



Predicament Of Refugee Women And Struggle For Human Dignity

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Abstract

Human beings are rational being and therefore worthy of dignity and respect. This proposition indicates that all human beings are equal & enjoy basic, inherent rights. The growth of population and exploitation of earth's natural resources resulted in creating a stress on means of human survival. As a result of this stress, people forced to move from one place to another. The said displacement further got complicated with the increasing conflicts. The influx of such population is in large number in Asia. It is evident from recent Global Displacement Report of 2020, which accounted India for most of region's new displacements with total of 2.8 Million, which is highest in the world. Amongst this figure, 2.7 million were triggered by disasters and more than 160,000 displacements associated with conflict and violence. Talking specifically about women refugees, at least 1 in 5 is estimated to have experience violence including sexual violence. Refugee women go through challenges in terms of abuse, including risk of prolonged separation from family members, being kidnapped, detained for long periods, physical and sexual abuse, torture and being extorted by smugglers and criminal gangs. Displacement exacerbates inequalities, resulting in violation of human rights in public, along with private spheres. Displacement causes various mental pressure-results in conflicts within family or group. This leads to making their life very vulnerable. With the adverse impact of conflicts, climate change, food-housing insecurity and poverty their movement is uncontrolled. These problems become severe as it lacks the foundational laws to deal the situation. Through this research paper, author is trying to establish an argument that because of lack of legal mechanism, refugee women are more vulnerable to abuses and in continues threat of human rights and human dignity.

INTRODUCTION

UDHR proclaims that “all human beings are born free and equal in dignity and rights, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The great philosopher Immanuel Kant has stated that “human beings are rational being and therefore, are worthy of dignity and respect”. The proposition indicates that all human beings are equal & enjoy basic, inherent rights. It is simply because all human beings are the members of this earth. The growth of population and exploitation of earth’s natural resources resulted in creating a stress on means of human survival. These phenomena of displacement further got complicated with the increasing conflicts (internal & external), which lead to the problem of identity crisis. The said conflicts, persecution, human rights violations continue the post-world war and it is in rise today. As we know that states has the sovereignty right to fix the conditions of entry and stay in their territories, they also have the simultaneous obligation to protect, respect and honour the human rights of all individuals regardless of their origin, gender, and nationality or immigration status.² The influx of such population is in large number in Asia.³ The enormity of the refugee crisis has changed the demographic outlook so far. For instance, in the year of 2018, Asia hosted 9.4 million people of concern including 4.2 million refugees, 2.6 million internally displaced persons (IDPs) and 2.2 million stateless people. Further, recent Global Displacement Report of 2019, accounted India for most of region’s new displacements with total of 2.8 Million, which is highest in the world. Amongst this figure, 2.7 million were triggered by disasters and more than 160,000 displacements associated with conflict and violence.⁴ Amongst this figures, half of the world refugee populations are women and children. In recent report from Bangladesh, during January 2018 and June 2019, it is found that among five refugees seeking safety, four were women and children. There were 26% and 55% women and children respectively.⁵

In the existing patriarchal setups women itself become vulnerable and placed in an oppressed situation. The said oppression is more for displaced and refugee women. Because of the prevalent situation they are facing greater obstacles in claiming and enjoying their rights. These women suffer through several social crimes such as domestic violence, trafficking, sexual violence, economic insecurity and many more. Further, the challenges faced by refugee women are not just limited to social issue but it includes issues related to human dignity and autonomy. The circumstances often compel refugees to compromise with their basic rights, thus infringing their human dignity, which is universal and uncompromised. The fear of detention and deportation from refuge country completely diminish their human value and dignity. But at the same time

² Human Rights Committee, ‘General Comment No. 3’ (2004) < <https://www.refworld.org/docid/478b26ae2.html> > accessed 10 February 2020.

³ Asylum Access and Host International, “Refugee Work Rights Report – Refugee Access to Fair and Lawful Work in Asia” 5 October 2019.

⁴ Internal Displacement Monitoring Centre, ‘Global Report on Internal Displacement’ <https://www.internal-displacement.org/global-report/grid2019/> > accessed 24 May 2021.

⁵ United Nations High Commissioner for Refugees, ‘Refugee: Movements in South East Asia’ <https://www.unhcr.org/protection/migration/5d91e2564/refugee-movements-south-east-asia-2018-june-2019.html> > accessed 16 November 2021.

we believe that humans are rational beings, each individual including refugee women must be given respect and their dignity needs to be protected.

REFUGEE WOMEN: A CONCEPTUAL UNDERSTANDING

The Convention relating to the Status of Refugees and its Additional Protocol⁶ is basic legal instrument for refugees. A 'refugee' is defined under Article 1A(2) of the Convention as "any 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 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 result of such events, is unable or owing to such fear, is unwilling to return to it". The definition is incomplete as it lacks to discuss about the particular groups of refugees such as victims of generalized and organized violence, women and people unwilling to return to their native country and others. The international conventions and legal documents on refugees have a patriarchal based vocabulary, which ultimately disproves the philosophy of gender equality and gender justice. Henceforth, the definition is partial from women related aspect. Under the Convention definition, the refugee is largely constructed according to liberal concept of an individual bearing human rights, who is persecuted for reasons of civil and political status.⁷ Refugee women have been incorporated into refugee law by discussing them from social and cultural aspects. As such their experiences are characterized as apolitical. This construction of refugee women is extended on ground of 'membership of a particular social group' rather than 'religion' or 'political opinion'. Majority of refugee population facing the variety of challenges attached to the forced displacement and this way refugee women face double/additional obstacles because of their gender and social status. Refugee despair in terms of its number and magnitude is primarily termed as a female misery.

Prolonged Issues and Challenges of Refugee Women

Since inception of human civilization, people started moving from one place to another. The prime reason for the same is to explore the better human (living) conditions and gradually movement becomes the essential feature of human civilization. In this process of evolution, displacement of people is a common feature. Such rapid and regular movement in new paradigm of migration created stress or friction and placed displaced person under weak social, political and economic situation. The Refugees are the classic example of interdependence of international community. It is so interlinked that issues of one country results in consequences of another. So there exist a clear relationship between the refugee problems and the issue of human rights.⁸

⁶ United Nations Convention relating to the Status of Refugees, 1951; and its Additional Protocol of 1967 for protection and solution of refugee problem.

⁷ Susan Kneebone, "Women within the Refugee Construct: Exclusionary Inclusion in Policy and Practice- The Australian Experience"[2005] Oxford University Press 8.

⁸ United Nations High Commissioner for Refugees, 'Fact Sheet No. 20 Human Rights and Refugee' (2016) <<https://www.refworld.org/docid/4794773fo.html>> accessed 20 February 2020.

As articulated though UNHCR reporting that the women and girls who try to free themselves from persecution faces “the rigors of long journeys into exile, official harassment or indifference, and frequent sexual abuse- even after reaching an apparent place of safety”. In this regard, they are sexually assaulted by people from the local population, acquaintance- refugees or officials (border guards, police, and military and international refugee workers).⁹ The study says that at least 1 in 5 is estimated to have experience sexual violence. Other similar challenges are in terms of abuse, also includes risk of extended and prolonged separation from their family members, chances of getting kidnapped, detention for a longer durations, torture and being extorted by smugglers and criminal gangs.

Further, displacement exacerbates inequalities, resulting in violation of human rights in public, along with private spheres. Displacement causes various mental pressure-results in conflicts within family or group. Agencies responsible for protection of refugee women have identified increasing numbers of “women at risk”, whose life situations or experiences pose exceptional protection challenges.¹⁰ In these situations refugees may also be subject to cruel and inhuman treatment. The status of refugee women in Asia is very vulnerable. Particularly Rohingya women, who fled persecution from ethnic conflict in Myanmar, have experienced serious human rights violations. On various occasions, being member of social group, protection for female was available against violence in form of persecution and rejection of rights.¹¹ Another issue is about frequent shifting of refugees from nation in regard to bilateral agreements between the Governments. This has prolonged suffering of refugees in the process of seeking protection. In this regard human rights and human dignity of refugee women remains constantly susceptible.

As we know women plays a significant role towards contributing in economic growth by household and domestic works all along during their life. But as a matter of fact, displaced women face various economic problems, particularly when they are forced to move from their native place. As it was the place where they used to earn their respective livelihood throughout ages. Moreover, it becomes a real challenge to them to sustain their social identity once they got relocated. Further, majority of these women are poor and become vulnerable from their displacement. Their health, mental well being, nutritional and socio-economic status gets to decline after harsh displacement. Thus, in the process of displacement women become double vulnerable. Such displacement and relocation repeatedly changes women’s role and they start working outside their homes in order to find the subsistence for themselves and their respective families. Forcibly, displaced women also face the barriers in securing their economic livelihoods. Also discriminations in various forms, such as sexual violence, difficulty in accessing various services including reproductive health care. Further, they also become the prey to the negative some cultural practices, which leads to violation of their right to dignity and life. Agencies responsible for protection of refugee women have identified

⁹ United Nations Commission on Human Rights, *Report of Special Rapporteur on Violence Against Women* (E/CN.4/1998/54/1998) 12-18.

¹⁰ Women’s Refugee Commission Report, *Abuse without End: Burmese Refugee Women and Children at Risk of Trafficking* (2006) 36

¹¹ *Attorney General v. Ward* [1993] 2 SCR 689, The Canadian Supreme Court recognised that ‘women’ comes under a particular *social group* within the definition of Refugee Convention.

increasing numbers of “women at risk”, whose life situations or experiences pose exceptional protection challenges.¹² Women lacks independent identity and henceforth no political participation in matters related to them including documentation. This results in diluting the ambit of their rights including right to their Self-Determination; Bodily Integrity; Privacy; Healthcare including Reproductive rights and Food-Shelter etc. Women’s ‘unfreedoms’ make them vulnerable to forced labour, sexual exploitation and cross-border trafficking. Women and girls, being victims of trauma and stress of displacement, often suffer continued violence and discrimination in reconstruction and rehabilitation activities.¹³

Because of homelessness refugee women are bound to inhabit in very unhygienic living conditions in their camps. They go through the severe sanitation problem. Moreover, they get highly insufficient allowance from UNHCR and the fund which comes to them is division of many. Budget is a major issue, as in year of 2017, UNHCR’s estimated a budget for Asia Pacific region is \$545 Million USD, which is less in comparison to 2016 budget of \$671 Million USD. Further, in order to fulfill its needs, UNHCR had only received 44% of its forecasted budgeting till 5th December 2017.¹⁴ The shortfall in funding year after year, with increase in humanitarian crises is significant to be addressed. Government budget for Refugees and displaced women is not planned. The funding solely relies on organization such as UNHCR, NGOs which itself struggles to get the funds.

WORK, SECURITY AND SUBSISTENCE: CONDITIONS FOR HUMAN RIGHTS AND DIGNITY

Right to work is one of the fundamental aspects of human life. It ensures individual confidence and boosts her self-esteem. It is process that develops individual’s internal capabilities so that she can participate in social and political life. In the words of Martha Nussbaum¹⁵, person can only live her life in an autonomous and dignified manner if she is provided with the opportunities to develop her capabilities. In her theory of Capabilities she talked primarily of ten indicators that include life, bodily health, bodily integrity, reasoning and thought, emotion, practical reason, affiliation, play and control over one’s environment. These are essential features or pre-conditions that individual need to live an autonomous life. In other words refugee women once moved from her native country become vulnerable as she loses her bargaining position in society (new place where she is migrated). Her life becomes miserable and her bodily health and integrity got violated. She was unable to exercise her reason, thought and emotion in a ‘truly human way’ as she was forced to compromise with choices and this way with her dignity. The argument is further substantiated with reference to Henry Shue’s idea of ‘Basic Rights’.¹⁶ The American writer talked about that security and subsistence are the basic rights or pre-conditions for individual’s enjoyment of fundamental rights. In other words person cannot enjoy her right to life of freedom of speech and expression unless ‘arrangements’

¹² *Supra* note 8 at 38. Also see: Catharine A, MacKinnon, *Women’s Lives, Men’s Laws* (Oxford University Press 2007)

¹³ Report of the Special Rapporteur on Violence against Women, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women* (E/CN.4/2003/75, 6/01/2003) 2-9

¹⁴ UNHCR, ‘Operations: Asia and Pacific’ (May 2016) <<http://reporting.unhcr.org/node/29>> accessed 15 March 2020

¹⁵ Martha Nussbaum, *Central Capabilities* (Oxford Publication 2011)12-20. Also see: Martha Nussbaum *Frontiers of Justice: Disability, Nationality, Species Membership* (Harvard University Press 2007)

¹⁶ Henry Shue, *Basic Rights* (Oxford Publication 1980) Also see: Thomas Couser, *Vulnerable Subjects* (Cornell University Press 2003)

were made for the same. According to author unless one assures the security and subsistence person cannot enjoy her fundamental rights. In this context as long as institutions including states and its agencies are not able to provide adequate food, clothing and shelter including healthcare to refugee population they cannot live a life with dignity. In this regard when we talk about refugee women there is need to make special arrangements including hygienic living conditions, healthcare facilities, reproductive choices and home. It also requires basic economic subsistence and political participation for women so that they can exercise their human agency in their day to day works. The argument can be further substantiated with reference to Irish Young, who in her concept of oppression talked about five basic conditions that lead to oppression of person.¹⁷ According to her conditions and opportunities plays an important role in constructing the position of individual in society. Similarly, Patman¹⁸ in her famous work titled, *Sexual Contract* stated that social contract as theory of state's evolution is the half story, it demonstrate the patriarchal contract that denies spaces and opportunities to women and put them at the lowest position in that contract. According to her through those contract men rights and action become "civil" and women are placed in the category of "private" rights. Therefore there is need to challenge the present trend and stereotypes pertaining towards women as it violate the autonomy and dignity of women including refugee women.

As economic un-freedom force an individual to risk her life¹⁹, the displaced people are constrained to leave their home and relocate themselves while taking several challenges. In this regard, Article 17 of the 1951 Convention of Refugees accords refugees "the most favourable treatment as accorded to nations of foreign country and exempts refugees from the restrictive measures imposed on the foreigners if they have completed three years of residence in the country or have spouse or child possessing the nationality of the country. Most importantly the Convention requires state parties to give "sympathetic consideration" to refugees to work in the nation. Henceforth, employment becomes one of the important aspect or tool for women that guarantee them the opportunity to live a life with self-esteem. Because enabling refugee women's access to gainful employment offers significant gains not only for themselves, but also for the host countries' economies. There are few examples of counties such as Turkey, United States, Germany that offers employment to refugees.

The refugees in Asia relay on humanitarian aid such as food, shelter, clothing and medical aid. It is difficult to get any employment because of status of refugees and such employment is often exploitative in nature. But most refugees in Asia do not have protected and respected work rights. The humanitarian aid and organizations do not provide refugees access to protection and solutions. With the new dimensions of conflicts resulting to, the status of refugee is in disorder. In such situation refugees remain isolated. The increase in displacement and statelessness resettlement opportunities available to refugee continue to decrease. As discussed above that work opportunities are prerequisite for refugee women to decrease the dependency and enhance the dignified life. The awful situation of refugees can be transformed with access

¹⁷ Irish Young, 'Five Facts of Oppression, Oppression Privilege and Resistance' (2011) <<https://wmbranchout.files.wordpress.com/2011/12/five-faces-of-oppression-iris-young.pdf> > accessed 17March 2020

¹⁸ Carole Pateman, *The Sexual Contract* (Cambridge Publication 1988)

¹⁹ Amartya Sen, *Development As Freedom* (Oxford University Press 1999)

to safe and work. Access to work rights and economic opportunities are crucial to becoming self-reliant and securing a sense of dignity.²⁰ Unfortunately, accessing lawful employment is challenging and often impossible for refugee women. The denial of such opportunities is amount to violence against women and fall under definition of Declaration on the Elimination of Violence against Women, it define violence against women as ‘any act of gender-based violence that results in or is likely to results in physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurred in public or private life. It is also recognized by Committee on Elimination of Discrimination against Women in its general recommendation no. 19 (1992) that wars, conflicts has far reaching effects on women’s enjoyment of their human rights whether civil, political or economic or social. Therefore there is need to remove the un-freedom of refugee women so they can live a life free form any kind of violence including social economic or political.²¹

LEGAL FRAMEWORK OF REFUGEES: A STUDY ON SOUTH ASIA

Asian region have few international commitments to protect the refugees. The legal framework consists of international human rights law, customary international law, international humanitarian law and United Nations High Commissioner for Refugees (UNHCR)²² guidelines, along with the 1951 United Nations Convention relating to Status of Refugees (Refugee Convention) and 1967 Additional Protocol. The Convention of 1951 and its Protocol is magna carta of international refugee law.

In absence of ratification to the Convention, Asian region observe many International Human Rights Law instruments such as International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, and Convention on the Elimination of All Forms of Racial Discrimination and Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which protects refugees in specific categories.

Refugee is such a pertinent issue, despite the Convention lacks its worldwide acceptance. In South Asia, Countries such as Afganistan, Cambodia, Philippines and Timor-Letse are the only signatories to the Convention. Countries of this region are greatly affected with the problems of refugee. Nepal is facing the problems of refugees mainly from Bhutan; Bangladesh is struggling with refugees from Myanmar; Pakistan has problem of Afghan refugees; Sri Lanka is facing problems arising from internal displacement. Similarly, India is providing shelter to mixed flows of refugees such as Chakmas, Rohingas, Tibetans and Sri Lankan refugees. India, among these South Asian Countries, hold the most protuberant place, not because of its geographical size and population-count, but as a result of country’s geo-political, economic and strategic capacity to impact or influence the events occurring in the sub-continent.²³ None of these affected nations

²⁰ *Supra* note 2 at 6.

²¹ Amratya Sen, *Development As Freedom* (Oxford Publication 1999) 84

²² The Mandate of the Office of the UNHCR derives from its Statute, which is added to United Nations General Assembly Resolution 428(V) of 11 December 1950.

²³ Prabodh Saxena, “Creating Legal Space for Refugees in India: the Milestones Crossed and the Roadmap for the Future” [2007] *IJRLAA* 2

are signatory to the Convention, further, they don't have any municipal or national legislation related to the same. But these countries are members of Executive Committee of the High Commissioner (EXCOM)²⁴ which usually adopts a consensus resolution on international protection of refugees. One of the accepted reasons for non-signatory to the Convention is the migration and movement of refugees mostly within South Asian region. Therefore, idea of refugee protection in South Asia is fluid and complex.

The humanitarian assistance in Asia is carried out by other international commitments selected by the country. For instance, India has signed the Universal Declaration of Human Rights (UDHR), wherein Article 14 is the fountain-source for incorporating laws and policies related to protecting the rights (human rights) of refugees. Article 14 stipulates the right to seek and enjoy asylum in the other countries. In exercising the protection, it is essential to maintain the dignity of refugee women. The Universal Global Consultation on International Protection on Gender-Based Persecution, stated that: "the definition of refugee, when properly interpreted, can encompass gender related claims. The text, object, and purpose of the Refugee Convention require a gender-inclusive and gender-sensitive interpretation."²⁵The countries hosting refugees do not answer the concerns of women facing persecution because of their gender. In absence of precise legal framework, how states construct Refugee women is a biggest challenge.

At the regional level, the mechanism includes Asian- African Legal Consultative Committee (AALCC), the 1966 Principles Concerning the Treatment of Refugees popularly known as Bangkok Principles, Informal Consultation on Refugee and Migratory Movement in South Asia (Eminent Persons Group). Asian-Pacific Refugee Rights Network (APRRN) has adopted the New York Declaration on Refugees and Migrants for the advancement of refugee rights. APRRN reiterated that what is needed most importantly is not a new set of recommendations and approaches, but rather the realisation of concrete commitments from states and other actors that match global needs and effectively provide protection to refugees.

The discernible and distressing feature of all refugees is the lack of national protection of their fundamental rights and freedoms, which creates a need for international protection in order to secure the enjoyment of those rights. The national security concerns have preoccupied the nations to address their own issues which increase difficulties to achieve consensus to develop new universal treaties on refugees. However, vulnerabilities and needs of refugees are vast and various in scope, ranging from the need for personal security and means of subsistence, through legal status and respect for fundamental human rights, to finding durable solutions to their plight. Whilst the needs and corresponding content of international protection vary according to the circumstances, the universal and paramount objectives of international protection, as contained in the fundamental refugee instruments, are admission to a country of refugee, security from forcible return and respect for basic human rights without discrimination.

²⁴ Executive Committee of High Commissioner is responsible for approving UNHCR's program and budget and also advice High Commissioner.

²⁵ Model National Law on Refugees, Article 13 (1) (a).

UNHCR POLICY AND REFUGEE WOMEN

The Asian nations which have not signed the Refugee Convention have set up the United Nations High Commissioner for Refugees Office in respective nations. The specific tasks which enable UNHCR to carry out international protection are listed in paragraph 8 of its Statute. It has a responsibility related to the development of international treaty law on refugees.²⁶ It provides that UNHCR is to promote 'through special agreements with Governments the execution of any measures to improve the situation of refugees and to reduce the number requiring protection'.

UNHCR has the outmost responsibility to maintain the registration procedure of refugees. It is fundamental to make individual registration of refugee women so as to ensure their exercise of basic rights. The obligation extends further to provide with relevant documentation to ensure her individual security, freedom of movement, capacity to register their children, access to essential services, support property claims and ensure political rights on return.²⁷ In this regard, right to work stands as essential for livelihood and to reduce the dependency on the host country. There are significant refugee reports on lack of livelihood opportunities. Recently UNHCR has begun with small program for women to teach skills in craft production.²⁸ Recently in India two training sessions was organized to provide refugee women with skills to orgainse and advocate for themselves and direct participation in decision-making.²⁹ Further UNHCR has initiated dignity kits to refugee women and girls to maintain feminine hygiene, dignity and respect in their daily lives.³⁰

Gender equality is a central part of all. For enjoying the basic rights and to live a dignified life, it is fundamental to ensure social equality. UNHCR Policy has moved to focus on gender issues as well. In 2002, UNHCR issued new Guidelines on Gender-Related Persecution³¹, where focus was on interpretation of refugee definition from gender perspective and ensure that proper consideration to be given to women claimants in refugee status determination procedures and to identify the gender-related claims. Another important aspect of UNHCR is sexual exploitation and abuse and sexual harassment against displaced people. To fight against the sexual exploitation, it has taken several measures such as prevention of misconduct, awareness-raising, effective investigation and robust action against perpetrators. There is a Working Group on Sexual Exploitation and Abuse (SEA) and on Sexual Harassment (SH)³² to undermine the fundamental rights and to be treated with dignity and respect. But this action is possible only when cases

²⁶ Paragraph 8 (a) of UNHCR'S Statute provides that UNHCR shall provide for the protection of refugees falling under the competence of its Office by 'promoting the conclusion and ratification of international convention for the protection of refugees, supervising their application and proposing amendments thereto'.

²⁷UNHCR, 'Commitments to Refugee Women' (12 December 2001) <<https://www.refworld.org/docid/479f3b2a2.html>> accessed 5 March 2020

²⁸ Right to work

²⁹ UNHCR India, 'Factsheet' (31 December 2019) <<https://www.unhcr.org/en-in/publications/operations/5e398b707/india-factsheet-december-2019.html>> accessed 2 April 2020

³⁰ UNHCR India, 'Factsheet' (30 November 2019) <<https://www.unhcr.org/en-in/publications/operations/5e257b8c4/india-factsheet-november-2019.html>> accessed 4 April 2020

³¹ Gender-related Persecution is within the context of Article 1A(2) of the 1951 Convention and 1967 Protocol relating to the Status of Refugees.

³² In May 2018, UNHCR appointed a 'Senior Coordinator' who reports to Deputy High Commissioner who is chairing Emergency Task Force on Sexual Exploitation and Abuse and Sexual Harassment.

are registered. There are several unreported cases relating to the violence against refugee women. The practice of reporting of cases requires strong leadership, workforce and continuous funding.

JUDICIAL PRONOUNCEMENT ON RIGHTS OF REFUGEES

The national legal mechanism guarantees the human dignity of refugees under International Human Rights Law. The Constitution of India does ensure freedom and dignity of the individual. Part III enumerates the fundamental rights and Part IV lays out the Directive Principle of State Policy. The Constitution provides that fundamental rights are inherent in all human beings and are basic and essential for all individual.³³ These rights are aimed at protecting the dignity of the individual and creating conditions in which every human being can grow and develop his personality. Further, any international convention not inconsistent with fundamental rights must be read with these provisions to enlarge the meaning and content thereof, to promote the object of constitutional guarantee. This is embedded in Article 51(c) which enables Parliament to enact laws for implementing the international conventions and norms by virtue of Article 252 read with Entry 14 of Union List in the Seventh Schedule of the Constitution.

Although there is no definition of the term 'refugee' in any Indian statute, the term has been used in administrative correspondence.³⁴ The refugees are governed by Foreigners Act of 1946, which deals with entry of foreigners in India, their presence herein and their departure.³⁵ The Act does not distinguish refugees in standard of treatment while considering their peculiar and tragic circumstances. Nevertheless, Indian Judiciary has formulated innovative and compassionate approach in protecting the human rights of refugees in India. In the *State of Arunachal Pradesh vs. Khudiram Chakma*³⁶, the issues of citizenship of Chakmas has conclusively been determined, and Court held that, since Chakmas are foreigners, they are not entitled to the protection of fundamental rights, except Article 21 of the Constitution. *National Human Rights Commission vs. State of Arunachal Pradesh*³⁷, is a significant judgment regarding the fundamental rights of refugees under India Constitution. The decision rules that foreigners are entitled to enjoy the protection of right to life and liberty under Article 21 of Constitution. Secondly, the decision removed ambiguities with respect to application for citizenship by registration. So the district authorities receiving applications have no power to reject them as the power to consider them lies exclusively with the Central Government. Through Article 21, any person, including a refugee can claim that any action against him is not a fair, just and reasonable procedure. In *Hans Muller vs. Superintendent, Presidency Jail*,³⁸ the Supreme Court held that the Foreigners Act gives an unfettered right to the Union Government to expel the foreigner from India. Later, in another case of *Louis de Raedt vs. Union of India*,³⁹ the Supreme Court reiterated that

³³ Manoj Kumar Sinha, *Protection of Refugees Through Human Rights Instruments: India Perspective* (Manak publishers 2004) 5-18

³⁴ *Supra* note 19 at 4.

³⁵ Preamble of Foreigners Act, 1946

³⁶ *State of Arunachal Pradesh vs. Khudiram Chakma* (1991) 3 SCC 554

³⁷ *National Human Rights Commission vs. State of Arunachal Pradesh* (AIR 1996) SC 1235.

³⁸ *Hans Muller vs. Superintendent, Presidency Jail* (AIR 1955) SC 367.

³⁹ *Louis de Raedt vs. Union of India* (2005) 5 SCC 665.

Indian government has a general power of deportation, but it is subject to principles of natural justice i.e. to be heard, which may not be personal hearing in all cases.

CONCLUSION

It is clear from the above discussion that until refugees have access to effective legal remedies, humanitarian assistance will continue to be inhumanely delivered to refugees. For better protection of refugees, “right-based humanitarianism”⁴⁰ is required which is beyond aid and diplomatic interest. This approach is not about discretionary assistance based on administration of government. It is about defending, advocating and securing enjoyment of human rights and human dignity. Another important aspect is registration of refugees. Women refugees are neglected and therefore protection and exercise of their basic rights becomes difficult. Placing women in decision-making roles and including their needs and realities in policies and solutions designed to address migration and the refugee crisis make them more sustainable and responsive. How can refugee women be made part of decision making is a crucial issue. One of the solutions is to bring all refugees particularly women under the ambit of UNHCR. With this step, refugee women can enjoy their basic rights on equal footing and participate meaningfully in the decisions that affect their lives, families and communities. The dignity of millions of refugees is further languished by confining them into the camps at the borders of cities, where they are segregated without any access to basic needs, livelihoods and income opportunities. There is need to provide continuous psychological, social and economic support to refugee women so that they can remove their un-freedoms. The proposition is very well supported from Amratya Sen’s idea of Development as Freedom, where he argues that how poor economic and social conditions results in deprivation of basic rights for individual. It forced individual to risk her life.⁴¹

⁴⁰ Barbara Harell Bond, “Can Humanitarian Work with Refugees be Human?”[2002] 24 *Human Rights Quarterly*, 52

⁴¹ While substantiating this argument Sen gives illustration of Mohamed Mir, a wage earner, who was killed in communal violence in Dhaka. Amratya Sen stated that Md. Mir went to earn his daily wage in that locality of Dhaka where communal violence was going on. He went there because he does not have any other means of subsistence for his family. It is his *economic un-freedom* that has forced Mir to go there. For detail refer to Amratya Sen, *Development as Freedom* (Oxford Publication 1999) 1-15.