



Rights of the Refugees and Humanitarian Obligation of World at Large with Special Reference to India.

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ABSTRACT

A quarter billion people worldwide live outside their country of nationality. Most of them are migrants, people who opt to leave their countries seeking greater opportunity. One-tenth of them, though, are refugees. They are fleeing political persecution and other acute threats. Most refugees go to countries neighboring their own, in part so that they can return home when circumstances change. The work of protecting refugees is carried out by a vast array of organizations. Some are public, others private; some are global, others grassroots. States, however, are the ultimate arbiters of their work. The international refugee regime, under the guiding hand of the UN High Commissioner for Refugees (UNHCR), has proven adept at providing life-saving assistance in response to emergencies but has been challenged to provide meaningful opportunities for the long-term displaced or support the communities hosting them. Compounding the challenges, it faces is the retreat of many advanced democracies amid rising anti-immigrant sentiment. Established by the 1951 convention and its 1967 protocol, the regime envisioned refugee status as a temporary one for people who fear or have suffered persecution on the basis of race, religion, nationality, membership in a social group, or political opinion and who as a result require protection until they can return to their countries of origin; gain permanent residency in the country to which they have fled; or be resettled in a third country. The current state of the international refugee regime provides us with tried and tested tools to address them. What is needed now is to put our collective resources and

capacities to their most effective use. We are already seeing this in the recent move towards creating a proposed Global Compact on Responsibility Sharing for Refugees, as set out in the UN secretary-general's report, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*. We are also seeing this with innovative directions in protection, assistance, and solutions for refugees that are helping us to operationalize long-standing principles of protection, transforming them into tangible results for refugees. New forms of group determination, combined with community-based protection and other measures, can help to ensure an appropriate legal status while at the same time identifying specific protection needs. Protection strategies can inform frameworks for governing migration and meeting the needs of the most vulnerable migrants. The integration of services to refugees within national systems and the expansion of cash-based programming can meet essential needs for assistance more effectively. The Humanitarian-Obligation of World at Large realization of Rights of the Refugees can provide the building for achieving a long-term solution, which remain, as ever, the ultimate aspiration of the international refugee protection regime. Thus, viewing the refugee problem in the context of humanitarian rights has assumed unprecedented importance today. The present article considers some of the basic human rights of refugees and their implications in the area of refugee protection. It also surveys the human rights of refugees in India and gives a brief account of the impact which human rights principles have made on the current programs and policies of UNHCR and the increasing involvement of human rights bodies in matters relating to refugees. Humanitarian emergencies are becoming increasingly frequent and thus, for want of better protection of human rights in these circumstances, humanitarian policy-making and emergency response need to take an integrated approach combining needs-based and rights-based approaches.

KEYWORDS- Refugees, Displaced Persons, Rights, Humanitarian, Obligation, Extradition, Expulsion, Refoulement, Asylum, Non-discrimination, Protection of Refugees, International Humanitarian law, Chakmas, Right to life and Personal Security, Safeguard, Convention etc.

I. INTRODUCTION

Refugees are civilians who no longer receive protection from their government. International Humanitarian law interprets the notion of refugees more widely, also taking into consideration population displacements caused by conflicts. This does not mean that refugees must automatically be granted that status under national laws, but it does establish their right to receive International Protection and assistance while the conflict lasts. These guarantees include provisions, for instance, that individuals may not be considered enemies simply because of their nationality, even if their nationality is that of an adverse party to the conflict. If they find themselves in territory that is suddenly occupied by the State they originally fled, the occupying power may not arrest, prosecute, convict, or deport them for acts committed before the outbreak of hostilities. They must be granted the same protection as civilians. Today's refugee problem is global and world at large in nature and concerns not only individuals in their relations with states but also states in their relations with one another, we need a law which is not only a law relating to the legal status and protection of refugees but also encompasses the refugee problem as a whole, a law which is solution oriented and imposes collectivized responsibility on all states. It is believed that a humanitarian obligation perspective of the rights of refugee problem will be helpful in restructuring the present mechanisms of refugee law on these lines. In addition to this, humanitarian obligation-oriented approach may be helpful in providing the necessary legal basis for the protection of refugees in states which have not acceded to the 1951 Refugee Convention and or the 1967 Protocol. Refugees by definition are victims of human rights violations. According to Article 1(a) (2) of the United Nations Convention Relating to the Status of Refugees 1951 the term 'refugee' shall apply to "any persons who, owing to a 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 The Statute of the Office of the United Nations High Commissioner for Refugees 1950, extends the competence of the High Commissioner for the protection of refugees defined in Article 6(a) (1) in terms similar to Article 1(a) (2) of the 1951 Refugee Convention. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, extended the definition in the 1951 Refugee Convention to include in the term 'refugee' also 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 Cartagena Declaration on Refugees of November, 1984 laid down that the definition of refugee could not only incorporate the elements contained in 1951 Convention and the 1967 Protocol (or the 1969 OAU Convention and General Assembly resolutions), but also cover persons who have fled their country because their lives, their safety or their liberty were threatened by a massive violation of human rights It is clear from the foregoing discussion that it is the risk of human rights violations in their home country which compels the refugees to cross international borders and seek protection abroad. Consequently, safeguarding human rights in countries of origin is of critical importance not only to the prevention of refugee problems but also for their solutions. "If conditions have fundamentally changed in the country of origin promoting and monitoring the safety of their voluntary return allows

refugees to re-establish themselves in their own community and to enjoy their basic human rights". Respect for human rights is also essential for the protection of refugees in countries where they are integrated locally or re-settled. Although in the past human rights issues were virtually not allowed to enter the global discourse on refugees under the erroneous assumption that the refugee problem, as a humanitarian problem is quite distinct from a human rights problem, the current trend is towards integration of the human rights law and humanitarian law with refugee law. The growing realization that given the number, size and complexity of the problem of refugees the limited approach to the problem which was devised in the context of the post-second world war refugees and which placed greater reliance on safety and welfare, rather than solutions to the problem and virtually relieved the refugee-producing countries from their responsibilities towards their nationals living in asylum countries. Today, the discourse has turned the attention of the UNHCR and other U.N. bodies to the intrinsic merits and strengths of the humanitarian protection and obligation world at large to the problem. It is now increasingly recognized that such an approach is not only useful in reinforcing and supplementing the existing refugee law and securing the compliance with its provisions through quasi-judicial rights of Refugees implementing bodies, but can also make it more humane and effective.

II. OBJECTIVES OF THE STUDY

Refugee problem is as old as human Civilization, it was only at the end of World-War I that the international community came to confront it with full force. The refugee problem has assumed disturbing proportions because of the increase in the number of refugees throughout the world and today it has become a matter of acute international concern. Nobody can possibly fail to recognize the importance of refugee as the subject in an analysis of the policies of refugee care and protection. This importance it is said is great in tune that is grave in proportion as the analysis is less capable of analyzing policy in terms of contingency and experience. The researcher has undertaken this topic for research in view of the importance of the subject-matter with a zeal to have an in-depth study on the "Rights of Refugees and Humanitarian Obligation of World at Large".

The main objectives of the study are as following:

- (i) To study the world at large scenario concept of humanitarian rights and obligation of refugees.
- (ii) To study the criteria for the determination of refugees and protection of refugee rights in large scale influx situations.
- (iii) To study the strategies to combat refugee problem and the role played by the United Nations High Commissioner and India.
- (iv) To study the unresolved legal questions as to the determination of refugee status at national as well as international legal frameworks.
- (v) To suggest durable solutions which are essential and desirable for improving the existing legal framework for protection and promotion of rights of refugees.

III. HYPOTHESES

Hypothesis is a tentative generalization the validity of which has to be tested. It provides a direction to the inquiry, aids in establishing a link between theory and practice and delimit the field of inquiry by singling out the pertinent facts on which to concentrate. The researcher has endeavored hard to find answers to the following hypotheses:



- (i) Whether there is a need for more certainly, transparency and accountability in the law relating to refugees
- (ii) Whether the Human Rights violations are a major factor in causing the plight of refugees as well as an obstacle to their safe and voluntary return home.
- (iii) Whether the existing legal framework national as well as international, governing human rights of refugees need modification in order to overcome drawbacks and defects.
- (iv) Whether the human rights of refugees have progressively emerged as the new norms of customary international law.
- (v) Whether India has notably adhered to the International standards of protection of refugees as its humanitarian obligation.
- (vi) Whether the role of Indian judiciary in recognition and enforcement of the human rights of the refugees has been commendable and there remains still to be done more.

IV. METHODOLOGY

The reliability and dependability of any research problem depends upon the method that is adopted for the investigation of the problem. The research methods employed are descriptive and analytical. Most of the data is collected after consultations from various primary and secondary sources; for further sifting out hard realities. The researcher has used a multipronged approach to collect as much relevant information as possible through different sources. The study is purely exploratory in nature. The details of the tool of research for collection of secondary data includes: Collection and consultation of all available records and literature in various libraries of the country, including projects, reports, decisions of the courts, because with a continuously enlarging population of refugees and asylum seekers, a large section of who may not be repatriated in the near future, a uniform law would allow the government to maintain its huge non — citizens population with more accountability and order apart from allowing them to enjoy uniform rights and privileges. This will be one step towards supporting a humanitarian law for those who need it.

V. REVIEW OF LITERATURE

The review of allied literatures as well as previous research work is of paramount importance in research Endeavour. Under this review of related literature an attempt has been made to review literature so as to draw some meaningful guidelines for the present research work. The study in hand deals with Rights of Refugees and Humanitarian Obligation of World at Large. Various aspects of rights of refugees are discussed by Manik Chakraborty, Harun ur Rashid, T.N. Giri, Anil Shrivastava, U.N. Gupta, Justice Palok Basu, B.C. Nirmal, Harpal Kaur Khara, B. Sen, Nairn Ahmed, M. Afzal Wani, Nagender Singh, Satish Kanitkar, Ranbir Samaddar, Sanjay Parikh, T. Ananthachari, Manoj Kumar, Tapan K. Bose, Anil Shrivastava, Isha Bothra, Arjun Nair, Rajeev Dhavan, V. Suryanarayan, Chanakya Sen, Rajesh Kharat, J.N. Saxena, Michell Moussalli, Edwards Alice, Darren J.O' Byrne,

Peter MacLister-Smith, Joan Fitzpatrick, Brain Gorlick, Rogue Raymundo, Anna C. Bramwell, H. Knox Thames etc. in their writings Thus, from the review of literature, it is abundantly clear that it is informative, descriptive, theoretical and only a meager part of it constitute critical approach. Furthermore, the study is mostly based on secondary data, and has been designed to find and trace the lacunae with regard to the plight of the refugees in different countries. It is, therefore, crystal clear from the foregoing study that refugee assistance should be undertaken in a spirit of international solidarity and international co-operation, and that states should equally share the burden of refugees. It is evident that during the past few years there has been a dramatic increase in the number of refugees in various parts of the world.

VI. THE RIGHTS OF INDIVIDUALS WHO HAVE OBTAINED OFFICIAL REFUGEE STATUS

Once Refugees case has been examined, the individuals who come under obtain a juridical status that usually gives them rights similar to those of the citizens of the State in question. The legal status thus obtained—recognition of the person's refugee status in a territory of asylum—is defined by the national laws of the country in question.

The Refugee Convention¹ enumerates the main rights that must be granted to refugees by the national laws of each country (Arts. 12–34).

VII. RIGHTS OF THE REFUGEES OF WORLD AT LARGE.

I. Right to Protection Against Refoulement

No State is permitted to expel or return (refouler) a refugee, in any manner whatsoever, toward the frontiers of territories where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership in a particular social group, or political opinion. Hence, individuals whose requests have been dismissed may nevertheless benefit from temporary asylum since they cannot be sent back to their State of origin because of the dangers they would incur. They must also benefit from the minimum standards of protection attached to this temporary asylum. When a person is compelled to flee his country of origin or nationality his immediate concern is protection against refoulement. Such protection is necessary and at times, the only means of preventing further human rights violations. As his forcible return to a country where he or she has reason to fear persecution may endanger his life, security and integrity, the international community has recognized the principle of non-refoulement,² which prohibits both rejection of a refugee at the frontier and expulsion after entry. Legal basis for protection against forced return of refugees to countries where they apprehend danger to their lives, safety, security and dignity can also be found in the law relating to the prohibition of torture and cruel or inhuman treatment.³ Thus Article 7 of the ICCPR which prohibits torture and cruel, inhuman or degrading treatment casts a duty on state parties not to expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return 'to another country by way of their extradition, expulsion or refoulement'.⁴

1. The definition of the 1951 Refugee Convention
2. The 1951 Refugee Convention (Art. 33(1)), UNHCR, *Basic Legal Documents on Refugees* (1999), 8-37; Article 3, United Nations Declaration on Territorial Asylum, Art. VIII of the Asian- African Legal Consultative Committee, Bangkok Principles, Art.II (3), OAU Convention 1969, Article 22(8), American Convention on Human Rights Convention, 1969
3. Universal Declaration of Human Rights, Article 5; UNHCR, *Basic Legal documents*, pp.43-47;and *Convention Against Torture*, Articles 2 and 6. Article 7 of the ICCPR (1966).
4. HRC General comment No. 20, para 9.

Forcible return of an individual to a country where he or she runs the risk of violation of the right to life is prohibited by international human rights law.⁵ Indeed, as the European Court of Human Rights has held, the decision of a state to extradite, expel or deport a person “may give rise to an issue under Article 3 (European Convention of Human Rights), and hence engage the responsibility of that state under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country”.⁶ This observation is also valid for forcible return of refugees to territories where there is a real risk of their being subjected to torture, or to inhuman or degrading treatment or punishment or to killing. The act of handing an individual over to his torturers, murderers or executioners constitutes a violation of the obligation to protect individuals against torture and unlawful deprivation of life. In this regard it is the liability of the state which handed over persons to the actual perpetrators of torture or prescribed ill treatment, and not of the receiving state.⁷ Thus the principle of non-refoulement is well entrenched in conventional and customary international law. Despite this, of late governments everywhere are adopting unilateral restrictive practices to prevent the entry of refugees and other forcibly displaced persons into their territories.⁸ Refugees are interdicted on the High Seas⁹ Penalties have been imposed against airlines or shipping companies carrying suspected passengers.

5. Ibid., paras 14.1 and 15.3.

6. Cruz Varas Case, Judgment of 20 March 1991; Quoted in UNHCR, *International Legal Standards Applicable to the Protection of Internally Displaced Persons: A Reference Manual for UNHCR Staff*, (Geneva, 1996), p.65.

7. *Cruz Varas Case*, note 12. Series A no. 161. Para 91.

8. Amnesty International, ‘The Barriers are Going up’, *Refugee* (Spring 1998), 19; B.S. Chimni, ‘Refugees in International Law’, Seminar n.463, (March 1998), pp.18-22; James Hathaway, ‘Crisis in International Law’, *Indian Journal of International Law*, vol. 39 (1999), pp. 9-11.

9. In an unfortunate decision *Sale v. Haitian Centres Council* C1/3 Set 2549 (1993), the U.S. Supreme Court decided that such action is not violative of Art. 33 of the Refugee Convention.

New concepts such as ‘temporary protection’ and the ‘safe third country rule’ which allow officials to eject people on flight who have already transited another state have been introduced. Hundreds of thousands of refugees seeking shelter in the refugee camps have been demarcated in airports where physical presence does not amount to legal presence and from where summary and arbitrary removal is permissible. Besides, safety zones have been created inside countries as in Northern Iraq and former Yugoslavia to stop asylum seekers moving out and seeking refuge.

Asylum seekers have been held in offshore camps which have been effectively declared rights free zones.¹⁰ Not content with these measures Europe and North America have codified the so called ‘country of first arrival’ principle which purports to ‘assign’ refugees to be the responsibility of a single asylum state, without regard for the quality of protection offered there. The ‘safe third country’ concept has come into force in Europe and the United States.¹¹ The Dublin and Schengen Conventions which lay down new criteria for determining claims of asylum seekers have also complicated the problem. Ironically, these unethical and illegal practices are being resorted to by those countries which were instrumental in the initial drafting and adoption of the 1951 Refugee Convention and have the economic ability and indeed, the duty to give them both asylum and protection.

(II) Right to Seek Asylum

To ensure that a person fleeing his or her country can submit a request for asylum to the authorities of a foreign State, the 1951 Refugee Convention reaffirms certain fundamental rights of individuals whose life or freedom is threatened.

10. When the U.S. started holding Haitian and Cuban refugees at Guantanamo Bay, a territory leased out from Cuba, a U.S. Court of Appeals ruled in *Cuban American Bar Association (Cuba) v. Christopher* [43 F. 3 A. 1412 (11th Cir. 1995)] that refugee in ‘Safe haven’ camps outside the U.S. did not have the constitutional rights of due process or equal protection and were not protected against forced return. Also See, Chimni, note 14, p. 22.

11. The German Federal Constitutional Court, in May 1996, upheld the German safe third country law. See Chimni, note 14, p. 22.

(a) The Right to Seek Asylum in Another Country

This reflects the fact that individuals have the right to flee their country by any means, and to enter the territory of another State, even illegally. States party to the Convention may not impose penalties on refugees on account of their illegal entry or presence, if, having come directly from a territory where their life or freedom was threatened, they enter or are present in that State’s territory without authorization. This provision applies as long as the refugees present themselves without delay to the authorities and show good cause for their illegal entry or presence (Art. 31 of Refugee Convention).

(b) The Right to Submit a Request for Asylum before the Appropriate Authorities

This means that States must not impede refugees’ access to the competent national authorities and, in fact, must facilitate this access. Furthermore, UNHCR must be allowed to assist individuals with these formalities. Hence, refugees no longer receive administrative assistance from their State of origin to validate their rights. Other States are therefore under the obligation to provide the necessary administrative services, either directly or through an international authority—namely, UNHCR. As a result, UNHCR or the State in whose territory a refugee is residing commit to delivering or ensuring the delivery of documents or certifications that would normally be delivered to aliens by or through their national authorities (Art. 25 of Refugee Convention).

(c) The Right of Refugees to Have Their Request Examined by the Appropriate National Authorities

The examination of their file must be in conformity with the rules established by the Refugee Convention and must be carried out under the supervision of UNHCR (Art. 8.a of UNHCR statute). Once a person fleeing persecution enters a state other than that of his origin or nationality, what he needs most is asylum. "Asylum is the protection which a State grants on its territory or in some other place under the control of certain of its organs, to a person who comes to seek it".¹²

12. Article 1 of the Resolution adopted by the Institute of International Law in Sept. 1950, American Journal of International Law, vol. 50, Supplement (1951), p 15.

Asylum is necessary not only for safeguarding his right to life, security and integrity but also for preventing other human rights violations. Thus, the grant of asylum in the case of refugees who constitute a unique category of human rights victims is an important aspect of human rights protection and hence should be considered in the light of the U.N. Charter as a general principle of international law and an elementary consideration of humanity. No wonder then, not only the right of a person to leave the other or his country is recognized in several human rights instruments but even his right to seek and to enjoy in other countries asylum from persecution has been proclaimed as a human right.¹³

If a state grants asylum to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights, it can not be regarded as an unfriendly act by any other state. It is also repugnant to the principle of common concern for the basic welfare of each human being which forms the basis of the current refugee regime and furthermore runs counter to the oft-repeated assertion at the global level that the promotion and protection of all human rights is a legitimate concern of the international community and accordingly humanitarian intervention in certain circumstances is permissible and justified. Denial of asylum to genuine refugees is also against UNHCR policies. In this context, it may be noted that the underlying principle for the UNHCR is that "In cases of large-scale influx, persons seeking asylum should always receive at least temporary refuge".¹⁴ "The industrialised countries must also share the burden of accepting those ... who seek asylum outside their regions."¹⁵ In 1986 the UNHCR had taken the position that "Refugees and asylum seekers who are the concern of office should not be the victims of measures taken by Governments against illegal immigration or threats to their national security, however justifiable these may be in themselves".¹⁶

13 . Article 14 (1), Universal Declaration of Human Rights (G.A. Resolution 217 (III); Art. XXVII, American Declaration, Art. 22 (7), American Convention on Human Rights, ILM, vol. 9 (1970), p 673, Vienna Declaration, part I (1993), para 23.

14. Michell Moussalli, "Who is a Refugee?" Refugee Magazine, (September, 1982), p.42.

15 . Opening statement by the High Commissioner for Refugees at the Thirty-Seventh Session of the Executive Committee of the High Commissioner's Programme, 6 October 1986.

16. Ibid.

(III) Right to Equality and Non-Discrimination

A refugee is entitled to be treated with humanity by the state of asylum. The obligations of the State of refuge on this count are derived from the rules and principles, which enjoin respect and protection of fundamental human rights,

general international law and elementary considerations of humanity and are founded on the international community's interest in and concern for refugees. Refugees under the Refugee Convention are entitled to relatively higher standards of treatment¹⁷ than those belonging to B status category or mandate refugees. Since as a general rule, the rights and freedoms recognized by international human rights law apply to everyone, including refugees, the latter are also entitled to respect for, and protection of their basic human rights like nationals of the state of refuge. Of crucial importance to the protection of human rights and fundamental freedoms of refugees is the rule of non-discrimination laid down in several global and regional human rights instruments,¹⁸ The right to equality before the law, equal protection of the law and non-discrimination which form a cornerstone of international human rights law appear to ban discrimination against refugees based on their status as such. In addition, such provisions would prohibit discriminatory conduct based on grounds commonly related to situations of refugees, such as race, religion, national or social origin, and lack of property.¹⁹ In addition, all guarantees providing protection against specific categories of discrimination such as race and gender specific discrimination are also applicable to refugees²⁰.

17. The Refugee Convention contains certain rights provisions- protection from refoulement, protection against unlawful expulsion or detention, the right to employment and education, access to the courts, and freedom of movement. In respect of many of these rights, refugees are supposed to receive the same treatment as nationals in the country of residence.

18. ICCPR, Art. 2(1) ILM., vol. 6 (1967), p. 3687; ICESCR, Article 2 (2), ILM., vol.9 (1970), p.360, U.N. Charter, Arts. 1 (3), 13 (1) (b), 55 (c) and 76 (c); Universal Declaration of Human Rights, Art. 2; European Convention, Article 14 213 UNTS 221; American Convention, Articles. 1 and 24; African Charter, Articles 2, 13, 18 (3)- ILM.,vol. 21 (1982),p. 58.

19. UNHCR, International Legal Standards, note 12 at p. 18.

20. Relevant instruments include the U.N. Declaration and the International Convention on the Elimination of All forms of Racial Discrimination (CERD), 60 UNTS 195; The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), I.L.M., vol. 19 (1980),p. 33, the UNESCO Convention against Discrimination in Education, 1960; The Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, 1981; The UNESCO Declaration on Race and Racial Prejudice, 1978; The Declaration on the Elimination of Discrimination against Women (G.A. res. 2263 (XXII) of 7 Nov. 1967).

(IV) Right to Life and Personal Security

Refugees as a group are the most endangered people in the world. Most of their basic human rights are threatened during flight and upon their relocation in camps in the sanctuary state and finally during their return to their countries of origin or nationality. In the initial and most desperate phase they often lose all their belongings, their basic security, family and often their own lives. For majority of refugees, life in exile is as bad or worse than the conditions in their own country which compelled them to flee. In view of the foregoing the provisions of human rights law guaranteeing the right to life²¹ and protection against genocide,²² which is a grave form of violation of the right to life, are of direct relevance and far-reaching importance to refugees.

In protecting against 'arbitrary deprivation of life', State Parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.²³ In the context of loss of life from war and other acts of violence it has been stated that "States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life".²⁴ Since the right to life is a non-derogable universal right, refugees are protected from arbitrary deprivation of life The human rights regime guaranteeing freedom from torture and cruel, inhuman or degrading treatment or punishment²⁵ is of paramount

importance to refugees, particularly women and girls who may be compelled to suffer violence or ill treatment during flight and upon their relocation in camps.

21. Universal Declaration of Human Rights, Article 3; ICCPR, Article 6(1), American Declaration, Art. 1; American Convention, Art. 4 (1); European Convention, Art. 2 (1); African Charter, Article 4; CRC., Articles 6 (1) and 19.

22. Article II, Genocide Convention, 1948

23. Views of the Human Rights Committee on Communication No. 45/1979 (Suarez de Guerrero v. Colombia), Paras, 13.2 and 13.3.

24. H.R.C. General Comments, , No. 86, paras 2,3 and 5.

25. Universal Declaration, Article 5; ICCPR, Art. 7; CRC, Art. 37 (a); American Convention, Art. 5 (2); European Convention, Art. 3; African Charter, Art. 5.

Refugees like other persons are entitled to be treated with humanity and respect for the inherent dignity of the human person,²⁶ when they are held in prisons, hospitals, detention camps or correctional institutions or elsewhere. It is the duty of the State “to afford every one protection through legislative and other measures as may be necessary against torture and cruel, inhuman or degrading treatment or punishment, whether inflicted by people acting in their official capacity or in a private capacity”.²⁷ Besides, it can be argued that refugees can not be deprived of their liberty except on such grounds and in accordance with such procedure as are established by law.²⁸ They might also be entitled to claim legal safeguards listed in Article 9(2) of the ICCPR and also to challenge their detention. Since holding refugees in closed camps will also constitute ‘detention’ under Article 9 (1) of the ICCPR, states should refrain from such practice.²⁹ In no case is arbitrary detention allowed. But when their detention is in the interest of their security or is dictated by public necessities, doing so will be permissible.

(V) Right to Return

Refugees need to be guaranteed the right to return voluntarily and in safety to their countries of origin or nationality. They also need protection against forced return to territories in which their lives, safety and dignity would be endangered. Human rights law recognizes the right of an individual, outside of national territory, to return to his or her country.³⁰

26. Art. 10 (1) of the ICCPR, See also HCRC General Comments, No. 21, paras 2,4.

27. HRC General Comment No. 20. para 2.

28. Universal Declaration, Article 9; ICCPR, Article 9(1); CRC; Article 37 (b); American Convention, Article 7(1); American Declaration, Art. 1; European Convention, Article 5(1); African Charter, Article 6.

29. the HRC’s view on Communication 305/1988 (Van Alphen v. The Netherlands) para 5.8, Annual Report of the Human Rights Committee 1990, 115.

30. Universal Declaration, Article 13 (2); African Charter, Article 12 (2); CERD, Art. 5d (ii). Art. 12 (4) of the ICCPR, Art. 22 (5) of the American Convention; Art. 3 (2) of the Fourth Protocol to the European Convention prohibits the deprivation of the right to enter the territory of the state of which a person is a national. The African Charter limits restrictions to those provided for by law for the protection of national security, law and order, public health or morality. Article 12 (2).

The U.N. Security Council has also affirmed “the right of refugees and displaced persons to return to their homes The right of a refugee to return to his country of origin also arises from the rules of traditional international law which stress the duty of the State of origin to receive back its citizen when the latter is expelled by the admitting state and to extend its diplomatic protection to him. Besides, the social fact of attachment, together with the genuine connection between a national and his state, his sentiments, and emotional ties with his motherland give rise to the above mentioned obligations of the State of origin.³¹ .A refugee has the right to return to his or her country and enjoy his or her basic human rights. It in turn casts an obligation on the state of origin, the state of refuge and also the international community to create conditions conducive to his voluntary and safe return to the country of origin since refugee status is a temporary state of affairs and its only objective is to deliver human rights protection for the duration of risk, it should extinguish as soon as that risk comes to an end by reason of a fundamental change of circumstances. It is now increasingly recognized that voluntary repatriation will provide both effective and durable solutions to the refugee problem and allow the returnees to re-establish themselves in their own community and to enjoy their basic human rights. Despite this, due to political reasons in the not too distant past refugee status was equated with permanent immigration and ‘external settlement’,³² return was not seen as the normal solution of the problem of refugees. It is true that the UNHCR Statute mentioned voluntary repatriation as one of the durable solutions, but it was included. Voluntary return, of course, is closely linked with the aspect of prevention.

31. Nottebohm Case, ICJ Reports (1955), 23. See also Ammoun’s separate opinion in the Western Sahara case, ICJ Reports (1975), 12 at pp. 85-6. The learned Judge observed; “The ancestral tie between the land and the man who was born there from, remains attached thereto, and must one day return there to be united with his ancestors. This link is the basis of the ownership of the soil”

32. UNHCR Resettlement Section, “Resettlement – An Instrument of Protection and a Durable Solution”, International Journal of Refugee Law, vol.9 (1997), p.666.

In the context of a broad approach to the refugee problem, therefore, the notion of solution must be seen today in a comprehensive and balanced manner which gives due value to the concerns of prevention and of voluntary return”³³ The concerns for prevention and voluntary return, he stressed, “must relate only to the rights and freedoms of the individual and not to the desire to prevent trans-frontier movement or to compel a return movement regardless of circumstances in the country of nationality”.³⁴ Thus the recent trend is towards facilitating the voluntary repatriation of the refugees by involving both the country of refuge and the country of origin and also the UNHCR. So far as preconditions for organized voluntary repatriation are concerned, Article V of the 1969 OAU Convention stressed the essentially voluntary character of repatriation, the importance of collaboration by country of origin and country of

asylum, of amnesties and non-penalization, as well as assistance to those returning. The 1979 Arusha Conference, on the situation of Refugees in Africa, went a step further and recommended that appeals for repatriation and related guarantees should be made known by every possible means.³⁵

(VI) The Right to Remain

Recently, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities has affirmed “the right of persons to remain in peace in their own homes, on their own lands and in their own countries”.³⁶ The Turku/Abo Declaration on Minimum Humanitarian Standards³⁷ also provides in Article 7: 1 “All persons have right to remain in peace in their homes and their places of residence.” Article 7 runs: “No person shall be compelled to leave their own country”. This right which is also known as ‘the right not to be refugees’ has provided the jurisprudential basis for the concept of ‘preventive protection.

33. Arnaout, “Refugee Law Today”, Refugees, p. 11. ———

34. Ibid.

35. Goodwin-Gill, note 49, p.263.

36. Sub-Commission resolution 1994/94, para, 1, UN Doc. E/KN.4/ Sub.2/1994/56, 28 Oct. 1994 at 67. See also, resolution 1995/13, para 1, Report of the Sub-Commission on its Forty Seventh Session, Geneva 31 July-25 August 1995.

37. Reprinted in American Journal of International Law, vol. 89 (1995), pp. 218-23

VIII. HUMANITARIAN OBLIGATION PRINCIPLES ON RIGHTS OF REFUGEES PROTECTION

MECHANISMS-Humanitarian Obligation and response is carried out more as an act of benevolence than as part of the humanitarian assignment that entails guaranteeing the rights of the Refugees to life with dignity, assistance, as well as protection and livelihood security There is need for better cooperation between the UNHCR and the U.N. High Commissioner for Human Rights. NGOs should also be knit together more closely than in the past. In recent years UNHCR has incorporated a number of human rights principles in its working e.g. legal rehabilitation, institution building, law reform and enforcement of the rule of law, humanitarian assistance to internally displaced persons and given due importance to the establishment of increased cooperation with international and regional human rights mechanisms.³⁸ Another important positive development has been the concerns expressed by the Human Rights Committee, the Committee on the Rights of the Child, and the Committee Against Torture over the treatment of refugees by state parties to the respective conventions.³⁹ For example, in 1997, the Human Rights Committee recommended that the definition of ‘persecution’ be broadened to include not only state harassment but also persecution by non-state actors.⁴⁰ It further said that a country ignored its obligations by detaining a refugee and without allowing for a regular review of the detention.⁴¹ The Committee against Torture reviewed the situation of many asylum seekers and concluded that several states had threatened to return those people to their home country in violation of their international obligations.⁴² As part of the efforts to prevent refugee flows, the U.N. and others, especially NGOs are engaged in providing technical assistance to states within a general human rights framework. Since refugee protection has now come to be recognized as a part of the U.N. agenda for human rights, the possibility of the use of the current structure of international human rights treaty obligations and the mechanisms established by the Commission on Human Rights for analyzing the problems and proposing remedial action have greatly increased.

38. Brian Gorlick, "Refugee and Human Rights", Seminar (1998 Spring), p. 19.

39. Gil Loescher, "Refugees, A Global Human Rights and Security Crises" in Dunne and Wheel, Human Rights in Global Politics, (1999), p. 245.

40. "The Barriers are Going Up", Refugees: (1998 spring), p. 19.

41. Ibid.

42. Ibid.

IX. RIGHTS OF REFUGEES IN INDIA

India has one of the largest refugee population in the world. Regardless of the fact that India serves to the diverse group of refugees, example: – Syrians, Afghans, Palestinians, Persians, Ethiopians and Christians, etc., the country do not have specific domestic laws and policies for the refugees. "The United Nations 1951 Convention relating to the Status of Refugees (Refugee Convention) defines a refugee as a person who, "owing to a 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."⁴³ Although India is not the party to the 1951 Refugee Convention or its 1967 protocol, even do not have a national refugee protection framework, but still it continues to give asylums to refugees of the neighboring countries. Asylum seekers can get the refugee status from UNHCR if the status is not protected by the Indian Government. "Under Indian law, the term "foreigner" is the only reference to aliens of any kind; this places refugees, immigrants, and tourists in the same broad category."⁴⁴ All persons who flee their homelands have invariably been provided refuge, irrespective of the reasons of their flight.⁴⁵ Taking a broader view of the concept of 'refugees' which somewhat resembles the one found in the 1969 OAU Convention, rather than the narrow definition provided in 1951 Refugee Convention, the Government of India recognizes Tibetans, Chakmas, Sri Lankan Tamils and Afghans and thousands of people of other nationalities from Iran, Iraq, Somalia, Sudan and Myanmar as refugees. However, 50,000 refugees are not recognized as refugees but foreign nationals temporarily residing in India. These persons are assisted by the UNHCR and provided international protection and assistance under its mandate. Its policies are discriminatory and inequitable, even to members of the same group. Thus, it granted substantially less assistance to the Tibetan refugees arriving after 1980 than to the Tibetans who arrived here prior to 1980.⁴⁶

43. retrieved on <https://www.wcl.american.edu/hrbrief/v7i1/india.htm>

44. retrieved on <http://www.alnap.org/pool/files/protection-of-refugees-a-humanitarian-crisis-in-india.pdf>

45. J.N. Saxena, "Legal Status of Refugees: Indian Position", Indian Journal of International Law, vol. 26 (1986), p. 501.

46. H. Knox Thames, "India's Failure to Adequately Protect Refugees", Human Rights Brief, (Issue I, 1999), p.7; (Centre for Human Rights and Humanitarian Law, Washington College of Law), p.20.

In the absence of accession to the Refugee Convention by India and any national legislation on protection of refugee — the legal status of individuals recognized as refugees by the Government of India is not clear.⁴⁷ Also not clear is the relationship between refugee status granted by the Government and corresponding laws governing the entry and stay of foreigners (i.e. Foreigners Act, 1946).

(I) Law for refugees and displaced people

As discussed, earlier India has been the home for several refugees. For these refugees, numerous legislative measures were passed and issued under Seventh Schedule of the Indian Constitution. But some of the measures have lost their importance in the current context. “There was certain legislation that was enacted following the partition of India and before the Indian Constitution came into effect which are given below:⁴⁸

Once the Constitution of India came into operation, the following acts were passed relating to refugees, evacuees and displaced persons. “Article 51 states that the state shall endeavor to foster respect for international law and treaty obligations in the dealings of organized people with one another.⁵⁰ Article 51 of the Constitution is the Directive Principles of State Policy demonstrating the spirit in which India approaches her international relations and obligations.”⁵¹ Article 253 of the Indian Constitution states that “Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement, or convention with any country or countries or any decision made at any international conference, association or other body.”⁵² Further 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.”⁵³

47. Gorlick, note 71, p. 26.

48. Retrieved on http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2129225

49. Ibid

50. Ibid

51. Ibid

52. Ibid

53. Retrieved on [http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss\(35\).pdf](http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss(35).pdf)

Article 253 read with Entry 14 makes it clear 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.⁵⁴ 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.⁵⁵

(II) Problems faced by refugees in India

Various countries protect their refugees by enacting refugee legislation based on international recognized principle. The countries that have signed the convention have a procedure for identifying the refugees and addressing their protection issue. Although India has not signed the convention but are providing protection to the refugees. “However, consistency in the procedure for determining refugees is still lacking.”⁵⁶ Since India has no uniform code for determining refugee status, there is no central body that deals with the refugees. After so many years also, there are various gaps that exist in the mechanism for dealing with refugees policy. This is because the government has not enacted a law for refugees. Due to the several problems faced by the refugees and no proper legislation has not been passed the legal status of the refugees is miserable.

(III) Role of judiciary for the protection of refugee

When any of the refugees are detained or arrested by the Indian authorities, there would always be a danger of refoulement, 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.

54. Supra 7

55. Supra 7

56. Supra 7

The Supreme Court of India in “Hans Muller of Nuremburg vs Superintendent, Presidency”⁵⁷ 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 De Raedt & Ors vs Union of India.”⁵⁸ In the same judgment, Supreme Court also held that foreigners have the right to be heard. In the judgment of “Ktaer Abbas Habib Al Qutaifi vs Union of India”⁵⁹ 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 irrespective of his nationality.⁶⁰ As Justice J.S. Verma, former Chairman of the National Human Rights Commission observed, “the provisions of the (1951) Refugee Convention and its Protocol can be relied on when there is no conflict with any provisions in the municipal laws”.⁶¹ Fortunately, the judiciary has sought to fulfill the void created by the absence of domestic legislation by its landmark judgments in the area of refugee protection. It extended the guarantee of Article 14 (right to equality) and Article 21 (right to life and liberty) to non-citizens including refugees. The Madras High Court in P. Neduraman and Dr. S. Ramadoss v. Union of India and the State of Tamil Nadu (1992) emphasized the need to guarantee the voluntary character of repatriation. The National Human Rights Commission has also come to the rescue of refugees ‘approaching it with their complaints of violations of human rights.’

57. 1955 SCR (1)1284

58. 1991 SCR (3) 149

59. 1999 CriLJ 919

60. Supra 15

61. Mr. Verma made this observation at the SAARCLAW and UNHCR Seminar on Refugees in the SAARC Region held in New Delhi on 2 May 1997. This reasoning has been recognized in Visakha v. State of Rajasthan, AIR 13 August 1997.

While India's record with respect to protection of human rights of refugees has been generally satisfactory, the Human Rights Committee recently expressed concern at reports of forcible repatriation of asylum seekers including those from Myanmar (Chins), the Chittagong Hills and the Chakmas. It recommended that in the process of repatriation of asylum seekers or refugees, due attention be paid to the provisions of the Covenant and other applicable norms.⁶² The Committee also recognized that India, notwithstanding all its historic generosity to refugees, has recently engaged in certain practices *vis-a-vis* less favored refugee populations. In this context it needs to be recognized that India is not the only country which resorting to such practices. Indeed, as already noted there are many states in the South which starve refugees out, imprison them behind barbed wire, and otherwise make their lives miserable.

India has not become a party to the convention relating to the status of refugees, 1951, yet two basic principles of the convention namely (i) non-discrimination as far as possible between national and refugees and (ii) no discrimination based on race, religion or country or origin amongst refugees this conclusion is based on the provisions of Part-III of the Constitution. Once the refugee is lawfully in India, he/she gets several protections enshrined in Part-III of the Constitution. Article 14 provides that the state shall not deny to any person equality before the law or equal protection of law within the territory of India. Further Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Besides this, Article 22 provides protection against arrest and detention in certain cases. Article 25 (1) provides that all persons are equally entitled to freedom of conscience and right to freely profess, practice and propagate religion. A glaring example of refugees living with honor is that of Dalai Lama and his Tibetan followers. Being oppressed from the repressive policies of China, Dalai Lama and some of his followers fled away from Tibet and sort political refugee in India. India granted asylum to Dalai Lama and his followers.

62.National Human Rights Commission v. State of Arunachal Pradesh and another, (1996) 1 SCC.295; Khudiram Chakma v. Union of India (1994) Supp. 1 SCC 614.

In this context China resented it and made a great hue and cry over it and alleged that India was interfering in the internal affairs of China. For the protection of refuge in India and India as a Sovereign State was within her right to grant asylum to Dalai Lama and his followers. Yet another example of refugees coming to India was that of the influx of refugees from Bangladesh that is Chakma refugees, in the matter of the National Human Right Commission vs. State of Arunachal Pradesh (1996) ISSC-742, where in the Supreme Court has laid down that the state of Arunachal Pradesh was under Constitutional Obligation to protect and safe-guard the life, health, and well-being of the Chakmas. The Court directed the state to take all necessary measure for ensuring the life and personal liberty of the Chakmas. It may be noted that a large number of Chakma migrants had crossed the Bangladesh borders and entered into the Assam, Tripura and in Arunachal Pradesh⁶³.

In 2015, the Supreme Court directed the Centre to grant citizenship to Chakma and Hajongs who had migrated from Bangladesh in 1964-69. The order was passed while hearing a plea by the Committee for Citizenship Rights of the Chakmas. Following this, the Centre introduced amendments to the Citizenship Act, 1955. The Bill is yet to be passed, as the opposition says the Bill makes illegal migrants eligible for citizenship on the basis of religion, which is a violation of Article 14 of the Constitution. The Union government is keen in implementing the Supreme Court directive now since the BJP is the ruling party in both the Centre and Arunachal Pradesh. The Union Home Ministry on Wednesday cleared the citizenship for over one lakh Chakma-Hajongs. However, they will not have any land ownership rights in Arunachal Pradesh and will have to apply for Inner Line Permits to reside in the State.⁶⁴

63. Ibid

64. The Hindu, September 14, 2017

X. CONCLUSION

Understanding efforts to protect refugees around the world depends on grasping many issues, from the meaning of "protection," to the complexities of aid distribution. This understanding requires thinking through the actions and motivations of governments, aid workers, academics, and the media. Complicated as they are, attempts to shed light on all of these topics are vital to the hands-on work ahead, to achieving public understanding of these problems, and to formulating better policies. Now is the time for a progressive development of a global approach to the refugee problem, an approach which takes due cognizance of the basic human rights of refugees and interests of the asylum countries and the international community, and secures the cooperation of all parties in seeking a solution to the problem. Given the close link between refugees and human rights, international humanitarian rights standards are powerful ammunitions for enhancing and complementing the existing refugee protection regime and giving it proper orientation and direction. Since the refugee problem is an important aspect of human rights protection, human rights groups, humanitarian obligation organisations, the UNHCR, Governments and U.N. human rights agencies should take a hard look at their respective roles and make coordinated efforts for elimination of human rights abuses and protection of the rights of refugees.

XI. RECOMMENDATIONS

The challenges that the international refugee protection regime faces today are immense, but are not insurmountable. What is needed now is to put our collective resources and capacities to their most effective use. This article has made numerous recommendations regarding how to accomplish this goal, including the following:

1. Commit to share responsibility for refugees:

Support the proposed Global Compact on Responsibility Sharing for Refugees, as set out in the UN secretary-general's report. Agree upon responsibility-sharing arrangements, defining when they would be needed, measures that would be taken, and a framework for states to contribute in line with their capacities and to receive support according to their levels of need.

2. Uphold obligations to protect refugees:

Institute new forms of group determination and the strategic use of refugee status determination, combined with community-based protection and other measures, to ensure an appropriate legal status while at the same time identifying specific protection needs. Develop wider and more consistent applications of refugee protection principles through accessions and lifting reservations to the relevant refugee instruments. Use protection strategies to inform frameworks for governing migration and meeting the needs of the most vulnerable migrants. Implement "protection-sensitive" border procedures and systems for receiving individuals who arrive in mixed movements to ensure the security of both refugees and host communities.

3. Ensure protection through more effective assistance:

Fund national health care, education, and social assistance systems to also serve refugees and ensure refugee access to rights and services. Expand cash-based programming, alongside, as relevant, in-kind assistance, vouchers, and services, to help identify and address protection and social welfare needs, build livelihoods, and facilitate longer-term solutions, such as voluntary repatriation and reintegration.

4. Realize protection through solutions:

Enhance self-reliance in countries of asylum, for example by including refugees in development planning and facilitating their right to work. Create opportunities for safe, regular admission to third countries through, for example, resettlement, humanitarian admission, labour mobility, family reunification, medical evacuation, and student visas and scholarships, as well as easing or lifting legal barriers or administrative requirements for admission. Taken together these recommendations not only will ameliorate the existing hardships experienced by refugees, but also will provide the building blocks for achieving longer-term solutions, which remain, as ever, the ultimate aspiration of the international refugee protection regime.

SUGGESTION

XII.A global solution to a global refugee crisis needs following methods:

1. Reform must address the circumstances of all states, not just the powerful few.
2. Plan for, rather than simply react to, refugee movements

3. Embrace common but differentiated state responsibility.
4. Shift away from national, and towards international, administration of refugee protection
5. Protection for duration of risk, not necessarily permanent immigration

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