

Why India Needs Refugee Law Not Ad Hoc Measures : Mapping Reasons and Responsibilities

Dr. Kalpna Sharma, Assistant Professor

Law Centre -II, Faculty of Law
University of Delhi Pin code is 110007

“ While every refugee’s story is different and their anguish personal, they all share a common thread of uncommon courage; the courage not only to survive, but to persevere and rebuild their shattered lives.”

Antonio Guterres,

U. N. High Commissioner for Refugees

Abstract

The Indian government has handled a few refugee communities very well, but it has yet to create an obviously refugee statute, and court interventions have been situation. In the lack of clearly defined statutory standards, refugees and asylum seekers are subjected to government practises that are contradictory as well as arbitrary. India has never been a country of originating refugees. Except the largest migration of people at the time of partition in 1947 in the newly formulated states India and Pakistan. But India’s geopolitical position in the subcontinent makes it a preferred place for refugees and asylum seekers. Presently the number of refugees coming to India is increasing and dealing with mass influx without a refugee law will make situation more complex. This paper address the policies and ad hoc legal measure for refugees in India. Paper further discuss the disparity among rights and facilities provided to different refugees communities while assisting them in India The reasons and responsibilities of the Government of India is highlighted with conclusion. This study investigates the influence of the existing ad - hoc basis structure of the legal framework that controls refugees in India on the basic contours of refugee treatment under Indian law as well as administrative practise. It examines India's commitment to refugee protection, as well as judicial efforts to broaden refugee protection as well as administrative practises that control refugee living. It aims to offer a case for the development of a distinct legislative framework that describes the legal status for refugees in India depending on this debate.

Key Words : Human Right, Refugee Law, Legislation, India, Administrative.

I Prelude

There has been a new emphasis on the refugee crisis across the globe. There are more refugees as well as people who have been forcibly moved throughout the world than ever before because of poverty, environmental pollution, human rights abuses, and wars. In developing nations, refugee



immigration is a common problem. The worldwide refugee crisis is growing on a daily basis 65.3 million people have been displaced in 2015, with 21.3 million refugees, 40.8 million forcibly displaced individuals (IDPs), as well as 3 million seeking asylum among them.¹According to the UNHCR's 2015 Global Trend Report, the 30 countries with the biggest number of refugees welcomed 86.5 % of all refugees. Many refugees come from countries that are struggling to keep up with the demands of their own people. In South Asia, ethnic or religious persecution or political turmoil, as well as murder, have spurred interregional mobility and relocation of minor parties. It is now almost difficult for nations and international bodies to react adequately to a plight of refugees and those driven to leave inside their own countries. At the end of 2015, 65 million people were forcibly displaced. The literature reviewed shows that the South Asian region has a long and complex history of migration within and outside the region, every country received refugees and produced refugees as well. Despite the South Asia's economic growth in the recent past, which make it fastest growing region in the World and home of numerous refugees, interestingly not a single country of South Asia region⁴are signatory to the International Convention on the Status of Refugees, 1951 and Protocol relating to the Status of Refugee, 1967. Hence, region is ill equipped to deal with contemporary refugee crisis. This might be a reason that there have been only humanitarian initiatives to alleviate the plight of refugees and displaced persons. Over the decade South Asian States significantly improved health, primary education and infrastructure etc. But lacks good regional models of constructive refugee policy and programme to support the people persecuted and deprived of their human rights. In South Asian region, India is one of the prominent place to take shelter by refugee since time immemorial. India's culture and civilization reflect refugee asylum as an integral part of this land. Its size and geo-political strategic and economic capacity influence the population migration in this region. Even now, people are coming in the subcontinent. As a result, India is accused of treating refugees from different countries differently, resulting in some receiving basic human rights while others stay in appalling circumstances. Due to their inability to get basic services, like identity cards, refugees fear about additional displacement. Papers like this one attempt to measure the causes of refugee migration, as well as India's current legal framework to deal with refugee concerns. The government of India's plans and initiatives to cope with the refugee crisis, as well as its international responsibilities and worries about national security and reliability, are detailed in the paper.

II Refugees Movements in India

India has been noted in its historic culture for receiving people who were persecuted and harassed, provide asylum and sheltered to the number of people since time immemorial. India welcomes all, whosoever comes to this country. China invaded the Tibet in 1949, since that time Tibetan refugees arrived India through Nepal border and take asylum in India. The flow of Tibetan refugees continues even today but the density is a bit less for now after Karmapa



Lama entered into India in 2000. The Government of India has restricted the movement. China's oppression in Tibet and persecution of Tibetan forced them to escape from homeland. Further with the Soviet military intervention in Afghanistan in 1979 Afghan refugees started coming to India, Pakistan and Iran.

The flow of Afghan refugees has continued since then. In 2015 according to UNHCR India, there were nearly 11,000 Afghan refugees registered under its mandate. While earlier Afghan exiles were mainly Sikhs & Hindus of Afghanistan who fled to Pakistan, Iran as well as India due to worsening security in their homeland, this is no longer the case. Currently, Afghanistan is the only country in the world creating thousands of refugees every month. Following the overthrow of Iran's shah as well as the rise of an Islamic fundamentalist government in 1979, several Iranian students in Delhi were forced to return home as refugees. The 'principle of non-refoulement' is recognised by India. The arrival of refugees in India continued in the sequence and in the meantime in 1983 thousands of Sri Lankan Tamils took asylum in Southern coast of India due to ethnic conflicts between Sinhalese and Tamils. Which resulted in a massive migration of Tamils in the State of Tamil Nadu, India. This exodus of refugees continued till 1987, over 1 Lakh Sri Lankan refugees took asylum. Presently, 109 Special Camps in Tamil Nadu houses more than 60,000 refugees.

The ethnically, culturally and religiously distinct indigenous people of the Chittagong Hill tracts of eastern Bangladesh faced numerous massacres and atrocities from Bangladesh armed forces and the Muslim communities. Therefore, Chakma refugees moved to Indian border areas, notably Tripura in 1981, Mizoram in 1984, and then again in Tripura in 1986, among many other destinations. After return to their homeland and being rehabilitated by the Ministry of home affairs in 2003, the government withdrew rations and other basic services, leaving the Chakma people stateless in their very own nation. An further stream of refugees into India took from Bhutan, that began in 1990 as a result of ethnic warfare between the governing Drukpas of Bhutan and ethnic Bhutanese of Nepali descent. Nepalese from Bhutan have taken shelter in the Indian states of Assam and West Bengal, which are located in the nation's military north-eastern region. India's response towards Bhutanese refugees showed that India has not recognised them as refugees and hence not provided them any assistance

The burmese refugees in India reached in 1988 following political turmoil in the Burma which resulted in the migration of large scale of people to neighbouring states. A large number of ethnic Chins entered in the state of Mizoram. But Government of India did not recognize Chins, Nagas and Rakhins from Burma as refugees. At present 40,000 Rohingyas are in India and 16500 Rohingya refugees have identity cards of The United Nations High Commissioner for Refugees (UNHCR). Aside from the mentioned previously influx of refugees, India has traditionally welcomed asylum seekers from throughout the world, notably Somalis, Sudanese,



Indo-Chinese, and countless others, but in relatively small numbers. According to the preceding paragraph, India is now home to a large refugee population. Indian policy towards refugees as well as their difficulties is far more favourable than that of other Asian nations, despite India's own domestic limits, such as its social imbalance as well as economic resources.

III. International Refugee Law Regime and India's International Commitments

The two World Wars of the 20th century relocated millions of people around the world, leading to the formation of a range of global guidelines, regulations, and conventions aimed at ensuring the safeguards of basic human rights as well as the treatment of an ever-growing number of people who were forced to flee their homes due to the fear of various forms of persecution and oppression.

The solution to a current global refugee crisis is based on international refugee law. It aims to protect refugees from violence and use them as a decent living until they are able to return to the country. . The preamble of a United Nations Charter reinforces the basis of refugee law. *“faith in fundamental human rights, in the dignity and worth of the human person” ”to promote social progress and better standards of life in larger freedom”*.

Over the last 65 years The 1951 Convention on the Refugee Status has maintained its relevance and shown its resilience in respect of providing a normative framework to address the changing pattern of migration and the contemporary refugee issues as well. The 1951 Convention on the Status of Refugees for the first time offered a general definition of refugee and its 1967 Protocol, extended its protection to such persons irrespective of nationality or geographical location.²⁰ The Convention contains rights and obligation of refugees towards their host country. However, refugees whose flight is not motivated by persecution rooted in civil or political status are excluded from the rights regime established by the convention. Apart from the international legal regime, there are some regional instruments which enhance the protection of refugees and asylum seekers to meet the peculiar regional conditions and compliment the international refugee protection regime.

The corner stone of International and regional refugee law is the principle of non-refoulement. Hence, according to this principle, a refugee should not be returned to a country where his/her life is in threat or the chances of persecution is there. Apart from these regional instruments United Nations High Commissioner For Refugees (UNHCR) is the principle and leading United Nations agency mandated to provide assistance and international protection to refugees and other persons of concern and to find solution to their plight.



India is signatory to a number of United Nations Conventions on Human Rights issues and related matters. Though India is not signatory to the 1951 Convention on the Status of Refugees and its 1967 Protocol. But its commitment to protect and assist refugees in the country is on the principle of non-refoulement. India was signatory to the Universal Declaration of Human Rights, 1948. It is important to highlight here that international refugee law regime recognized several provisions of the Universal Declaration of Human Rights. also ratified International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of Discrimination against Women (CEDAW), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child(CRC) etc. Therefore India , directly or indirectly is responsible for its commitments at the international level to protect people entering its border, persecuted in their own country. India is also a member state of the Executive Committee of the High Commissioner's Programme (ExCOM) since 1995 and assisting UNHCR towards redressal of refugees related matters. While India never signed and ratified The 1951 Convention on Refugee Status, it also not denied to provide the minimum standard of treatment to the asylum seekers and refugees. Hence India respects international treaties and fulfilled its commitment towards a normative international framework for the protection of the human rights of the persecuted people.

IV. India's Stand on Refugee : Policies and Statutory Provisions

However, India's internal society's urgent requirements prevent it from taking in large numbers of refugees. Because of India's open attitude, refugee children come to the country. India's bureaucratic machinery is actually dealing with refugee issues, such as the Interior Ministry for resettlement and rehabilitation, the Ministry of International Trade and industry for bilateral talks with the nation that produced the refugees as well as global platforms for dealing with refugee issues, and eventually individual member states for the conservation as well as improvement of refugees inside the camps themselves. Refugees' human rights are even further protected by the Commission On Human Rights (NHRC) and the State Human Rights Commissions. But the Government of India has chooses its own administrative arrangement to deal with refugees on the basis of there stay in the country. Like the mass influx of refugees are received in the camps¹ and provided temporary protection and basic facilities, asylum to people from South Asian countries usually granted subject to the political exigencies.

In the lack of separate legislation on refugees, refugees are governed by The Foreigners Act 1946, The Extradition Act, 1962, Citizenship Act, 1955, Passport Act 1967, Passport (Entry into India) Act, 1920, Registration of Foreigners Act, 1939, Illegal Migrant (Determination by Tribunal)



Act, 1983, The 1993 Protection of Human Rights Act, for instance, All current Indian regulations, such as the Indian Penal Code 1860, the Code Of Criminal procedure 1973, and the Indian Evidence Act 1872, pertain to refugees. In addition, the Indian Constitution reflects the global principles enshrined in the Universal Declaration, that affirms the concept of non-discrimination and proclaims equality and dignity for all human beings. As a result, all of the fundamental rights have indeed been recognised by the Constitution. Article 14-35 of Chapter III of the Indian Constitution deals with a number of essential rights, only a few of which are equally accessible to refugees in India. The Indian Constitution and bill of rights provisions on law enforcement guarantee that refugees' rights have been completely protected to the fullest extent possible. Sri Lankan Tamil refugees are living in the State of Tamil Nadu in camps and getting aid by Government.

The Indian government recognises both these refugee communities. Afghan refugees in India, on the other hand, are not legally recognised as refugees, and their status in India is that of a "foreigner temporarily staying in India." The same is valid for the other refugee populations mentioned in the article, who have not yet been granted refugee status and have received no aid from of the Indian government. Distinct refugee groups have received varied rights and benefits, as well as different roles, as has been noticed. As a result of the foregoing debate, it is clear that India's handling of asylum seekers was always a political choice, i.e. India's relations with the refugee-producing countries. As a result, the government handles these issues operationally in accordance with bilateral political as well as domestic considerations. Various standards of protection and support apply to various refugee groups, resulting in discrimination in India's refugee community.

V Refugees in India : Partisanship And Treatment

Refugees from various countries had diverse treatment, as documented in the accessible literature. The Indian govt's discriminatory restrictions and uneven treatment of the refugee population call into question India's human rights and humanitarian stance. As first foreign refugees to seek refuge in India, the Tibetans are arguably the only members of the that nation's refugee population who reside in real communities rather than prison camps. Sri Lankan Tamil refugees are living in the State of Tamil Nadu in camps and getting aid by Government. The Indian government recognises both these refugee communities. Afghan refugees in India, on the other hand, are not legally recognised as refugees, and their status in India is that of a "foreigner temporarily staying in India." The same is valid for the other refugee populations mentioned in the article, who have not yet been granted refugee status and have received no aid from of the Indian government. Distinct refugee groups have received varied rights and benefits, as well as different roles, as has been noticed. As a result of the foregoing debate, it is clear that India's handling of asylum seekers was always a political choice, i.e. India's relations with the refugee-



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VI India's National legal regime on Refugee : Sketchy and Undone

Due to a belief that this is Eurocentric as well as relevant only to the post-World War II refugee movements, India really hasn't adopted the Treaty. Despite the reality that Indian government insists that its actions are in accordance with international standards, no Indian statute specifically mentions refugees by name. As a consequence, refugees are subject to the same laws that apply to non-citizens as well as foreigners. India presently lacks a proper legal framework to cope with the massive refugee community that exists in the nation. The fact that India has decided to deal to large waves of immigration of refugees and asylum seekers inside the past without having a consistent refugee law cannot be denied, but as the population of refugees and asylum seekers continues to grow, a consistent refugee law will allow government to better manage its group of noninhabitants in the future. It is also critical for the fulfillment but instead implementation of the human rights of refugees and asylum seekers. There can be no lasting fix if policies and programmes are implemented on an as-needed basis. It is true that court plays an important role in interpreting the Indian Constitution in line with the principles of international law in order to defend the civic dignity of migrants and refugees . The National Human Rights Commission (NHRC), which serves as a watchdog for Indian refugee policy, has issued a list of suggestions advising the formula of refugee law, which must take into consideration the nature and needs of refugees in the mainland, as well as the national security interests and humanistic.

Even though India really hasn't ratified the 1951 Convention just on Status of Refugees or its 1967 Protocol, the country has ratified a number of many other international treaties and conventions as well as conventions. As a result, if India adheres to treaty obligations and law with regards to a persons who have sought refuge inside the country and are staying inside its boundaries, A blemish on the country's worldwide reputation is caused by its lack of knowledge of migrants and reluctance to pass separate refugee laws.

No doubt, the Indian judiciary has worked with a great deal of zeal to preserve the rights of refugees in India, but it does so within certain limitations. When it comes to activist judges, there is no such things as certainty or continuity. The adoption of a national legislation to protect, rehabilitate, and return refugees is an absolute need. Since only law will be able to give an effective as well as long-lasting answer.



As long as Consumers continue to welcome asylum seekers as well as refugees from its bordering countries, a comprehensive refugee legislation is urgently required, as is consistent treatment of all refugees across the country.

VII. Conclusion

To put it another, this international refugee problem is being compounded by nation governments as well as the boundaries imposed during colonial times. Keeping in mind that boundaries are sentient is crucial. Empathy is the most one can do instead of scorn for migrants. Refugees now are tomorrow's citizens. It is time for a law that not only addresses the legal status as well as protection of refugees and also embraces the refugee crisis overall, because today's refugee dilemma is global in character and affects both persons as well as states. International law now supports the rights of refugees. In order to differentiate among unlawful migrants and refugees, the Government would be able to use the national legislation on refugees. As a result, the adoption of the a national law on refugees would indeed formalise India's international legal commitment to refugees, but it would also help ensure openness and impartiality in the law or processes regulating refugees. It is in India's best interest to pass a law governing the status of refugees. There is now no system in place to address the problem with refugees. As a matter of urgency, India's government must implement an asylum seeker law.

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