

## RIGHTS TO REFUGEE: JUSTICE FOR ALL

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### Abstracts:

One day you wake up and find you have to leave your home because of some civil war. How helpless it is! This paper shall deal with theoretical and practical refugee rights, considering emotional aspect and laws of different countries. Dealing issues of asylum; concluding needs of change in law.

**Keywords:** *Human, Rights, Justice, Refugee, India*

We love our lives so much, isn't it! And the lives of near and dear ones are also so precious to us. We wake up in morning get ready for our work places, earn our lives and in the evening when we return back, we feel so relaxed that we are going back to our homes. Home, the safest place where we can do anything and everything we want. But just imagine if you don't have that home or you got no way to get back home? Thinking such situation even makes us so restless. That restless feeling is what a refugee feels every day. This is the biggest reason that makes it an issue of concern.

This paper shall deal on emergence of the "refugee" and current scenario of refugee under 3 heads, first, history and development of refugee law, this topic shall deal with league of nation and United Nation Organization; second various international agencies; third situation in India, finally concluding the paper.

Laws are made by us, we the people. They are made just for our convenience, so that we could live our lives in peace. So the nature of law should be such that it suits majority and should do just for all. Fundamental rights are the only thing that are enforceable in courts worldwide and protects us from unjust

situations. And the basis of all fundamental rights comes out of the principle of right to equality. And that's the biggest issue for refugees that they are discriminated.

A state is not free to treat its nationals as it please despite the fact that it's sovereign. The greatest impact of human rights law has been to erode the absolute control which a state has in its classic period<sup>1</sup>. International human puts a check that in exercising its sovereignty any state do not takes away the fundamental rights of the individuals. Refugee law is a matter of 'municipal law'<sup>2</sup> as well as to international laws, as refugees flee from one country to another so it's to scratch out any confusion as to what laws should apply on him (i.e. origin country law or laws of the country where he is residing) refugee laws are made.

According to Article 1 of the 1951 Convention relating to the Status of Refugees, a refugee is someone who has fled his or her country "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a

<sup>1</sup> Agarwal H. O, international law and human rights, central law publication, Allahabad; 4<sup>th</sup> edition(2014) ISBN 978-93-81292-51-8; page:

<sup>2</sup> Here the word municipal is used and not state because municipal has some other meaning in strict sense



particular social group or political group opinion.”<sup>3</sup>

The term ‘Refugee’ has a particular meaning in international law and its legal definition is laid down in the United Nations 1951 Convention relating to the Status of Refugees<sup>4</sup> (to be referred to as “1951 Convention”) and its 1967 Protocol<sup>5</sup>. Article 1 paragraph 2 of the 1951 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.”. Therefore, the need to give due importance to humanitarian and human rights aspects in dealing with refugees cannot be over-stressed.

“Thus, it may be noted that there are well-defined and specific grounds, which have to be satisfied before a person can qualify to be a ‘refugee’. These grounds are *well-founded on fear of persecution* and considerations of a number of factors which may operate individually or collectively”<sup>6</sup>.

### History and development of refugee law

Refugees are victim of gross violation of human rights from a long time. The reason for same is that they don’t have any security any of state. So to check on their basic human rights international conventions and protocols came into picture. International action for Refugee did not start until 1920. Assistance to Refugee was provided by Dr.

<sup>3</sup> **Definition as per UNO**

<sup>4</sup> J.Fitzpatrick, “Revitalising the 1951 Refugee Convention”, *Harvard Human Rights Journal*, vol. 9 (1996), pp.229-53.

<sup>5</sup> See Goodwin Gill, note 1; Pirkko Kourula, *Broadening the Edges : Refugee Definition and International Protection Revisited* (Hague, 1997)

<sup>6</sup> The Refugee in International Law Third edition Guy S. Goodwin-Gill, Professor of International Refugee Law, University of Oxford, ISBN 978-0-19-928130-5 Guy S. Goodwin-Gill & Jane McAdam

Nansen. His contribution helped in creation of the world public opinion in favor of creation of international machinery for the protection and assistance of Refugee. League of nation on June 27, 1921 established the office of high Commissioner for Russia refugee. Doctor Nansen was appointed the first high commissioner on August 20, 1921. He devised a so call League of nation passport commonly known as Nansen passport; give the owner the right moves freely across Nation boundaries. Nansen passport was adopted by more 50 states. He was awarded leadership, vigor and spirit in the service of refugee. League of nation could not stop another world war and the problem of refugee even increased by Second World War.

### United Nations relief and Rehabilitation administration (UNRRA)

The problem of Refugee started after Second World War. Many people after world war became Refugee. United Nation organization formed after world war formed UNRRA on 9 November 1943 signed by 44 Nations. Main objectives of this agreement included the release, maintenance, rehabilitation and repatriation of United Nation nationals who had been displaced as a result of war. However many of them were reluctant unwilling to be repatriated, either because they had lost all ties with their countries of origin or because of change political conditions. UNRRA concentrated on distributing relief supplies, such as food, clothing, fuel and medicines. It also provides relief services with train personal and aided agricultural and economic rehabilitation.

### International agencies

#### International Refugee organization

The International Refugee Organization (IRO) was founded on April 20, 1946 to deal with the massive refugee problem created by World War II. This Special committee on Refugee and displaced persons was established by economic social council. A Preparatory Commission began



operations fourteen months previously. It was a United Nations specialized agency and took over many of the functions of the earlier United Nations Relief and Rehabilitation Administration. In 1952, its operations ceased, and it was replaced by the Office of the United Nations High Commissioner for Refugees (UNHCR)<sup>7</sup>

United Nations high Commissioner for refugees

The United Nations High Commissioner for Refugees was established on December 14, 1950 by the United Nations General Assembly with a three-year mandate to assist Europeans displaced by World War II. The following year, on July 28, the 1951 Convention relating to the Status of Refugees was adopted. It still constitutes the key legal document in defining who constitutes a refugee, their rights, the legal obligations of states, and the basic statute guiding UNHCR's work. The Convention entered into force on April 22, 1954, merging previous international instruments relating to refugees, and still presents the broadest codification of the rights of refugees at the international level. Unlike former international refugee instruments, which concerned specific groups of refugees, Article 1 of the 1951 Convention approved a single definition of the term "refugee," which accentuated the protection of persons from political or other forms of persecution. Accordingly, a refugee is someone who is unable or unwilling to return to his or her country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political<sup>8</sup>.

The general assembly on December 3, 1949 adopted the Statute of the office of the United Nation high Commissioner for refugees. UNHCR came into existence on January 1,

1951. UNHCR was set up in Italy for a period of 3 years. Later general Assembly decided to prolong the mandate for the period of 5 years. Made it renewable beginning from January 1, 2000 in the year 2000, general assembly resolved to continue UNHCR for a period of 5 years.

The most important International instruments related to problems of Refugee and the convention relating to status of Refugee of 1951 which was adopted after considering that the charter of United Nations and Universal Declaration of Human Rights have affirm the principles that human beings enjoy fundamental rights and freedoms without discrimination. The convention came into force on April 22, abs on June, 15; the convention had 136 state parties.

According to Para 2 of article 102 those persons who have become decision support January 1, 1950 in order to widen scope of convention, status of refugees was completed in 1967 which is under Para 2 of article 1 omitted the expression " as a result of such events." legal status of Refugee has been defined in the above two international treaties also define rights and duties of Refugee and make provision for various aspects of the everyday life including desire to work, education and social security and the right to travel documents, since not in position to use their own National passport. Main provisions of the convention of 1951 are as follows:

- Personal status of Refugee
- Movable and immovable property
- Civil rights
- Treatment of refugees
- Illegal entry of refugees
- Expulsion of refugees
- Travel documents
- General applications
- Prohibition of expulsion or Return
- Access to courts

<sup>7</sup> Holborn, Louise Wilhelmine; *the International Refugee Organization, a specialized agency of the United Nations: its history and work, 1946-1952*. London: Oxford University Press, 1956.

<sup>8</sup> Sert, Deniz Şenol. "United Nations High Commissioner for Refugees." *The Encyclopedia of Global Human Migration* (2013)



## Present international scenario

Talking about the most recent case of Paris, people of Paris faced a traumatic Attack by terrorist. Many people were killed in this attack on 14th November 2015. The reason which is guessed behind attack is religious. Three-year-old Aylan Kurdi, found dead in Turkey near the beach this incident got viral on Twitter with hash tag humanity shore away. Famous artist Charles made cartoon sketches of this incident in which he spoke controversial about Islam religion. Many Muslim youngsters over there are under training of IS, and this pictures of Charles seems to be the reason behind Paris attack. Why people puts religion on the one side of the balance and basic human rights of others on the other side. No doubt right to religion if one of the fundamental rights but every right has its importance and one must have a clear decision as to which right should dominate which. Taking someone's life is it justifiable because someone out of a huge population has said something about your religion. Such intolerance is increasing these days which is not acceptable neither could be control single handedly by any international agency. Till the time the mentality thinking approach towards others right changes no one of us can do anything.

The main motto of United Nation organization if to prevent the conversion of cold war into physical war and such attacks by a few terrorists is declining the motive of UNO. It is the need of hours for UNO not only to make laws for Refugee but also to prevent the causes which let the persecution occurs in the country. UNO is the most important and most powerful international Organization and should positively take steps to cure search situations that may lead to the problem of Refugee.

People have to leave their origin country due to fear of persecution and to travel some other country in search of basic needs of human, another country where he is not

welcomed. Condition of Refugee pathetic and very pity, due to some riots or attack, they become homeless and helpless

## Situation in India

India is neither the party to the refugee convention of 1951 nor protocol of 1966. Parties to the refugee convention have not been considered by the government of India from time to time standards in 1967 and 1992-94, history of external affairs considered conventions and protocol and a 'particular design for Refugee protection drafted in euro heightened centric context.' DJ instruments according to ministry and design family Steel with individual cases in contrast situation of Mars influx which country has been facing. Similar argument has been given by the other developing countries as well. Not being a party to convention is not legally bound to provide right to refuse explain down in about instruments. India in the past has not connected any domestic legislation in relation to Refugee despite the fact that it has invalid please provide it refuse to the people link from countries like Tibet, Bangladesh and Afghanistan. That is fairer approximately 1, 76 000 refugee is in India, epass maturity of home innocence of any law is not clear as to what shall be legal status of refugees and to be properly identified . The legislation is likely to have enriching impact on the refugee issues but no serious am tired anil opposite the drafting and adoption of such loss is essential. legislation is also essential to safeguard the security of the country.

India in Past has not enacted any domestic legislation in relation to refugee despite the fact that it has invariably provided Refugee to the people fleeing from countries like Tibet, Bangladesh Shri Lanka Afghanistan. It has been estimated that they are approximately 1, 76, 000 Refugee is in India, the vast majority of whom are Afghans. Absence of any law it is not clear up to what shall be the legal status of refugees and what light shellac your to them.



The constitution provides that some of the fundamental rights under part 3 of the Constitution shall be available to 'all person' and consequently, there's a will able to Refugee as well.

### INDIA'S MEASURES FOR FULFILLING INTERNATIONAL OBLIGATIONS:

India has taken numerous steps and measures to fulfill its international obligations in respect of refugees. Some of the more important ones merit detailed mention.

#### **Entry into India**

The Government of India have followed a fairly liberal policy of granting refuge to various groups of refugees though some groups have been recognised and some other groups have not been, often keeping in view the security concerns of the nation. However, the emerging trend of past refugee experiences bear testimony to the fact that entry into India for most refugee groups is in keeping with international principles of protection and *non-refoulement*. Further, such entry is not determined by reasons of religion or any other form of discrimination.

#### **Work Permits**

There is no concept of work permits in India, although refugees who are granted residence permits do find employment in the informal sector, without facing any objection from the administration. In fact, Tibetan refugees have been granted loans and other facilities for self-employment. Similarly, most Sri Lankan Tamils have been granted freedom of movement within the camp areas, enabling work facilities for them as casual labour. Similarly, Chakma and Afghan refugees have also been engaging in gainful, even if it is in minor forms of employment.

#### **Freedoms**

Generally, refugees are allowed freedom concerning their movement, practice of religion and residence. In case of refugees whose entry into India is either legal or is subsequently legalised, there is limited interference by the administration regarding these basic freedoms. However, those refugees who enter India illegally or overstay beyond permissible limits, have strict restrictions imposed upon them in accordance with the statutes governing refugees in India i.e., The Foreigners Act, 1946, Foreigners Order, Passport Act etc.

#### **Detention**

A refugee may face detention as soon as he/she illegally crosses the international border into India. It is pertinent to appreciate that the refugee has at that moment just entered an unknown country, after fleeing to save his/her life from his/her own country of origin. He/she may have undergone severe trauma of loss of family and friends in his/her homeland or en route India. The refugee in such situations may be unable to explain his/her background during initial interrogation, giving rise to apprehension on the part of local authorities regarding the genuineness of his/her subsequent refugee claim. He/she may be suspected to be a spy or infiltrator in the light of inconsistent statements that may have been made by him/her to the authorities. This is bound to be further compounded if the refugee is not in possession of the usual 'travel documents'. In fact, it would be very unreasonable to expect him/her to possess valid travel documents, considering the background of his/her having to escape from his/her own country. The same may result in further interrogation and continued detention pending registration of FIR (First Information Report, which is usually the basis of the start of 'investigation').



## Lack of Medical Aid in Detention

While in detention the refugee may be suffering from some physical ailment requiring immediate medical attention. In the event that the detaining authority does not provide the requisite medical aid, the same may result in devastating consequences. In some cases court's directions can be obtained and appropriate medical attention and treatment given to the refugee. Here again, NGOs can play a very useful role. In the case of a Palestinian refugee who was detained at the international airport in New Delhi consequent to a deportation order pending against him, a writ petition was filed to obtain the Delhi High Court's order that the refugee be provided at least the basic necessities like food and medical care. Knowledge of such cases would help security personnel to foresee and where necessary, seek the help of an agency like the UNHCR or a local NGO to render necessary help to the refugee.

## Right of asylum

This part of the paper examines how extradition and asylum interrelate "where the person whose extradition is sought is a refugee or asylum-seeker, or if an asylum application is filed after the wanted person learns of a request for his or her extradition. While international refugee law does not in itself stand in the way of extradition, its principles and requirements impose certain conditions on the lawfulness of extradition, which need to be taken into consideration by the requested State. Conversely, information which comes to light in the extradition process may affect the credibility of an asylum application and/or give rise to the application of an exclusion clause in the asylum procedure. Such information may also cast doubt on the validity of a refugee status determination, which in turn may result in its cancellation or revocation."<sup>9</sup>

The word asylum is Latin and ride from the Greek word 'asylia' which means inviolable place. Asylum and refugee status are special legal protections available to people who have left their home country for their own safety and are afraid to return. the term refers to those cases where the territorial state declines to surrender a person to requesting state, and provides shelter and protection in its own territory. Asylum Involves two elements firstly, shelter, which is more than a temporary refuge; and secondly, degree of active protection on the part of authority in control of the territory of asylum. These two elements distinguishes asylum from immigration

'The right of asylum falls into three basic categories: territorial, extraterritorial, and neutral. Territorial asylum is granted within the territorial bounds of the state offering asylum and is an exception to the practice of extradition'<sup>10</sup>.

Extraterritorial asylum refers to asylum granted in embassies, legations, consulates, warships, and merchant vessels in foreign territory and is thus granted within the territory of the state

## Conclusion

It can be easily seen from the foregoing paragraphs that India notwithstanding its own security concerns, particularly in the last couple of decades, and pressure of population and the attendant economic factors, continues to take a humanitarian view of the problem of refugees. Even though the country has not enacted a special law to govern 'refugees', it has not proved to be a serious handicap in coping satisfactorily with the enormous refugee problems besetting the country. The spirit and contents of the UN and International Conventions on the subject have been, by and large, honored through executive as well as judicial intervention. By this means, the country has evolved a practical balance between human

<sup>9</sup> <http://www.unhcr.org/3fe84fad4.pdf> ( page 10 ¶2)

<sup>10</sup> Smith, G. "Right of Asylum." *LQ Rev.* 27 (1911): 199.



and humanitarian obligations on the one hand and security and national interest on the other. It is in balancing these interests, which may sometimes appear to be competing with each other, that the security and law enforcement agencies face day-to-day challenges. If and when a separate 'Refugee Law' for the country is enacted, it is important that this aspect is given due consideration. It is important that security and enforcement officials do not overlook both the legal as well as the underlying human angles inherent in the 'refugee' situation, especially the latter.

Basically, the problem on refugee issue is not that we lack of basic laws somewhere. If that would be the issue, it would not be a great deal for UNO to make some international agency to seek ways out. The situation is that we are flooded with endless number of international agencies and protocols but the problem is that following or going by that norms are not really easy. Let's assume that following protocol we deal with the problem of refugees but what about limited resources present in our country. India is not a part of IRO, it has not sign the agreement and the biggest reason for same is that the India is already trying to deal with huge population of 121 cores of its own how can it handle some more immigrating every year. When someone is not given the title or status of citizen than what should be his rights being in territory of India. Before going into the problems of asylum or basic human rights we have to look into our own problems like population, security etc.

Sometimes right of asylum is compromised by some missing travel documents and national security. Its time when we should not only provide facilities to refugee but to take strict action on international level and make every country so strong that no one can take away sovereignty and create situation of fear that let to refugee to leave their own country and roam to any other country. Let's make UNO such a strong organization that no one could force anyone to leave their country. After all the rule should be of majority who wants peace and not of those

few who wants to create fear and spread terrorism amongst people.