

The Nowhere Citizens: Analyzing India's Refugee Policy and Its Implications

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ABSTRACT

A refugee is someone who has been flee his or her country because of persecution, war or violence. A refugee cannot return home or has less chances to return home because of fear of persecution for reasons of race, religion, nationality etc. India specifically has no international policy for protection of refugees. Moreover, India has wide range of refugees entering in from different neighbouring countries. The host country may face economic burden, long term demographic change and security issues. However, helping this is a human rights paradigm. There is no specific statute for refugees but The Foreigner's Act, 1946 and CAA, 2019 has provisions regarding refugees. In India the absence of national legislation on refugees has placed their rights in vacuum. This, report deals with refugees to India and their legal status.

KEY WORDS: UN Refugee Agency, UNHCR, Internally Displaced People, IDPs, Refoulement and repatriation.

INTRODUCTION

“NO ONE PUTS THEIR CHILDREN IN A BOAT UNLESS THE WATER IS SAFER THAN THE LAND.” -WARSAN SHIRE.

Mostly, refugees are legal and Indic minorities who migrated to different countries after independence in 1947. These refugees who migrated during independence in the event of partition of the state (two nation theory) aren't illegal in respect to Part II² of The Constitution of India. Multiple groups of people are recognised as legal refugees who migrated in fear of persecution on basis of religious and ethnic discrimination. Religious refugees like people from Afghanistan, Bangladesh, Pakistan and Tibet were refugees to

¹ IV SEMESTER B.B.A.L.L.B JSS LAW COLLEGE, A PROFESSIONAL AUTONOMOUS COLLEGE FUNCTIONING UNDER THE AEGIS OF JSS MAHAVIDYAPEETHA RECOGNIZED BY UGC AS “COLLEGE WITH POTENTIAL FOR EXCELLENCE”

² Part II of The Constitution deals with citizenship (Article 5-11)



India. Additionally, refugees who face ethnic prosecution like Ugandans of Indian origin and Sri Lankan Tamils are also included in legal refugees list. They are mostly of minority religions of neighbouring countries like Hinduism, Buddhism, Sikhism, and Jainism. People of majority religion like Muslims in the neighbouring country Myanmar are also undergoing fear of persecution and had to migrate like the Rohingya Refugees.

Illegal migrants are those who enter the country without valid visa who are likely to pose threat to the country. India, is not a party to International Refugee Convention of 1951 and its 1967 Protocol. Apparently, India has no Legislations and regulates refugees by political and administration levels and ad hoc system to handle the needs of refugees. They are basically treated as aliens who are regulated by The Foreign Act of 1946.

CITIZENSHIP

Indian nationality law is governed by The Citizenship Act, 1955 which had further Amendments. The Constitution of India in Part II deals with citizenship of Indians at times of Independence. India has established National Register for Citizenship (NRC) which has the list of the citizens of India residing in Assam with relevant information like their name.

Citizenship Amendment Act, 2019³ which was established on 11th December, 2019 amends the Indian Citizenship Act of 1955 and provides citizenship for refugees of religions like, Hinduism, Buddhism, Jainism, Zoroastrianism, Parsis and Christians from countries like Pakistan, Afghanistan and Bangladesh who entered India before the end of December, 2014. This law doesn't apply for Muslims as the countries specified are basically Muslim-majority countries. This was the first time to determine citizenship on the basis of religion. This Act

³ Citizenship Act of 1955 was amended in 1992, 2003, 2005 and 2015

neglected Rohingya refugees and Sri Lankan Tamils was the reason for undergoing high controversies.

THE FOREIGNER'S ACT, 1946

The Act defines a foreigner as “a person who is not a citizen of India”. According to Section 9 of this Act, if a person’s nationality is not evident he has the burden to prove that he’s a foreigner. Foreigner (report to police) Order, 2001 under The Foreigner’s Act, 1946 provides obligation to report to the police if a foreigner has entered to the state in his premises by the owner within a period of 24 hours. The police has right to detain them until they are deported to their country of origin.

DIFFERENCE BETWEEN REFUGEES AND IMMIGRANTS

Refugees are forced to leave their home countries because of war, environmental disasters, political persecution and religious or ethnic intolerance. Refugees, according to the office of the United Nations High Commissioner for Refugees [UNHCR], are people who are “fleeing armed conflict or persecution” and “for whom denial of asylum has potentially deadly consequences.” Refugees leave their home countries because it is dangerous for them to stay. They often arrive without their personal belongings’ sometimes without preplanning.

Simply speaking, a migrant is someone who chooses to move for any no. of reasons. Some of them move to be with family or for economic reasons, education or to return to their home countries after few years. This doesn’t mean that all are moving from good situations to better one unfortunately, many people move because their homes have become dangerous or difficult to live in. They might be fleeing from unrest, famine, drought, or economic collapse. But unless they are in danger of conflict or persecution, they are not considered refugees.

The distinction is an important one, because an international convention⁴ in 1951 outlined certain rights for people deemed refugees, whereas migrants have no such rights. Refugees are protected from being deported or returned to situations that might threaten their lives. They are to be given access to social services and to be integrated into their new country's society. Migrants are subjected to a country's immigration laws and procedures and can be turned away or deported back to their homeland.

ILLEGAL IMMIGRANTS

Illegal immigration refers to the migration of people into a country in violation of the immigration laws of that country, or the continued residence without the legal right to live in that country. Illegal residence in another country creates the risk of detention, deportation, and/or other sanctions. Whereas, the legal migrants can undergo:

1. Local integration
2. Voluntary repatriation
3. Third country resettlement⁵

IMDT ACT, 1983

The Illegal Migrants (Determination by Tribunal) Act, 1983 was introduced during Indira Gandhi's period and was struck down by the Supreme Court judgement in the case *Sarbananda Sonowal vs. Union of India*. The act was determined to detect illegal migrants from Assam from Bangladesh and expel them. The Act provides protection against undue

⁴ UNHCR established in 1955 expands as United Nations High Commissioner for Refugees and has Protocol in 1967.

⁵ Third country resettlement means the resettled refugees has right to stay in the country and even acquire citizenship.

harassment to minorities affected by Assam Agitation. The Act made it difficult to deport illegal immigrants from Assam.

REFUGEES OF PARTITION OF PAKISTAN

At times of Independence, several people crossed over the newly formed boundaries of India and Pakistan either by choice or forcibly. Those people didn't lose nationality rather lived as refugee. After establishing The Constitution of India and the citizenship laws, the refugees were automatically part of the Independent India. In 1948, due to national security in India in the event of war in Pakistan, there was a flow of refugees from the neighbouring states into India. Pakistan was accused to shift 'internal problem' onto India. Over 10 million refugees entered from East Pakistan as they were facing discrimination and were in fear of persecution by the people of West Pakistan. The control over the govt. lied in the hands of West Pakistan who had Muslim majority speaking Urdu. The govt. made Urdu and English as the official language which profusely affected the feelings of the people of East Pakistan who were mostly Bangla language speakers. Students who protested against this were persecuted and mercilessly killed. The people of East Pakistan were seeking for a separate and independent state and India showed up as international intervention on behalf of the refugees. As a result, East Pakistan became a free state designated as Bangladesh an independent state. The ad hoc refugee treatment was used to handle the tremendous number of refugees during that time. Operation Searchlight was instituted by Pakistanis and a mass of people were killed in Bangladesh during Bangladesh Liberation War. This led to Genocide⁶ where about 30 lakh people were killed. A large number of women faced genocidal rape and to save their lives entered India.

⁶ Genocide refers to deliberate killing of a large number of people from particular nation with the aim of destroying a nation or a group.

AFGHANISTAN AND TALIBAN

Afghanistan was having Marxist reforms sparkling meanwhile Muslim troops invaded and took over the power. The Taliban Militia took power in Kabul and established harsh Islam order. The Militias were unwilling to extradite Osama bin Laden and members of his al Qaeda⁷ organisation. In the event of statelessness, the Afghan people migrated to India,⁸ mainly to Delhi were 11000 in count by the UNHCR report.

TIBET

The 14th Dalai Lama, spiritual head of Tibet escape to Dharmashala in India in fear of persecution from Peoples Liberation Army of China along with one lakh people. This flee of Dalai Lama with his followers had brought India a refugee crises. This migration was due to invasion of communist China into Buddhist Tibet and establishment of antireligious legislations. This even led to a war with China.

ROHINGYA

They are a group of Islamic people who were discriminated in Myanmar. Rohingyas were denied citizenship under 1982 Myanmar Nationality Law. This was stated to be equivalent to apartheid policy and was condemned by several leaders. There was a threat to unfolding genocide, mass killing, persecutions and sexual assaults. Due to these controversies, Rohingyas fled to India where even they were denied citizenship.

⁷ The prime ambition of al Qaeda is to remove all foreign influences from Islamic country.

⁸ Hashimy, S.Q. (no date) Goodbye to Afghans: What is the promise of human rights to human rightslessness Afghan migrants in Pakistan?, *International Journal of Law in Changing World*. Available at: <https://ijlcw.emnuvens.com.br/revista/article/view/76>

UGANDA EXPULSION

In the year 1972, Pres. Idi Aman the Ugandan President, ordered expulsion of Asian minorities within 90 days. Asian minorities mostly Gujarati were accused to have sabotaging Ugandan economy and encouraging corruption. There was a wide spread anti-Indian sentiment and all their belongings are seized. Thus, a large number of people migrated to India seeking help and for restoration.

SRI LANKAN TAMILS

Over 1 lakh Tamils in Sri Lanka are refugees of Sri Lankan civil war (1983 – 2009). The Ceylon Citizenship Act, 1948 failed to include Tamils of south Indian origin. 11% of country's population were homeless. Over 122000 migrated to Tamil Nadu and after PM Rajiv Gandhi's assassination 54000 were repatriated. The so called Eelam Tamilians stopped to enter India because of Cease Fire Agreement. The Sri Lankan Tamils had great connection with Tamil Nadu in the history and have been ruled by several Indian kings witnessed in historic literature. People of Tamil Nadu possess strong feeling towards their wellbeing whereas they as refugees are treated without humanity.

HUMAN RIGHTS AND REFUGGES

Article 14(1) of The Universal Declaration of Human Rights guarantees the right to seek and enjoy Asylum⁹ in other countries. Article 7 of UDHR is simultaneous with Article 14 of The Indian Constitution ensures equality before law and equal protection against discrimination.

REFUGEE CHILDREN

⁹ Asylum seekers are not fully refugees but are just migrated to find home. They aren't recognized as refugees in the beginning.



Over half of the refugees are tender children. UN Refugee agency UNHCR and UNICEF jointly are working to provide hygienic environment and good education to children. As humans, the prime responsibility is to provide the younger generation a durable future and education which ensures peaceful living. Almost all the refugee parents strive hard to ensure their children safety although they undergo mental trauma and sometimes physical stress. At times, children are exposed to child labour and other such exploitation. Such sufferings at tender age is unbearable. Most of the girl children had been rape victims which destroys their valuable life. This is the most devastating part of being refugee.

CONCLUSION

Refugees had experienced extremely stressful situations because of war and migration. They are separated from family, robbed, killed, witnessed, torture of killing, raped, betrayed by the enemy forces. They also embrace several health issues and mostly live in unhygienic conditions. This also includes more broad reaching phenomena, such as gender-based violence and maternal health. Being forced to flee, refugees may experience imprisonment, torture, loss of property, malnutrition, physical assault, extreme fear, rape and loss of livelihood. While in cities with all sort of luxury, sufficient food, education and peaceful living, people starve for riches, refugees are in all time fear of death and abrupt assaults. The enemy forces are often merciless and inflicts torture on refugee. Being humans by fate, they are treated as aliens. With all those international laws and conventions, refugees are still suffering without valid citizenship. Most of the countries strived to grow towards developed status without even holding a sense of humanity towards humans only to satisfy greed of the human-made sects and divisions.