

# Protection Of Refugees On Humanitarian Ground- The Indian Perspective

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**Abstract:**-Refugees are the victims of circumstances. Nobody ever wants to leave his own soil unless is compelled to do so for saving his own as well as those of his near and dear ones' lives. It is never easy to move to another country and seek asylum there as refugees. Even after grant of asylum, one will not be able to live up to his fullest as a human being endowed with all rights unlike the citizens of the asylum provider country. It is quite obvious as the status of the person as a refugee will be guided as per the internal legislations of that country along with the International Conventions, if the country is a signatory to the later. The protection of Refugees remains a major concern for all the countries throughout the globe for quite a considerable period of time even after the framing of the rules in the 1951 Convention and its Optional Protocol in 1967 on the Status of Refugees. Migration of people in ancient times in search of food, shelter and other necessary requirements is completely different from today's refugee problems as the later escapes a country not because of lack of basic necessities but because of threat to life owing to persecution basing upon race, religion, nationality, political opinion, or membership in a particular social group as defined in the 1951 Convention. Countries who are parties to the 1951 Convention and its 1967 Optional Protocol have incorporated this definition of refugees in their internal laws also dealing with the matter. But there are large number of countries in the Asian sub- continent who become home to huge number of refugees even not being parties to the 1951 Convention and its 1967 Optional Protocol. In this regard the stand of India in protecting the interests of the refugees coming from almost all neighboring countries is really praiseworthy. India is neither a signatory to the International Convention on the Status of Refugees, 1951 and its Optional Protocol on the Status of Refugees, 1967 nor does it have any national legislation on the point, still its liberal policy have made it a natural destination for the Refugees fleeing due to persecution and threat to lives in their own countries. India goes on with accepting them regardless of being comprised of its own over- a- billion population with no less than six hundred million people still living the poverty line being deprived of basic amenities. This humanitarian approach of India, however, puts it into a very sensitive position as threat of infiltration of terrorists in the name of refugees always remains there and the country has already experienced several such attacks time and again. The geographical position of the country also places it in a vulnerable condition for infiltration of refugees through its borders.

**Key Words:** Convention, Persecution, Protocol, Refugee, Status

## Introduction

The entire world is undergoing through serious problems in dealing with the issues relating to refugees. For centuries together States have been safeguarding the persons running away from their own countries to escape persecution. One becomes a refugee not because of his choice, but because of the circumstances those compel him to flee from his own country being scared of human rights violations leading to persecution. In earlier times also people used to move from one to other places in search of basic amenities and used to settle at the places where they get their needs fulfilled, but today's refugee problem is altogether different from the causes of the earlier times. Now one becomes a refugee because of the circumstances those left no other option than to leave one's own country to save oneself from all kinds of violations leading to threat to life. This view is clearly evident in the definition of the term 'Refugee' as enshrined in the UN Convention relating to the status of Refugees in 1951 and its optional Protocol in 1967. The Convention defines the 'refugee' as "A person who owing to 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, unwilling to avail himself of the protection of that country". There is a great lacuna in the language of the 1951 Convention as to determine the status of an individual as a 'refugee' by the State parties rather it is left for parties to determine by developing their own rules.

That is why most of the member countries have prescribed their own internal rules to deal with the refugee crisis in addition to the rules of the 1951 International Convention. This created large differences between the member states as the later formulates the rules for granting asylum to the refugees basing upon various aspects of their convenience such as availability of natural resources, security related concerns, previous problems faced due to illegal infiltration etc. Regardless of such disparities amongst the member states, the overarching objective of the current refugee regime is to impart security to the persons compelled to run away from their own countries being afraid of losing their lives. Another lacuna of the definition enshrined in the 1951 International Convention and its optional Protocol, 1967 is that it didn't include internally displaced persons (IDP)s those flee due to natural disasters or generalized violence and not facing persecution within its purview. Dealing with the Refugee Problems- The International Scenario Most of the refugee problems of the world are the results of aftermaths of war. Be it the Balkan Wars of 1912 and 1913 in the Balkan Peninsula, the Russian Revolution of 1917, the Spanish Civil war between 1936 to 1939 or the two World Wars. All these wars are responsible for the major refugee crisis in the World. During the First World War almost a million of refugees migrated to Netherlands and then to United Kingdom and other nearby countries. The Second World War caused the migration of huge number of refugees to Europe, USA, and other South Asian countries. In recent times the war in Syria is the major cause of migration of millions of people to Germany and Lebanon as refugees. Germany even made it a constitutional right to provide Asylum to the refugees and passed two Acts, the Asylum Act and the Residence Act prescribing rules and procedures for acceptance of refugees. The action taken by Sweden to accommodate refugees from bordering states is quite impressive. It provides all kinds of aids including monetary, health care, education, pass ports etc. to the

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refugees. During the Iraq war in 2013, Sweden has accommodated huge number of refugees even more than the numbers accommodated by the US and UK combined together. Brazil too guarantees asylum security to aliens through its Constitution. Being a party to the Convention on Territorial Asylum, Brazil provides freedom of movement to the accepted refugees inside the country as well as to choose their place of residence. The very objective to establish a Common European Asylum System (CEAS) by the European Union was to provide international protection to the persons who become refugees due to justifiable fear of persecution. The CEAS guarantees Right to Asylum and Prohibition of Refoulment of the refugees by its Charter of Fundamental Rights and the UN Convention on the status of Refugees in 1951 and its optional Protocol, 1967. The rules and regulations of the CEAS are obligatory for the members of European Union to act upon. Acceptance of Refugees- The Indian Perspective The UN Convention on the status of Refugees in 1951 and its optional Protocol, 1967 envisage the rights of the refugees in the countries where they refuge and the responsibilities of the asylum-provider countries. It was signed by 144 countries, but India has not succumbed to the International pressures on it to be a signatory to the documents. In the absence of any binding pressure on it, India is still considered to be one of the countries having major refugee populations in the world due to its accommodative policies on humanitarian grounds. India's pluralistic and stable society has often attracted people fleeing persecution and insecurity in their own countries to make it a natural destination. By the efflux of time India has continued to receive huge number of refugees not only from the neighboring countries but also from different other far away countries in spite of its limited resources and having about more than over a billion of its population still struggling for basic amenities. Starting with the influx of the Zoroastrian community in the 10<sup>th</sup> century fleeing persecution on religious grounds, India has witnessed the continuous inflow of refugees from different countries. But the most interesting point to note is that in none of the occasions, except in the trans-boundary movement of the citizens during the partition in 1947 between India and Pakistan, any refugee flees from India complaining persecution. India always remains on the receiving end being a home to millions of refugees belonging to multifarious religions and languages. Reasons for India not being a Party to the 1951 Convention The perception of India is that the Refugee Convention of 1951 is mostly Eurocentric in approach having little scope for the South Asian Countries to deal with. Further being one of the most populous countries & a developing one, the acceptance of the rules and regulations of the Convention would have been burdensome for the country for having affected the safety and security of the country. Another reason for India for not signing the Convention is that by being a signatory it would have been obligatory on India to allow huge flow of refugees from the bordering countries who fled just to avoid political instabilities of their countries. Being the World's second most populous country and having about more than a billion people, it is still not capable to provide basic amenities to about six million people of its own, who are living below the poverty line with limited resources. Being a signatory to the Convention, it would have been obligatory on the part of India to provide

food, shelter, employment opportunities, education and medical facilities to the refugees and that would have been a great injustice to the millions of citizens of our own country who are the prime responsibilities of the country to be provided with such facilities. However, even though not being a signatory to the Convention of 1951 and its optional Protocol, 1967, still India applies the very essence of the Convention enshrined in certain Articles meant for treating with the refugees on humanitarian ground. India always adopted the principle of non-discrimination on grounds of religion, race or country of origin, which is there under Article 3 of the Convention. India's stance on providing religious freedom to the refugees corresponds to Article 4 of the Convention. The treatment of refugees identical with those of the aliens is reflected there in Article 7 of the Convention. Being treated as aliens, refugees too have access to courts on the grounds available to the aliens, which act corresponds to Article 16 of the Convention. Refugees in India are allowed to get shelter in India as the alien, which is reflected in Article 21 of the Convention. Status of Refugees in India India is neither a signatory to the International Convention on the status of Refugees, 1951 nor its optional Protocol, 1967, nor has any specific statute determining the status of refugees in India, still it is considered as heaven for the refugees. Time and again India has accepted millions of refugees from the bordering as well as some far away countries. Refugees in India are covered under the purview of 'Foreigners' or 'Aliens', as those persons who are not regarded as citizens are considered as Foreigners or Aliens in India. In the absence of any clear distinction between the 'refugees' and the 'foreigners', lots of doubts remain in the minds of the people and taking advantage of that huge number of 'illegal migrants' become successful in entering the country through its porous borders and spread over the various parts of the country. Within the territory of India the refugees enjoy certain fundamental rights which are available to all the persons including the citizens as well as non-citizens. The most important among them are Article 14 and 21. Whereas Article 14 warrants equality before law and equal protection of law to any person throughout the territory of India, Article 21 ensures right to life and personal liberty to all the persons including the refugees. Other Articles ensuring fundamental rights to the refugees are 20, 22, 25, 27, 28 and 32 of the Indian Constitution. However, the government can restrict and regulate the free movement, employment and freedom to form associations etc. of the foreigners as these freedoms enshrined under Article 19 of the Constitution are available to the citizens only. In the absence of any specific legislation to regulate the status of refugees in India, it is regulated by certain Acts like the Registration of Foreigners Act, 1939, the Foreigners Act, 1946, the Indian Citizenship Act, 1955, the Extradition Act, 1962, the Passport Act, 1967, the Illegal Migrants (Determination by Tribunals) Act, 1983, the Protection of Human Rights Act, 1993 etc. Even certain provisions of the substantive and procedural laws like the Indian Penal Code, 1860, the Criminal Procedure Code, 1973, the Indian Evidence Act, 1872 are also applicable to the refugees as aliens. The Registration of Foreigners Act, 1939 and the Foreigners Act, 1946 are the statutes of pre-independent India made by the British rulers to regulate the admission and removal of foreigners in the country. The former Act

defines the term 'foreigner' as 'a person who is not the citizen of India' thus including the refugees, immigrants and travelers within its purview. The Judiciary in India has also left no stone untouched in protecting the interests of the refugees. With the advent of the concept of public interest litigation, many public spirited organizations as well as persons have drawn the attention of the judiciary time and again highlighting the issues of the refugees. In *Khy-Htoon & Others v. State of Manipur*, entertaining a writ petition filed by eight Burmese refugees including a child of twelve years against the deportation order issued by the government, the Gauhati High Court not only stayed the deportation order but also ordered for releasing the refugees from the central jail on personal bond. The court further directed to permit the refugees to go to the office of the United Nations High Commissioner for seeking refugee status. Similar kind of order was also passed by the Hon'ble Supreme Court in the case of *Malavika Karlekar v. Union of India* prohibiting the deportation of a group of asylum-seekers until the determination of their status by the United Nations High Commissioner. In *Digvijay Mote v. Govt. of India & Others*, when a public interest litigation is filed basing upon certain reports published in the news papers regarding withdrawal of financial assistance by the Govt. of Karnataka to the school exclusively established for the education of the children of Sri Lankan refugees, the High Court of Karnataka directed the government to continue with the humanitarian assistance to the school. In *State of Arunachal Pradesh v. Khudiram Chakma* the Supreme Court has not only directed the Central and the State government to finalize the conferment of citizenship rights to the Chakma and Hajong refugees who were eligible to get the same, but also directed to protect them from all kinds of discrimination as article 21 of the Constitution extends to all including the aliens. In the case of *National Human Rights Commission v. State of Arunachal Pradesh & Another* Hon'ble Supreme Court has directed the government to take care of the safety and security of the Chakma refugees and also to take all necessary steps for not evicting them applying any coercive steps by any organization. The Court further ensured the rights of the Chakma refugee Children born in the State for grant of citizenship. Indian Refugee Policy Though not a signatory to the International Convention on the status of Refugees, 1951 and its optional Protocol, 1967, India is a signatory to many other Conventions of the United Nations pertaining to protection of Human Rights and correlated issues. These Conventions put India under an obligation to deal with the refugee issues on humanitarian grounds. India being a member of the Executive Committee of the High Commissioner's Programme (EXCOM) in 1995 impliedly accepted to show larger commitment to the refugee issues. Successive governments in India have worked hard in resolving the issues created due to the huge influx of refugees. Whereas the Tibetan refugees were granted with Registration as well as Identity certificates, the refugees from Sri Lanka were identified as 'camp' and 'non-camp' refugees. The refugees from Pakistan, Bangladesh and Afghanistan were granted long-term visas to stay in India. As no specific legal process is there, the refugees in India come across differential treatments depending upon the relation of the country with the country from which the

refugees flee. In dealing with the refugee issues both the central and state governments in India act conjointly- Whereas the Home Ministry and the External Affairs Ministry of the Central government are entrusted with the responsibility of framing policies for the rehabilitation of the refugees and the accountability of dealing with the matters internationally respectively, the State governments are entrusted with the duties of protecting and maintaining the refugee camps in their territorial jurisdictions. Several quasi-judicial authorities like the National and State Human Rights Commission, Minority Commission, Women Commission etc. are delegated with the duties to ensure the protection of human rights and fundamental freedoms of all including the refugees within the territory of India. Due to the moderate approach of India to deal with the refugees, the bordering states of the country have seen much blood-shaded days in resolving the conflicts between the citizens and the refugees. Mostly the north-eastern states like Arunachal Pradesh, Assam, Manipur have undergone violent situations on several times on the issues of identification of illegal immigrants from bordering countries. The most brutal protest that shook the entire country was the 'Nellie Massacre' broke out in the Nellie district of Assam on the morning of 18<sup>th</sup> of February, 1983 taking away lives of more than two thousand alleged Bangladeshi Muslims by a mass of people in just six hours. The cause of the brutal killing is the non-deletion of names of the Bangladeshi refugees from the electoral roll of the State by the central government before the declaration of Bye-election. The All Assam Students' Union (AASU) challenged the politically motivated act of the government and their agitation soon transformed into a violent movement burning several bridges and blocking roads to boycott the conduct of election. The demand was mainly to revamp the electoral roll by removing the names of the huge number of illegal immigrants from Bangladesh who were conferred upon voting rights by the then government. The massacre of 18<sup>th</sup> of February, 1983 was the direct fall out of the election held on 14<sup>th</sup> February where votes were casted by few Muslims going against the call of AASU. Even today also Assam is going through similar kind of political chaos over the preparation of National Register of Citizens (NRC) with regard to identification of foreigners and the country is not under a situation to witness another 'Nellie' kind of incident.

## Conclusion

Influx of refugees to any nation directly affects its natural resources and economy upon which only the citizens of that country have the right to enjoy. The influx of refugees in large numbers and their demand on the limited resources of the host country lead to extreme hardship for the local population. Even in many cases the refugees become the cause of additional obstacle in the way of development of the host country. Since the day of entry, the refugees compete with the local citizens in getting their basic needs like land, water, shelter, food etc. fulfilled. By efflux of time their demands become more specific leading to considerable demands on education, employment, medical facilities etc. leading to a cause of inflation on prices. Instead of having huge pressure on population, volatile economy and highly vulnerable security concerns, India still continues to accommodate the refugees on humanitarian

ground. Even though not having any specific statute in dealing with the refugee issues, still its approach in dealing with the issue is definitely an eye-opener for the entire world. The country honors the true spirit of the United Nations Conventions while dealing with the issues. But at the same time the major concern affecting the security of the country is the inflow of illegal migrants causing a great threat to the citizens. While balancing the issues with human and humanitarian ground on the one hand and safety and security of the country on the other, the real challenges are being faced by the security and law enforcement agencies. A particular law dealing with the status of the refugees is surely the need of the time, but all these important aspects are to be given importance to. Showing humanitarian concern for the refugees is good, but not at the cost of the livelihood of its own people.