 1951 was framed in order to initiate the voluntary action of developed nations (Azad and Jasmin 2013). The protection of refugees is based on the concept that hunger, poverty, security threats recognize no border (Kumar2009). The Right to Dignity which enables a person to make one’s own free choices, respect for the choices and conditions to operate is also applicable to the Refugees. The refuge problem has been existing even before the World War II. By 2015 there was a total of 2,01,381 refugees and 6,480 asylum seekers were present in India (Acharya). Mostly in the case of refugees the men, women and children may be targeted for abuse by the police.

In India there is no specific legislation for refugees and mostly they are treated as aliens. There are certain administrative guidelines that deals with refugees in the form of the following three legislations. The Registration of Foreigners Act 1939 deals with the Foreigners, The Foreigners Act of 1946 empowers the State to regulate the entry, presence, and departure of aliens in India. The Foreigners Order 1948 under Section-2 defines the term Foreigner as those who are not the citizens of India, which can refer to aliens of categories like immigrants, tourists and even refugees. The government of India has power to limit the entry and even to issue orders to the refugees to return to their native countries when there is a risk for the internal peace, absence of valid passport etc.

Stateless persons residing in India by country of origin, as of 2014, according to an answer given in Parliament



Refugee and Indian legal framework

Constitution of India is the basic and supreme document governing the entire administration and legislative actions of the Indian government. It enumerates the key principles to be ensured in the administration of the Indian government. It also ensures the various fundamental rights and duties for its citizens. Some of the rights are also extended to the foreigners and thus thereby extending to the refugees also. Those provisions are

as follows:

(a). Equality before the law or equal protection of the law

Right to equality is established under the Article-14 of the Constitution of India. This right ensures that every individual is treated in an equal manner without any discrimination from one another. This right is extended for both citizens and non-citizens of India. Thus, it includes foreigners thereby extending to the refugees also. The wordings of article-14 are as follows, “The State shall not deny to any person equality before the law or equal protection of laws within the territory of India.”

(b). Right to Life and Personal Liberty

Right to life and personal liberty is established under Article-21 of the Constitution of India. According to this right every individual is having the right to live a peaceful life irrespective of his race, religion, nationality etc. The wordings of article-21 are as follows, “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

The judiciary in various landmark and other important cases has extended its scope to various aspects, which are as follows

1. Right to live with human dignity- it is one such right that states that every individual is secured to lead a dignified life until he affects the peace of the society or violates the law of India. Thus, even refugees are entitled to lead a dignified life in India

2. Right to livelihood- this right is similar to that of right to life under article-21 and acts as substantiate right to the latter ensuring the right to basic amenities, shelter etc.

3. Right to health and medical assistance- this right establishes the right to adequate medical assistance and health care to every individual in India. Thus, under this right the refugees are entitled to proper medical assistance until their stay in India.

4. Right to constitutional remedies- no right will be effective unless there is a remedy established under law in case of its violation.

Thus, the above stated fundamental rights will be meaningless unless there are constitutional remedies guaranteed by law. Article-32 and article-226 are the two vital constitutional remedies guaranteed by the constitution of India in case of any violation of fundamental rights. The former empowers the Supreme Court for judicial activism and the latter extends the same to the High Court.

Special Treatment

(a). Exemption from penalties

India is apathetic towards the status of refugees. According to the Indian law, foreigners are subjected to be liable for a term not extending five years and are also liable to fine. However, India has not implemented this provision without any reasonable causes. In case of large influxes of refugees, India laid down the principle of the refugee convention under Article-3 which states that the contracting States shall not penalize any refugee for illegal entry into their territory if good cause for such entry is shown.

(b). Identity and travel documents

India issues identification certificates to the refugees thereby showing their refugee status. But no refugees were given travel documents so far except for the Tibetan refugees. The Tibetan refugees were given travel documents under which they could travel to foreign countries and could return to India.

This is in accordance with the provisions of the Refugee Convention under Article-28 which states that the contracting States shall provide travel documents for the refugees within the prescribed conditions.

India has adopted the following three main ways in protecting the refugees:

1. India receives the refugees in mass influx by providing them a temporary shelter in camps and in certain essential situations provides them certain socio-economic measures too.

2. Asylum seekers from countries like South Asian countries or any other countries with which India is maintaining a sensitive relationship India grants them a status of political asylum without providing them the refugee status.

3. Whereas the refugees of other countries are subject to apply for the refugee status in the office of the United Nations High Commissioner (UNHCR). In addition to the above administrative ways being followed by India, India has also adopted three bureaucratic strategies in order to deal with the problems relating to refugees

4. The Home Ministry of India is empowered to deal with the matters of policies, framework regarding the rehabilitation and settlement of refugees. The Ministry of External Affairs is authorized to deal with the matters pertaining to the bilateral negotiations and the international issues respectively.

5. The State Governments are responsible for the maintenance of the protection in the refugee camps being organized in their respective limits.

The National Human Rights Commission and The State Human Rights Commissioner are authorized to ensure the

overall human rights to the refugees.

Rohingya issue- Critical Study

The Rohingyas are an Indo-Aryan ethnic minority group in Rakhine (Rahman 2015). The Rohingyas are the most persecuted minority group in the world. Their educational rights are restricted only in fundamental Islamic studies. Myanmar is a multi-religious country. India and Myanmar have got the robust and rugged relationship in their own legacy (Anupama 2017). Earlier 4000 Rohingya Muslim came to India and settled in Jammu and Kashmir.

Myanmar is a Muslim community originating from Arakan kingdom situated on the western coast of Burma. The list contained in the Citizenship Act 1948 of Myanmar passed after Burma got independence didn't apply for Rohingyas.

According to the United Nations high Commissioner for Refugees, Rohingyas are one of the 17 world's largest and most prominent groups of stateless people.

The New York Times Report states that there were 2000 to 6000 Rohingyas were found in boats in Andaman Sea (Majumder 2015).

According to United Nations High Commission for Refugees (UNHCR) 3 lakh Rohingya Muslims fled Myanmar as of 25th August 20 (Basu 2018).

India being the home for various refugees in South-Asia, was not ready to give support to the Rohingyas as some groups of Rohingyas related to militant groups which may cause danger to the internal and national security of the country. Though the UNHCR requested India to extend its support to them, India denied doing so, but agreed to extend its support to Bangladesh in deporting Rohingyas.

The Refugee Law and its Benefits

The absence of specific laws relating to refugees increases the non-uniformity among the treatment of refugees. Though the judiciary of India has extended the Articles 14 and 21 to the refugees, they are applicable only to selected groups of refugees leaving the other part to be discriminated. The example of this is the treatment of the Tibetan and Sri Lankan refugees. The Sri Lankan refugees until the assassination of former Prime Minister Rajiv Gandhi was welcomed and treated well by Tamil Nadu, but after the assassination of Rajiv Gandhi the treatment of them depends upon the ruling political party of Tamil Nadu. Another benefit of having a well-defined refugee policy/law is that it could clearly define the term “Refugee” thereby differentiating it from the term foreigners or aliens which cover the refugees in present. The instance can be traced in the situation of people involved in the assassination of Rajiv Gandhi where apart from the accused all the other was termed as refugees.

Roadblock in Framing Laws Relating to Refugees

The National Human Rights Commission in 1997 requested the Ministry of External Affairs to legislate a proper regulatory framework regarding refugees. It stated that the management of the refugees through the administrative decisions based on political and security considerations gives ad hoc remedies. But the reason for not regulating a uniform framework for the refugees is that India is having different treaties with its neighboring countries and hence a uniform framework cannot be suitable for the refugees.

The other reason for not framing a permanent law for refugees is that India being situated in a geographical location sharing its borders with many nations like Pakistan, China, Nepal etc. has to give its security the top priority as a recognized law for refugees may attract large influxes of refugees to India.

Recommendations

1. A specific municipal legislation for refugees is required.
2. A precise definition for refugees is required.
3. Refugees should be distinguished from the term “Foreigner” and “Aliens”.
4. Well established guidelines should be established about the remedial measures for refugees.
5. The legislation may try to adopt some key principles of the 1951 UN Refugee Convention.

II. Conclusion

Every individual is entitled to lead a dignified and peaceful life; no person should be left with a condition of statelessness. It is the duty of each nation to ensure the above rights to every individual across the world. In the case of refugees, the above rights are not assured to them in all the cases. India though is not the signatory member to the 1951 Refugee Convention is an active supporter to the refugees who seek the assistance of India, but the recognition of refugees under the definitions of “Foreigners” and “Aliens” leads to certain absurdity in certain cases. Though there are certain reasons to justify for not framing a municipal legislation regarding the refugees in India, certain instances where the refugees were denied their rights.

Moreover, the present form of regulations administering the refugees in India involves the political dominations in deciding the remedial measures to the refugees. There is need for a specific municipal legislation governing the provisions relating to refugees with well-defined definitions and reducing the involvement of politics.

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