

A Home Away From Home- The Refugee Crisis and Human Rights

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Abstract

The issue of refugee's rights is a vital and grave for international as well as for national sovereign countries. The gross human right violations faced by them in their own country force them to flee from there and to seek asylum in other countries. In India, there is a tendency to accommodate refugees entering in the country and providing them with basic amenities and also Indian judiciary has protected them under certain constitutional provisions like Articles-14, 21 and 32 of the Indian Constitution. The major drawback is India is neither a party to the 1951 Convention or neither the 1967 protocol nor it has any domestic legislation on the subject of refugees which bar expelling of refugees.

The perspective of refugee rights be only matter for international law is to be changed in India and they should be duly protected under Part III and Part IV of Constitution. A balance is needed to be maintained for the conflict of concerns for security and protection of individual human rights. So a justice-oriented approach which should be adopted by the government to protect the rights of refugees in India will be recommended by the present study.

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Introduction

When a person is deprived of from enjoying his life with dignity, his rights are said to be violated be it liberty, freedom, property, religion or profession for that matter. Similarly, a person, being thrown out of his habitual residence due to the obdurate positions, antagonistic approaches to diplomacy, suspicion and forked speech of egoistic politician disturbing the security of the country leading to dire consequences such as War, violence, terrorism, inter se disputes inside the country losses his human rights, for which necessary actions is to be taken in order to preserve and protect his right to life coupled with dignity, liberty and freedom to which he is entitled to by birth.

The amount of mental agony a person faces through his life when his place of habitat is snatched away from him can never be quantified by using a single word, like wise a person who is constrained to leave his beloved country because reasons for which he is not responsible, is in itself difficult to fathom. However, the concept of Refugee is not alien to the society as it relates back to AD 600, when the right to seek asylum in a church or other holy places was first introduced by King Ethelbert of Kent which was subsequently followed by different European Kings during different Wars. By the begging of the World War I , various group of people who have flown down from their origin were designated as Refugees and from thereon, the concept of refugee started gaining its importance as the World continued to witness different phases of War in its eventuality.

With efflux of time, as the quantum of Refugees continued to increase proportionately to the number of wars fought worldwide, number of laws were enacted to ensure due protection of their rights. Such laws received their judicial approval from several conventions which includes Human Rights that watches refugee rights programme to defend the rights of refugees asylum seekers and displaced persons worldwide. The role of Human Rights in protecting the rights of the Refugee is *ejusdim genesis* to that of the our Constitution guarding the rights of the Citizens by conferring the Constitutional Rights as Human Right responds to emergencies as well as chronic situations, focusing especially on documenting government efforts to block access to asylum, to deprive asylum seekers of rights to fair hearings of their refugee claims, and to the forcible return of people to places where their lives or freedom would be threatened. Different Human Right Agencies conducts on-the-ground investigations to speak with uprooted people and document abuses against them. Their findings are directly taken up for discussion with the policy-makers and the media as they advocate for

governments to improve access to asylum, to stop forced returns, and to ensure that all migrants are treated with dignity and regard for their basic human rights.

Research Methodology

The research methodology adopted in preparing this dissertation is primarily doctrinal in nature.

Objective

A comprehensive and insightful analysis of the captioned Topic would render an opportunity to have an idea as crystal on the aspect of 'Refugee', 'its inception', 'impediments/crisis', 'its impact on the society', 'steps taken to eradicate the crisis', 'Connection with Human Rights' and other miscellaneous aspects vis-à-vis legal precedents and judicial sanctity which are pertinent to arrive at conclusion which would be otherwise helpful for a better understanding of the life spend by a person who is compelled to stay away from his homeland, merely an outsider to this universe having no domicile, merely a 'refugee'.

Description of Research Issues

1. A comparative 'Definition' through different Conventions
2. Refugee and its relation with India
3. Legal Enactments for Pre and Post-Independence
4. Constitutional Safeguard for Refugees in India
5. Deportation of Refugees by Indian government
6. Role of Judiciary

Definitions of 'Refugee' Having Legal Sanctity

The very word 'refugee' has come from its inceptive word *refuge*, which in French refers to "hiding place". War, violence, hostility and ill-treatment, especially due to race or political or religious beliefs; oppression when forced upon someone, the person finding no other alternative takes shelter of any place other than his homeland due the constant fear of facing such arbitrariness in the event of his return. The person once leaves his homeland due to the aforementioned factors in order to take shelter under a specify entity is termed as a refugee.

Different Conventions have rendered different Definitions to the word 'Refugee' having regard to the prevalent circumstances; some of them are quoted below for better appreciation;

UN 1951 Refugee Convention

"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, owing to such fear, is unwilling to avail himself of the protection

of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

The Convention Governing the Specific Aspects of Refugee Problems in Africa

"Every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality."

The 1984 regional, non-binding Latin-American Cartagena Declaration on Refugees

"persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."

The United Nation High Commissioner for Refugees as on 2011

"who are outside their country of nationality or habitual residence and unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order."

Refugees and India

According to the kind words of NaniPalkiwala, an ardent defender of the Constitution of India, a king of civil liberties, a farsighted economic thinker and a legendary lawyer "*India is eternal, everlasting, Thought the beginnings of her numerous civilization go so far back in time that they are lost in the twilight of history she has the gift of perpetual youth. Her culture is ageless and is as relevant to our twentieth century as it was to the twentieth century before Christ.*" The purpose behind quoting the lines of one of the most prominent lawyer, the Country has ever produce is to portray the significance this Country possess that attracts people of other countries to take shelter when situation so constrains them to do so. The kindness, the culture and the glory, this Country has shown over the years to its neighbours is astonishing and the same tends to continue forever.

On 15th August, 1947, when a new, free and hopeful India was born alongside it, a new Country was born namely, 'Pakistan' our neighbouring Country which finds its basis on the partition that took place between Indian and Pakistan in 1947. During partition, a massive population was exchanged between the two newly founded free Countries. After the partition, nearly 15 Million people crossed the lines. On the basis of the 1951 census on displaced persons, approximately 7.226 million Muhmuddan migrated from Indian to Pakistan, per

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contra, 7.249 Millions of Hindus and Sikhs were compelled to migrate to India from Pakistan. When we talk about refugees in India, though the first thing that hits out mind is the refugees arising out of partition in 1947 but as a matter of fact there are several other refugees, to whom India has been kind enough to give shelter. Some of the important ones are named below;

1. Tibetan Refugees
2. Refugees from Bangladesh
3. Refugees from Pakistan
4. Refugees from Afghanistan
5. Sri Lankan Tamilians
6. Rohingya People
7. The Chakma and Hejong Refugees

In order to have a bare knowledge about these refugees and their relation with India, an analysis in nutshell would be imperative. From the fear of persecution of the People's Liberation Army in Tibet, during 1959, the 14th Dalai Lama escaped from Tibet to Dharmasala in India. Following the footsteps of 14th Dalai Lama, more than 1,50,000 Tibetans tagged along with him and sought for shelter in India. The then Prime Minister of India Pt. Jawaharlal Nehru was kind enough to allow the immigrants of Tibet to take shelter of India. The people who belong to Tibet but stays outside Tibet are known as Tibetan Diaspora. The prime organization of Tibetan Diaspora situates in McLeodGanj in the city of Dharmasala in India namely the 'Central Tibetan Administration of the 14th Dalai Lama'. The Central Tibetan Administration has its branches across the major cities around the globe to preserve the socio-cultural activities of the Tibetans. The Central Tibetan Administration also furnishes aid in educating the Diaspora in so far as India is concerned. It is a matter of great concern when the young Tibetans who are being migrated to India loses their identity as Tibetans especially when they enter into the Indian Cities to educate themselves. Moreover, the Indian food, climate and mixed Indian culture, the approach towards life and all other aspects is prejudicing the originality of the Diaspora which is a matter of immense concerned for the Central Tibetan Administration. As a matter of great pertinence, it is trite to mention at this juncture that in order to provide political asylum to the Tibetan Diaspora, India invited the Chinese trouble, and the Indo-China War in the year 1962 also finds its one of the reason from this political asylum.

Bangladesh, a country which fought its battle of freedom in the year 1971 while seeking independence from Pakistan is the home of second largest immigrants to India. India

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provided aid to Bangladesh to mitigate the Pakistani Forces and became a Friendly nation to Bangladesh. In order to secure their life, many Bangladeshi entered into Indian Territory and sought for asylum from the battle fought between Pakistan Army and Bangladeshi Forces. According to a survey conducted during that period, an approximate amount of 10 Million Bangladeshi took shelter under Indian Government which made it increasingly difficult for the Indian Government to provide food and basis amenities for those people. It also resulted in an increase in the population of the bordering states. So far as the current situation of the Bangladeshi refuges is concerned, they are still finding it burdensome to adopt themselves with the Indian Tribal Culture prevalent at the areas where, they have been inducted during the War of 1971. The regular tussle between the locals of those area and the Bangladeshi refugees is continuing as such. The continuous immigration of the Bangladeshi refugees has caused the locals to have feeling of they being a group of minority in their own land as compare to the refugees, this feeling has become a prime reason for the hatred shared among themselves, as a matter of fact, the Kokrajhar riots in Assam in the year 2012 is a bright example of such tussle which saw a death row of 100 people. The Indian Government and the Bangladeshi Government both have been working under one roof to ascertain the actual dispute prevalent between the two sects of people and endeavors are being made to capitulate the situation in order to sustain the peace between both the Countries.

Pursuant to the Black July Riots of 1983 and Sri Lankan Civil War followed by the arbitrary policies of the successive Sri Lankan Governments caused many Sri Lankan Tamils to leave their island nation and take shelter in our Country, especially in Tamil Nadu which is the closest to the island. More than, 1.5 lakh Sri Lankan Tamils crossed the border and took asylum in India. Notwithstanding the end of long Civil War in Sri Lanka, as on date there are more than 60,000 Sri Lankan Tamils are staying in refugee camps. India's intervention in the Civil War of Sri Lanka and providing shelter to the Refuges has already costed Indian, the assassination of former Prime Minister Rajiv Gandhi resulting the refugee issue alive and keeping the relation of India – Tamil Nadu – Sri Lanka in dark abeyance.

Following the soviet invasion in Afghanistan, large number of Afghans was constrained to take shelter of Indian Government and its Territory and was mostly concentrated in and around the Capital of the Country, Delhi. They have settled themselves in that region without any hindrance from any quarter. As per the information shared in the UN High Commissioner for Refugees (UNHCR) Website, several Hindu and Sikh Afghans who took aid in India after fleeing fighting in their home country during the 1990s have been granted citizenship in

India. Both the World Bank and UNHCR reports suggest that currently India has more than 200,000 Afghan refugees living in its territory.

The Rohingya Refugee finds their origin, being a Muslim community to the Rakhine state of Myanmar,. They have been identified as one of the most persecuted ethnic groups in the world. Despite the fact that they belong to Myanmar but the authorities therein refuses to give them their identity and recognition as its citizens. The ironical fact which remains for debate is that both Bangladesh and India, where these Rohingya Refugees have been mostly residing, they are not in a position to guarantee permanent place for residence to those persons as a matter of great concern, the Rohingyas are stateless people. These Rohingyas live a miserable life as prima facie there is the worst category of refugees to render shelter but what makes their life more miserable is they are constant parties to the real violence which at times lead to genocide in Rakhine. In India, Rohingyas basically have settled in places like Delhi, Hyderabad, Kashmir, West Bengal and the northeastern states. While the Indian government is denying their recognition, per contra, the UNHCR has been acting as a support system for them to fight for their sustenance in India.

The Chakma and Hejong Refugees hail from the Chittagong tracts, positioned in Bangladesh. Due to different situations countered by them in their locality, they have taken shelter of India having their life settled mostly in Arunachal Pradesh. In pursuance to a direction given by the Hon'ble Supreme Court, the Indian Government has taken effective measures to grant Citizenship to these refugees despite several objections received from different quarters.

Legal Frame Work in India: Refugee Law

India, being a Union of States its Parliament possesses every right and authority to manage its subject of citizenship, naturalization and aliens. Although the concept of Refugee, asylum is not new to this Country, but as on date due to a few unidentifiable reasons, this Country could not put forth any specific legislation which regulates the entry and status of refugees as a result of which, refugees are considered and treated under the law applicable to aliens in India.

In India refugees are considered under the ambit of the term 'alien'. Our Constitution has noticed the word alien as the same appears in Article 22, Para 3 and Entry 17, List I, Schedule 7, in Section 83 of the Indian Civil Procedure Code, and in Section 3(2)(b) of the Indian Citizenship Act, 1955, as well as some other statutes. There are certain enactments governing aliens in India viz. the Foreigners Act, 1946 under which the Central Government is empowered to regulate the entry of aliens into India, their presence and departure there

from; it defines a 'foreigner' to mean 'a person who is not a citizen of India'. The Registration Act, 1939 deals with the registration of foreigners entering, being present in, and departing from India. Also, the Passport Act, 1920 and the Passport Act, 1967 deals with the powers of the government to impose conditions of passport for entry into India and to issue passport and travel documents to regulate departure from India of citizens of India.

As the aforementioned legislative enactments do not make out any distinction between genuine refugees and other categories of aliens, there is huge amount of risk involved for the refugees in the event their of arrest by the immigration authorities and of their prosecution if they enter India without a valid passport/travel documents. Usually, the practice prevalent in such an eventuality is that when a refugee is detained by customs, immigration or police authorities for commission of any of the offences under the earlier mentioned enactments, he is handed over to the police, subsequently, a First Information Report is registered against him. According to the provisions of these statutes the refugee may face forced deportation at the established sea ports, airports or the entry points at the international border, if he is detected without valid travel documents. He may also be detained and interrogated pending decision by the administrative authorities regarding his plea for refugee/asylum. A refugee also faces the prospects of prosecution for violation of the Registration of Foreigners Act, 1939 and Rules made thereunder and if he is found guilty of any offence under this Act he may be punished with imprisonment which may extend to one year or with a fine up to one thousand rupees or with both.

Laws for Refugee: Prior and Post-Independence

For these refugees, several provisions were enacted but some of the measures have lost their existence. Following are some of the legislation which enacted the partition of India and before the Indian Constitution came into effect;

1. East Punjab Evacuees (Administration of Property) Act, 1947
2. UP Land Acquisition (Rehabilitation of Refugees) Act, 1948
3. East Punjab Refugees (Registration of Land Claims) Act, 1948
4. Mysore Administration of Evacuee Property (Emergency) Act, 1949
5. Mysore Administration of Evacuee Property (Second Emergency) Act, 1949

In pursuance to the Indian Constitution, the following acts were enacted relating to refugees, and displaced persons:

1. Immigrants (Expulsion from Assam) Act, 1950
2. Administration of Evacuee Property Act, 1950

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3. Evacuee Interest (Separation) Act, 1951
4. Displaced Persons (Debts Adjustment) Act, 1951
5. Influx from Pakistan (Control) Repelling Act, 1952
6. Displaced Persons (Claims) Supplementary Act, 1954
7. Displaced Persons (Compensation & Rehabilitation) Act, 1954
8. Transfer of Evacuee Deposits Act, 1954
9. Foreigners Law (Application & Amendment) Act, 1962
10. Goa, Daman & Diu Administration of Evacuee Property Act, 1969
11. Refugee Relief Taxes (Abolition) Act, 1973

Constitutional Safe Guards to the Refugees in India

The Constitution of India has been safeguarding the interest of its people regardless his nationality and status. The provisions enshrined under Article 14, Article 20, Article 21 and Article 32 stares for protection of rights of its citizens and non-citizens equally. Article 21 stipulates that no person shall be deprived of his life or personal liberty except according to procedure established by law. Therefore, on bare reading of the words used by the legislature it preserves the rights of a refugee to the extents that her life and personal dignity cannot be taken away arbitrarily, and in the event, any such action takes place, s/he has the right as provided by the Constitution of India to approach Hon'ble Supreme Court under Article 32.

Article 25 of the Constitution of India stipulates freedom of conscience and free profession, [practice and propagation of religion, which is another prominent Constitutional right available to a refugee. One of important aspect behind turning a person to a refugee is Religious persecution. The said factor is why asylum is sought and in such eventuality, refugee status is given. In such context of the matter, any deprivation of freedom of religion to a refugee would tender the entire constitutional process available to a refugee frustrated.

Constitution of India under Article 51 has stipulated promotion of international peace and security. The state shall endeavor to promote international peace and security, maintain just and honorable relations between nation, foster respect for international law and treaty obligations in the dealing of organized peoples with one another; and encourage settlement of international dispute by arbitration, which thereby, promotes the spirit in which India approaches her international relations and obligations.

Constitution of India under Article 253 postulates that “notwithstanding anything in the foregoing provisions of this chapter, Parliament has power to make any law for whole or any part of its territory of Indian for implementing any treaty, agreement or convention with any

other Country or Countries or any decision made at any international conference, association or other body.”

Moreover, Entry 14 of the Union List of the seventh schedule states that “Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.” Article 253 read with Entry 14 makes it conspicuous that that the power conferred by Parliament to enter into treaties carries the right to encroach on the state list to enable the union to implement a treaty with it. Therefore, any law made in accordance with this Article that gives effect to an international convention shall not be invalidated on the ground that it contains provisions relating to the state subjects.

In view of the same and in absence of express legislation reliance can be placed on international conventions to safeguard a particular right. The Hon’ble Supreme Court in *Vishkha’s case*² has observed that lack of legislation can never be an impediment for the Hon’ble Supreme Court to do justice. It is well within the competence of the Apex Court to safeguard the rights of refugees in light of various international conventions.

Deportation of Refugees by Indian Government

The Hon’ble Supreme Court in the case of *Louis de Raedt v. Union of India*,³ has categorically held that “*the power of the Government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering this discretion... the executive Government has unrestricted right to expel a foreigner*”. In view of the same, on the face of it, there is no prohibition in deporting Rohingyas if the Government so wants as such, however, while proceeding with that the Govt. needs to keep in mind one important aspect i.e. they shall not be deported without having regard to their human rights and the actions of the Govt. ought not to be arbitrary or highhanded.

Role of Judiciary

When any of the refugees are detained or arrested by the Indian authorities, there would always be a danger of refolement, repatriate or deportation. Those refugees who are arrested for the illegal stay can be detained illegally under administrative order without charges. The Foreigners Act vests an absolute and unfettered discretion in the Central Government to expel foreigners from India. The Supreme Court of India in *Hans Muller of Nurenburg v. Superintendent, Presidency*⁴ gave “absolute and unfettered” power to the Government to throw out foreigners. The said judgment was again upheld by the Supreme Court in *Mr. Louis*

²AIR 1997 SC 3011.

³AIR 1991 SC 1886.

⁴1955 SCR (1)1284.

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*De Raedt & Ors. v. Union of India*⁵ wherein Supreme Court also held that foreigners have the right to be heard.

In the judgment of *Ktaer Abbas Habib Al Qutaifi v. Union of India*,⁶ the High Court of Gujarat held that the principle of non-refoulement avoids ejection of a displaced person where his life or freedom would be undermined by virtue of his race, religion, nationality, enrollment of a specific social gathering or political conclusion. Its application ensures life and freedom of a person irrespectively of his nationality.

Conclusion

Indian being a country of secularism consists of people of different caste, creed and religion. Being in the limelight for several reasons such as British India Capture, Independence Movement, Partition, Wars, Terrorist Attacks etc., India has never turned her back when it comes to take a humanitarian view of the problem of refugees. Notwithstanding that any special enactments have been made to govern 'refugees' India has never been treated as an incomplete nation in coping with the impediments relating to refugee.

⁵1991 SCR (3) 149.

⁶1999 CriLJ 919.