



“Navigating Refugee: International Law And Internal Displacement In India”

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Abstract:

India is not party to the Refugee convention or its 1967 protocol and does not have a national refugee protection framework. However, it continues to grant asylum to a large number of refugees from neighboring countries. While the Government of India deals differently with various refugee groups, in general it respects the principal for holders of UNHCR documentation. The Government of India's approach to refugee issues results in different standards of protection and assistance among refugee groups. This paper will throw light on the 'Refugee' term and how there is 'Internal Displacement' of persons without international cross borders. India's concerns about security have had a more restrictive impact on asylum space in the country. Mixed migration flows have further complicated the identification and protection of refugees and UNHCR has significantly modified and increased its registration activities to cope with this and provide the necessary support to the Government. India that has acted by and large generously in hosting refugees, it should aim to improve its credentials with the global community in general. This will include India pushing for a law that will include human rights standards in the treatment of refugees and asylum seekers, thus getting rid of the arbitrariness currently on display. Despite of differences at national and regional levels, the overarching goal of the modern refugee regime is to provide protection to individuals forced to flee their homes because their countries are unwilling or unable to protect them.

Index Terms – International Law, Refugee, Internal Displacement, Human Rights, Legal Frame work.

“THE GREATEST NATIONS ARE DEFINED BY HOW THEY TREAT THEIR WEAKEST INHABITANTS”.
- JORGERAMOS

INTRODUCTION:

REFUGEE:

Article 1(A) (2) of the 1951 convention¹ defines a refugee as an individual who is outside his or her country of nationality or habitual residence who is unable or unwilling to return due to a well founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership in a particular social group.

ASYLUM:

There is no international instrument defines 'asylum'. Article 14 of the 1948 Universal Declaration of Human Rights² simply says that 'Everyone has the right to seek and to enjoy in other countries asylum from prosecution'. Article 1 of the 1967, UN Declaration on Territorial Asylum³ notes that Asylum granted by a state in the exercise of its sovereignty to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights shall be respected by all other state. But it is for the state granting asylum to evaluate grounds for the grant of asylum.

India is not party to the 1951 Refugee convention or its 1967 protocol and does not have a national Refugee protection framework. However, it continues to grant asylum to a large number of refugees from neighboring states and respects UNHCR's mandate for other nationals mainly from Afghanistan and Myanmar. While the Government of India deals differently with various refugee groups in general it respects the principle of non-refoulement for holder of UNHCR documentation.

But now, India's concerns about national security have had a more restrictive impact on asylum space in the country. Mixed migration inflows have further complicated the identification and protection of refugees' rights and UNHCR has significantly modified and increased its registration activities to cope with this and provide the necessary support to the Government.

In the absence of a national legal and administrative framework, UNHCR, based in New Delhi, conducts refugee status determination (RSD) for asylum seekers from non-neighboring countries and Myanmar. UNHCR also has a presence in Chennai, Tamil Nadu in the south to support the voluntary repatriation of Sri Lankan refugees. Although India has a large population of stateless people, no accurate estimates of the number are available UNHCR is working to identify and map stateless groups.

REFUGEES IN INDIA:

Under India law, multiple groups are generally accepted as legal refugees. These include Sri Lankan Tamils, Indians, who were affected by the 1972 Expulsion of Ugandans of Indian origin and Indic origin religious minorities. Most legal refugees are Indic religion minorities who fled prosecution from other countries after the India gained its independence in 1947. Illegal immigrants⁴ to India are not included in this definition. Foreigners who enter or stay in India without a valid visa are officially designated as illegal immigrants they can be arrested and deported. Over several centuries, India has offered shelter to people fleeing from persecution in their homeland. For example, Parsis, a Zoroastrian community migrated to India due to Islamic persecution between the 12 and 16 centuries to escape Arab persecution in Persia. Consequently, some Zoroastrians migrated to what is now the Indian state of Gujarat to maintain their religious tradition⁵. In 2015, the Indian Government has granted citizenship to 4300 Hindu and Sikh refugees most of them were from Afghanistan and some other refugees were from Pakistan.

PROBLEM OF REFUGEES IN INDIA:

British India was divided into two Dominions of India and Pakistan in 1947 under the Independence of India act, 1947 passed by the British parliament. According to it, Pakistan came into existence on 14 August, 1947 and remaining part of the country was declared independent India on 15 August, 1947. The Muslim majority

territories in the east part of the India were known as East Pakistan and the western part of the India is known as West Pakistan.

As a matter of fact both the western and eastern parts were declared as Dominion of Pakistan. There were certain definite and lucid conditions imposed under the Independence of India Act, 1947 for peaceful partition of the country. However Muslim leaders declared direct action against the Hindus were in the territories transferred to the Pakistan Dominion, and Hindus were butchered in as heinous act of genocide as could be seen even in Hitler's Nazi Germany, whose leaders were prosecuted in Nuremberg trial and punished by Death sentence. But the same assumed great powers shut their eyes and closed their ears to the victims of direct action by Muslim league and the Indian leaders and the other could not dare to make a complaint about the genocide caused by Pakistani rulers.

Great number of Hindus fled to the territories of Dominion of India. But they did not get status of refugees and were designated as displaced persons, even though the mohammedians who went from Bihar and some other parts of the country to eastern Pakistan deeming a Heaven for them were called and given status of mujahirs and are still being so called and designated with intention to repel them back to India. However, it may be noted that the Indian Leaders also were equally responsible for the turmoil and disturbances created at the time of partition of the country.

Following the partition of India, massive population exchanges occurred between the two newly formed nations, spanning several months. Based on census in 1957 immediately after the partition 7.226 million Muslims migrated from the India to Pakistan, while 7.249 million of Hindus and Sikhs moved from Pakistan to India. About 11.2 million migrants crossed the western border, making up 78 % of total migrant population. Most of them travelled through Punjab. There were 3.4 million Hindus and Sikhs who moved from Pakistan to east Punjab in India and 5.3 million Muslims moved from India to west Punjab in Pakistan. The initial population transfer on the east involved 3.5 million Hindus moving from east Bengal to India and only 0.7 million Muslims moving the other way. Non Muslims face constitutional and legal discrimination in Pakistan. Consequently, Hindus and Sikhs from Pakistan have sought asylum in India and many have been arrived in the 21st century. There are almost 400 Pakistani Hindu refugees in Indian cities. Many religious refugees came from Tibet. The 14 leader Dalai Lama, a leader of the Tibetan migration movement, left Tibet for India after the Tibetan uprising.

He was followed by about 80,000 Tibetan refugees. The government of India has built special schools for Tibetans, providing free education, healthcare, and scholarship for students who excel in school. A few Medical and civil engineering seats at universities are reserved for Tibetans. A document called the Registration certificate is a permit for Tibetans to stay in India renewed every year or half year depending on the area. Every Tibetan refugee above the age of 16 must register for it and RC's are not issued to Refugees who have newly arrived.

REFUGEES FACING ETHNIC PERSECUTION:

In 1972, the Majority Ethnic population expelled Asians from Uganda, including those of Indian origin. Many Indians had settled in Uganda, fleeing from the 1947 riots in Pakistan and the 1971 Bangladesh

genocide. The practitioners of Indic religious like Buddhists, Hindus, Jains, and Sikhs who are persecuted in other countries are generally accepted as refugees in India. In early August 1972, the president of Uganda Idi Amin, ordered nearly 80,000 Indians in Uganda, mostly Gujaratis, to leave the country within 90 days⁶. The expelled included 23,000 Indians who were Ugandan citizens. Although Ugandan citizens of Indian origin were later exempted from the expulsion, many chose to leave country voluntarily. At the same time, anti Indian sentiment in Uganda was prominent. At that time 4,500 refugees from Uganda ended up in India. Presently, there are around 8000 to 11,684 Afghan refugees in India, most of who are Hindus and Sikhs⁷. The Indian government has allowed United Nations High Commissioner for Refugees (UNHCR) in India to operate a program for them. In 2015, the Indian government granted citizenship to 4,300 Hindus and Sikhs refugees most of them⁸ are from Afghanistan and some from Pakistan. There are more than 1, 00,000 Sri Lankan Tamils live in India, most of them live in India. Most of who migrated during the rise of militancy in Sri Lanka in particular during the Sri Lankan civil war, which lasted from 1983 to 2009. Most of them are settled in the cities of Tamil Nadu like the Chennai, Madurai, Tiruchirappalli, and Coimbatore.

An eminent named Abul Barkat, from Dhaka University has estimated that there are 11.3 million Bangladeshi Hindu refugees living across different states in India particularly in west Bengal, Assam, Tripura, and Meghalaya. According to Report, about 5000 Hindus arrived from Pakistan to India annually as refugees.

Although India is not a signatory to the Refugee convention of 1951 and protocol of 1967 it is obliged by other international legal regimes to deal with the refugees in a humane manner. Most importantly, the doctrine of non-refoulement remains a compelling legal motivation for India. As India is signatory to multiple Human rights regimes, the country should create a more institutionalized mechanism of humanely dealing with refugees. India is signatory to the six core Human Rights covenants, and also the two optional protocols to the convention of the rights of the child. The first set of rights in the Human Rights Declaration from Article 2 to Article 21 have heavily influenced India's domestic constitutional rights enshrined in Article 12 to Article 35 of Indian constitution .

Indeed, certain fundamental rights guaranteeing life and personal liberty Article 14 as well as legal protection Article 21 are according to not only Indian citizens, but also to non- citizens on Indian soil⁹. The second set of rights guaranteed in Article 22 to 28 of the Human rights Declaration are also incorporated under DPSP –Article 36 to 51 of the Indian constitution ¹⁰. Therefore, not only do Indian's international obligations mandate a humanitarian approach towards undocumented migrants and refugees but also its own domestic legal apparatus . However, unless these protections are not only deeply embedded in the constitution's Justifiable frame and backed by political will, such existing legal pronouncements will fail to translate to real protections for refugees and the stateless. According to a statement in the parliament of by the Minister of State in the Ministry of Home Affairs Kiren Rijju, there are more than three lakh refugees with various states as of 2014 end.

Without a Law, India has handled the inflow of refugees through a mix of political and administrative measures. Therefore, India's approach, at best, can be called ad hoc, coming out with a series of procedures and relief and rehabilitation measures. There is also no specific agency or machinery that has been

responsible for determining the status of refugees. They are essentially determined under domestic laws as it applies to aliens in India, such as the Foreigners Act, 1946, The Registration of Foreigners Act, 1939, Passport Act 1967, Passport (entry into India), 1920, Extradition Act, 1962, the Citizenship Act, 1954, and foreigners order, 1948. Having hosted close to 5, 00,000 refugees at various points, India should formalize its arrangements. The burden sharing could be considered if India is able to coordinate with agencies such as UN High Commissioner for Refugees (UNHCR) and international organization of migration to, for instance assist in the return of the identified as illegal migrants.

Involvement of agencies such as these can also ensure certain degree of controlled transparency and thus we will strengthen the creditability of New Delhi's approaches and actions. India should aim to improve its credentials with the global community in general. For instance, if there was a law that laid down the processes and procedures for verification of refugees and asylum seekers, the Rohingya issue could have handled in more effective manner. The fact that the majority of known Rohingyas have settled around Jammu should ring a warning bell to security agencies. Earlier, Jammu accommodated Bangladeshis seeking to migrate to Pakistan, who after failing, settled around the region. Now it is the Rohingyas. These illegal migrants want to change the demography that causes the internal displacement and that creates huge problems in the society. This is also significant as India seeks a larger role in global governance mechanisms such as the UN Security Council.

Despite taking in refugees in large number, India has not been able to exercise a leadership role in this area because it does not have a national law and works on with its ad hoc approach. On the other Hand a national legal instrument on refugees and asylum seekers would remove the irregularities in India's approach aid in better categorization of refugees and illegal migrants a huge problem that India has been tackling ineffectively and possibly also bring about better resources to deal with the large inflow of refugees. Also border measures across all refugee groups have been far and few though in late 2011 India has come out with Standard operating procedure.

It should also lead to a single agency for processing and approval within the ministry of Home Affairs remove some of the extended delays, and bring about greater consistency in India's approach.

"Internal Displacement is the great tragedy of our time. The internally displaced people are among the most vulnerable of the human family". – Kofi Annan.

INTERNAL DISPLACEMENT PERSONS:

Persons or group of persons who have been forced or obliged to flee or leave their Homes or places of Habitual residence, in particular as a result of or in order to avoid the effective of armed conflict, situations of generalized violence violations of human rights or natural or human made disasters, and not have crossed an internationally recognized State Border. There is a difference between an internally displaced person and a refugee. A crucial requirement to be considered a refugee is crossing an international border. Persons forcibly displaced from their homes that cannot or choose not to cross a border, therefore are not considered refugees, even if they share many of the same circumstances and challenges as those who do. Unlike

Refugees, internally displaced people do not have a special status in International displaced person is merely descriptive.

The Kashmiri Pandits, have become the Largest internally displaced group in India. In 1989, a militant insurgency broke out in Kashmir, a disputed region in Northern India. The Kashmiri pandits, a Hindu group were targeted by Muslim insurgency groups and terrorized into leaving their ancestral Homes. After three decades of Displacement many Kashmiri pandits continue to live in migrant camps with little means of livelihood or access to basic services. There is more than 90% of Kashmiri pundits became internally displaced by the conflict, and the majority of the population relocated to urban areas such as Jammu and New Delhi, India's Capital City. This is one of the highest internal displacements of the people and that has effect on many things. The impact on the health, employment, education, on future has lost by the Kashmiri pundits.

After initial displacement, Kashmiri pandits were given what was supposed to be short term accommodation in migrant camps on the outskirts of cities. However, the majority of the population continues to live in these confined settlements. The terrorist anti-human organizations have been still creating the refugee problems. The Kashmiri valley has nearly been devoid of Hindus. The Kashmiri pundits have been compelled to take shelter in other parts of India, due to atrocities and genocide committed by some terrorist organizations and also due to total incompetence of the Union Government because of international or national circumstances and some other reasons relating to diplomacy in Kashmir. Many of Internally displaced persons don't have the means and resources to leave the country when they want to making them the most vulnerable people who are in dire need of protection. IDP's have similar problems that refugees do but they are not granted the same rights under the law.

PROTECTION OF IDP UNDER INTERNATIONAL LAW:

United Nations Guiding principles on Internal Displacement¹¹ IDP do not have rights or benefits like refugees. They do not benefit from any international legal and institutional framework. These were established in 1998 and were developed keeping the Human Rights Law as its basis. IDP's laws are lacking, and only way is to depend on the country's laws for their protection. Further, there are no laws that expressly mention that the state has a responsibility towards the maintenance and security of the internally displaced persons. It is highly recommended for IDP's to turn to the fundamental rights of the Indian Constitution in need of it. Article 21 provides the framework securing the right to life. In *Olga Telis vs. Bombay Municipal Corporation*, the court held that any person deprived of their right to an adequate livelihood or freedom to work could challenge the deprivation as infringing Article 21(Right to life and personal liberty) of the Indian Constitution.

In the case, the side walk dwellers in Bombay were forcibly made to move due to the destruction of their homes, workplaces, to construct an express way. Right to Shelter was also incorporated in Article 21 as held in the case *Mullin vs. Union territory of Delhi*.

It was held that in *Ram Prasad vs. chairman, Bombay port trust* that the eviction of the family of a slum dweller would infringe the Right to life unless the Bombay port trust provided alternate accommodations or

compensation. Article 39 provides a framework for securing its citizens with the right to an adequate means of livelihood. Article 41 talks about securing the right to work and the state shall take the responsibility to ensure said rights.

THE RIGHTS OF INTERNALLY DISPLACED PERSONS:

Internally Displaced persons are entitled to enjoy, equally and without discrimination, the same rights and freedoms under international and national law as do other persons in their country. International law does not specifically address the plight of internally displaced persons, but this does not mean that they are not protected under the law. In fact, the following three bodies of law provide a comprehensive legal framework for protection in all situations of internal displacement including during armed conflict:

1. International human rights law;
2. International humanitarian law;
3. International criminal law.

As citizens or habitual residents of their country, IDP's remain entitled to full and equal protection under the state's national law, which should be compatible with the state's obligations under International law. The challenge for international agencies, NGOs, and states has been to identify the rights and guarantees dispersed in the rich body of international law that respond to the particular needs and protection risks that arise during displacement. The Guiding Principles on Internal Displacement bring together in one document the main rules of International law, drawn from international human rights law and international humanitarian law and, by analogy refugee law that are relevant to protection in situations of internal displacement.

INTERNATIONAL HUMAN RIGHTS LAW:

Human rights are freedoms and entitlements that every individual should enjoy. International human rights law, which consists of both customary and treaty law, guarantees these rights and obliges states to respect, protect, and fulfill the human rights of all persons without discrimination of any kind, such as on the grounds of age, gender, ethnic origin, language, religion, political, or other opinion, national or social origin, property, birth or other status, including on the grounds of being or having been internally displaced.

The Universal Declaration on Human rights of 1948, the first human rights instrument developed by the United Nations, establishes the main civil, political, economic, social and cultural rights to which all persons are entitled, without discrimination of any kind. Although not a binding instrument in itself, many of its principles constitute customary law and or have been incorporated into treaties, thus gaining binding force.

International covenant on civil and political Rights (ICCPR) and

International covenant on Economic, social and cultural Rights (ICESCR).

Many human rights are also part of International customary law. Norms of customary international law include for example the rights to life, freedom from torture, freedom from discrimination on grounds of gender, race or ethnic origin, freedom from slavery, and freedom from genocide- all of which also are affirmed in international conventions.

DUTY OF A STATE IN PROTECTING INTERNALLY DISPLACED PERSONS:

State has a duty to protect the people and the some of the essential elements to be followed by the state are the:

- To begin with, prevention is key states have a responsibility elaborated in the Guiding principles on internal displacement, to provide populations on their territory with protection against arbitrary displacement. Preventive strategies, including cultivating an Environment of respect for human rights and developing early warning and rapid mechanisms to protect populations under threat, are critical.
- Training government officials, including the military and police, on the rights of IDPs is key to ensuring that their responsibilities towards the displaced. It is a part of building national capacity, and accountability, to effectively discharge these responsibilities.
- National responsibility for internal displacement must extend to ensuring that IDP's have access to a durable solution to their plight. Governments have a duty to establish conditions of safety and dignity enabling IDPs to return to their place of origin or, if they choose, to resettle elsewhere.

CONCLUSION:

It is evident that even though India has its security concerns, it tried its best to accommodate and act on humanitarian tendencies to all those who looked to India for help, shelter, and refuge. It is not handicapped in handling the situations satisfactorily. Though there are strict rules imposed on such asylum- seekers, it ensures the country's security .Although India has not signed the convention but it is providing protection to the refugees. "However, consistency in the procedure for determining refugees is still lacking". Since India has no uniform code for determining refugee status, there is no central body that deals with the refugees. Therefore India needs to bring its Refugee law into conformity with the international community and combines with humanitarian needs the refugees and improving their quality of life. The Government of India has to take effective measures to not happen internal displacement in the country. If it has happened already then they to provide rehabilitation, compensation, and resettlement in a proper way that makes the life of internal displaced people to live in a better way in regards of their life.