

REFUGEE LAW IN INDIA

Written by Cicily Martin

3rd year BA LLB Christ College

INTRODUCTION

The term refugee means a person who has been forced to leave their country in order to escape war, persecution, or natural disaster. A person becomes a refugee when they have to flee from the nation they stay because of the violation of human rights, socio economic changes and political insecurity, generalised violence, civil war or ethnic strife which all leads to the fear of persecution. Under the International Law, there is a particular meaning for the word “refugee” and the legal definition for the same is laid down in United Nations 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Under Article 1 of the 1951 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it". The Indian law does not have any specific definition for the word “Refugee”.¹

India is a country where there are so many refugees groups entering from different countries, especially from its neighbouring countries. It doesn't have any suitable refugee rules and is neither a signatory to the 1951 UN Convention nor 1967 protocol on Status of Refugees. Many countries have adopted binding regional instruments for the protection of refugees, but there is no instrument to protect the refugees of the Asian region. India has followed ad-hoc policies about refugee settlements since its independence. There are a large number of refugees in India

¹ Rights in Exile Programme, <http://www.refugeelaidinformation.org/1951-convention> (last visited Sep 1, 2018).

due to its geographic location, religious society, and vast culture. Currently, Rohingya refugees are a major concern to India. There are numerous aspects pertaining to refugees which are of major importance both to India, as a country and to the refugees, particularly in the context of law implementation. UNHRC and NHRC are the bodies of Human Rights of the UN and India respectively. All of the reasons to why there is a refugee crisis arises such as the war, human trafficking, natural disasters, domestic conflicts and, environmental displacement will lead to climate change and lack of resources in other places that they take refuge in.

HISTORY OF REFUGEES IN INDIA

Going back in time, it can be seen that India has a history of helping refugees. Some major Refugee groups in India are from Iran, Tibet, Bangladesh, Pakistan, Afghanistan, Sri Lanka, and Myanmar. The partition of India and Pakistan had led to the exchange of people from one nation to another. Major Refugee crisis in India arose because of the India-Pakistan partition of 1947, when there were millions of population exchanges between these newly formed countries. This was followed by the Government of India granting citizenships to the refugees from Afghanistan and Pakistan. Similar was the case of the Tibetan refugees who had followed the footsteps of the 14th Dalai Lama. As an agreement, Jawaharlal Nehru assisted these refugees till their eventual return out of which about 12,000 refugees are present in India today. The Sri Lankan Civil War had also caused a lot of Sri Lankan Tamil refugees to migrate to India. The Chakmas were another ethnic group who had also got refuge after the waves of violence from the Bangladesh Army. At present, the Rohingya crisis is an ongoing issue though India has yet not officially acknowledged them as refugees.

INDIA'S HESITANCE TOWARDS THE UNITED NATIONS REFUGEE CONVENTION

India is not a party to the 1951 United Nations Refugee Convention nor the 1967 Protocol as India has not signed them in spite of 140 other signatories, still there are so many refugees in Indian Territory where they are welcomed with kindness. The reason for India not to sign the convention is because of their borders in South Asia which is extremely porous and any

disagreement can result in mass movement of people. This will make India a position with fewer resources which will not even be sufficient to provide its own citizen and also destroy the demographic balance. Even though India is not a party to the convention of 1951, it is obliged to take care of the refugees as it has signed other international agreements. For example, India has signed the 1984 Convention against 'torture' in which Article 3 is about how a state party to this convention cannot expel or return or extradite a person to another state where the person would be in danger or subjected to torture, only if there are reasonable grounds for believing the same. This is act is also known as the principle of non-refoulement which means there cannot be forcible repatriation from the state party. Under the Constitution of India through article 51(c), India is obliged to 1951 Refugee Convention. Article 51(c) of the Indian Constitution states "foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration PART IVA FUNDAMENTAL DUTIES" where it is bound by the International Customary Law principle and the government of India cannot send back refugees with force. So India should ratify the 1951 United Nations Refugee Convention or its 1967 Protocol as its already accepting refugees to their country and they are also bound to do the same because of signing of other International Convention and according to 51(c) of the Indian Constitution. It is a known fact that if it is a party to the Convention of 1951 it will have to provide more and more resources and other things for the refugees. Refugees can also cause damage to the economy and many may come in search of better opportunities. Also people may enter in the country in the name of refugee but or various purposes and take the convention for granted. That is the major reason why India is hesitant to sign the 1951 UN Convention but if a domestic law is established regulating this the drawbacks can be removed.

ROLE OF THE FOREIGNER'S ACT IN INDIA

According to the Tibetan Political Review on the article "Refugee: Rights and issues of Deportation under Indian Legal System", it explains about the Foreigner Act of 1946 which India chooses to follow rather than have a refugee law. It is as follows,

Under the Foreigners Act, 1946 section 3(a) defines the term "foreigner", who is a person from outside and not an Indian citizen. The word illegal migrant is defined under Section 2(b) of the

Citizenship Act, 1955 which defined a foreigner who has entered into India- (i) without a valid passport or other travel documents and such other documents or authority as may be prescribed by or under any law in that behalf; or (ii) with a valid passport or other travel documents and such other documents or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time.

In India, the refugees are considered as aliens under the Foreigners Act, 1946 as there are no specific laws for the refugees and as its not part of the refugee treaty. Thus there is no recognition for the refugees in India and they are not distinguished from the foreign nationals entering country's territory. As there is no specific law or rule regarding the refugee's shelter or entry, everything is based according to the discretion of government through administrative power and political exigencies rather than basing them on a uniform and consistent legal framework. Various reports has been submitted to the government of India by the National Human Rights Commission urging to promulgate refugee law in India or bring amendments to the outdated Foreigners Act of 1946.

ROLE OF UNHCR AND NHRC

In India, United Nations High Commissioner for Refugees (UNHCR) plays a major role in protecting the refugees as it does not have any legal framework regarding the same. It is an organization which provides international protection to the refugees and does the needful for them. It was established in 1950 with the objective of protecting refugees. Through the increase in the cases reported regarding refugees shows a clear picture of UNHCR active participation in India. After staying in India as refugee and once they go back to their country the UNHCR make sure the person is going back voluntarily and not with force in relation to the principle of non-refoulement. It focuses on the people such as refugees, asylum-seekers, stateless people, some internally displaced people and returnees. From 1981, UNHCR is established in India, even though India has not signed the 1951 Refugee Status Convention or the 1967 Refugee Status Protocol. The National Human Rights Commission (NHRC) is the body which was given statutory basis by Protection of Human Rights Act, 1993 in India which is solely responsible for the protection of refugees seeking shelter and promotion of human rights. It is mainly authorized to review legal provisions and factors inhibiting the enjoyment of human

rights in India and make recommendations for the remedy of any violation. These two bodies help India in looking after the refugees and also acts as a help to refugees. This shows that there is a need for a refugee law which constitutes all the matters regarding refugees and it will also help to differentiate refugees from migrants.

HUMAN RIGHT OF NON-CITIZEN IN INDIA

According to Jean Picket, an authority on Humanitarian Law, "It is based on two basic principles that are to say necessity and humanity" Under section 2(d) of the protection of Human Right Act, 1993 the term human right is defined as; "Human rights means the rights relating to life liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the Courts in India."² The judiciary plays an important role for the protection of non-citizen people by providing and protecting their rights and it always makes sure the International obligations are followed by the government agencies. In the landmark case of Supreme Court in NHRC v. State of Arunachal Pradesh reported in (1996) 1 SCC 742, Article 14 and 21 of the Indian Constitution was granted to the Chakma refugees from Chittagong Hill Tracts Tribal areas of Bangladesh. The NHRC under Article 32 of the Constitution proceeded to the courts in regard to violation of fundamental rights. This was done when there was threat to their life and security by the local politicians and AAPSU leaders in the state of AP. This was the famous case which held Indian Constitution confer some essential rights to the citizens and also to the non-citizens. India is a country which governed by Rule of Law. Every person is entitled to article 14 and 21 of the Indian Constitution which equality before law and equal protection of law; right to life and personal liberty except according to the procedure established law and the state is also bound to protect the rights of any person. When there is a proper legal frame work for the refugees no question for violation of rights will arise. In the current stage all the rights are not applicable to the non-citizens such as Article 15, 16, 19 of the Indian Constitution. Only citizens are allowed for the holding of certain offices. Election rights are also confined among the

² TERRORISM AND HUMAN RIGHTS: ROLE OF THE SECURITY PERSONNEL AND THE POLICE, <http://www.legalserviceindia.com/article/1271-Terrorism-And-Human-Rights.html> (last visited Sep 1, 2018).

citizens and not to the aliens. When there is a law it can at least make foreigners different from refugees and not to treat them as aliens under the foreigner Act and special provisions can be made for the refugees.

THE ROHINGYA CRISIS

At the moment, the Rohingya crisis is one of the issues that is focused up on in South East Asia. The Rohingya people who are also known as Arakanese Indians from Myanmar. They don't have a state of their own to live. The UN declared refugee group Rohingya as the most persecuted minority group compared to others. The Rohingya population was denied citizenship according to the 1982 Myanmar Nationality Law. There are many people as refugees but the Indian government does not show any interest in them and also does not consider them as refugees. Some of them also sought help in Bangladesh. Even though India did not consider or accept them as refugees because of the security threats, they were given shelter in Assam and West Bengal. The threat is posed because they were declared as terrorist by counter-terrorism authority of Myanmar. Later on they were asked to deport but that is against the violation of basic fundamental rights and against the principle of non-refoulement and Article 51(c) of the Indian Constitution. As they are not citizens of the nation, it's hard for them to find a job for living. They can't buy even SIM cards as there are no proper documents or citizenship. There is communal violence happening in case of Rohingyas as they are discriminated against on the basis of Muslims while Hindu Pakistanis have full citizenships. There is discrimination happening through religions, this violates article 14 of the Constitution where there is no equality and equal protection of law. The BJP government introduced the Citizenship (Amendment) Bill, 2016 for the amending of Citizenship Act 1955 which proposed to make the illegal migrants eligible for citizenship. But people from Afghanistan, Bangladesh or Pakistan whose religions should be Hindus, Sikhs, Buddhists, Jains, Parsis or Christians. The Rohingya people who were Muslims totally disadvantaged by this omission. It's high time for the drafting of refugee policy. The situation get worse day by day and the number of refugees will also be increased. More crisis will arise, only when there is law it can be regulated with fairness and not according to the will of politicians.

THE NEED FOR A REFUGEE LAW

Some of the laws related to the refugees in India are Citizenship Act, 1955; Extradition Act, 1962; Foreigners Act, 1946; Illegal Migrant (Determination by Tribunals) Act, 1983; India Penal Code Act, 1860; Passport (Entry into India) Act, 1920; Passport Act, 1967; Protection of Human Rights Act, 1993; Registration of Foreigners Act, 1939.³ The Foreigners Act of 1946 is the main legislation where refugees are considered as Alien in India. This Act gives authority to the officials to arrest or detain any foreigner on mere suspicion for non-compliance. There is a need for separate legislation especially for the protection of refugees. The Indian judiciary takes the initiative to safeguard the rights of refugees with regards to the Constitution. Various judgements given by the Supreme Court in relation to the protection of rights of refugees and their livelihood shows judiciary's activeness. But only when there is a separate legislation for the refugees alone, it can be effectively implemented.

The rights and privileges are granted only to selected groups of refugees which bring the question of equality and uniformity. According to administrative, political and economic situations the refugees are dealt with in India which accepts large number of refugees. In the case of the assassination of Rajiv Gandhi in 1991, Tamil refugees were allowed as refugees in India without any hesitation but after the incident they were taken according to the discretion of the powerful political party in Tamil Nadu. Article 4 of the Model Law on refugees explains that if any person is guilty of a crime against peace, a war crime, a crime against humanity or a serious non-political crime, before that person's entry into India as a refugee, will not be provided with a refugee status. This eliminates the tension of the policy makers for the entry of dangerous elements like terrorists from neighbouring countries to India through the status of refugee when a legislation is created. Another reason for not creating a refugee law is because of India's bilateral conditions with its neighbouring countries and the countries of refugee people. One of the main reasons behind India's hesitation for the acceptance or signing of any national or local framework regarding refugees is, the issue of accepting or refugees is a unilateral decision because of which there is no need for the framing of a new law to consider

³ INDIA NEEDS A REFUGEE LAW (2008), https://www.jstor.org/stable/40277209?Search=yes&resultItemClick=true&searchText=india&searchUri=/action/doBasicSearch?Query=refugee.in&referid=search:172cf5b570bbe1907ca4917b8defl66&seq=1#metadata_info_contents (last visited Sep 5, 2018).

multilateral and bilateral agreements. Introducing a new legislation for the refugees by including a distinction between migrants and refugees will solve the problem of illegal migrants who acquire the status of refugees in India. Refugees are the persons who are forced to move out of their place due to persecution whereas migrants voluntarily move out to increase their living standards. In the current situation as there is no difference made by the government for the refugees and the migrants, they are entitled to same human rights and services offered to refugees. In some cases the local population suffer more than the refugees as all the needful and essentials are given to them which are not provided to the local population. This problem can be solved by creating a law governed by central authority with proper classification of refugees and by constructing a security database, international obligations will also be fulfilled by a uniform law. NHRC who mainly govern the refugee policy has also made recommendations for a new legislation which should be looked after.

CONCLUSION

The UN celebrates World Refugee Day as June 20 every year to create awareness throughout the world. It is high time for the parliament of India to create a uniform law to give a legal status for the refugees and recognise all without any discrimination. This can act as a check on the illegal immigrants into the country, refugee's introduction into the system, the resources can be managed and allocated efficiently to the refugees. When a law is established for the refugees certain limitations can be introduced such as the number of refugees who can enter into the country in a given year. A personal record can be created for the entry each refugee into the nation which keeps a check on them. At the same time, it would be better if India followed the USA-like system that will ensure the economy of the country as well as give a cultural exposure. A neutral strategy can be formed when there is an action command for the central government during the time of the refugee crisis. Also, the economy burden that the refugees are blamed to cause up on a country and 'conditional citizenship' implemented for the refugees will be handled efficiently. All of this will be facilitated by the programs handled by the government. An economic autonomy is gained which adds up to the State's capital. In a long run, this security and the interest of the nation is complemented. Through these recommendations and suggestions the law can be framed for the refugees.