



Refugee Law in Human Rights

Pankaj Karki^{1*}

¹*Department of Law, BGR Campus Pauri, HNB Garhwal University Srinagar Garhwal Uttarakhand*

*Corresponding Author Email: karkipankajggs@gmail.com

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Abstract: Refugee law is the part of international law, which deals with the right and protection of refugees. There are some group of human beings in society, which either by nature or because of deep-rooted custom are weak and vulnerable such as women, child and refugees. All these are weaker section of society. However, they being human beings do possess human rights and fundamental freedoms but their rights have been violated very frequently by the dominant section of society. The movement of the under privileged and deprived section for securing a place for themselves under the auspices of the united nations has contributed a great deal in spreading the message of human rights. Refugees are referred to those persons who leave their status in which they have permanent residence to escape persecution or military action. Human beings are rational beings. By virtue of their being human, They possess certain basic rights which are known as human rights. In other words, human rights are rights a person is guaranteed on the basis only that they were born as a human being. Since these rights belong to them because of their very existence, they become operative with their birth. Therefore, inherent in all the individuals irrespective of their Caste, Cread., Religion, Sex and Nationality. So these rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social; and spiritual welfare.

Keywords: Human rights, Convention, Refugee

Introduction

Refugee are victims of gross human rights violations. They are a distinct group of individuals without the protection of a national state. The linkage between human rights and refugees is clear in the sense that while gross violations of human rights can create refugee flows, restoration and respect for human rights make it possible for refugees to return home safely and for their problems to be resolved. The problem of refugees is international in character because of the involvement of two or more states in the sense that flee from one state to other states. Their problems therefore can not be resolved without international cooperation.

United Nations High Commissioner for refugees observed that – “ Human rights violation are a major factor in causing the flight of refugees as well as an obstacle to their safety and voluntary return home. Safeguarding human rights in countries of origin in therefore critical both for the prevention and for the solution of refugee problems. Respect for human rights is also essential for the protection of refugees in countries of asylum.”

A number of refugees have been resettled or repatriated since the end of World War II, but nearly an equal number of uprooted people are struggling hard to regain their basic human rights. Mass human rights abuses, civil war, internal strife, communal violence, forced relocation and natural disasters lead to the



creation of refugees. While national governments are responsible for the protection of the basic human rights of their national 'refugees' find themselves without the protection of a national state. There is thus greater need for according international protection and assistance to these persons than in the case of people living in their home states.

Refugees by definition are victim of human rights violations. According to article 1 (a) (2) of the V.N. Convention relating to the status of Refugees 1951, the term 'Refugee' shall apply to "Any person who owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a political 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." Although 'persecution' is not defined in the refugee convention. Professor James Hathaway defined it in terms of "The Sustained or systematic violation of basic human rights demonstrative of a failure of state protection."

The above definition lays down that only those persons shall be deemed refugees who are said to be political refugees as opposed to ordinary migrants ,or economic refugees or those who leave their country for reasons for personal convenience.

The crucial phrase in the definition is "well founded fear of being persecuted" which comprises subjective state on the part of the refugees and objective facts about the country from which the refugee is fleeing. Thus, only those persons fleeing political persecution can effectively qualify for refugee status because persecution is a denial of human rights. A person leaves his country because he is denied the use of basic human rights.

The OAV convention Governing the specific aspects of Refugees problems in Africa,1969, extended the definition in the 1951 Refugee convention. The Cartagena declaration on Refugee of November, 1984 laid down that the definition of Refugees could not only incorporate the elements contained in 1951 convention and the 1967 protocol, but also cover persons who have fled their country because their lives, their safety or their liberty were threatened by a massive violation of human rights.

Refugee Law

Refugees are also entitled to human rights and fundamental freedoms set forth in human rights treaties, convention and declarations. The international community must therefore take initiatives to address the human rights concerns of refugees in a positive and constructive way. There is need for better cooperation between the UNHCR and the U. N. High Commissioner for human rights. In recent years UNHCR has incorporated a number of human rights principles in its working – legal rehabilitation, institution building, law reform and enforcement of the rule of law.

Another important positive development has been the concerns expressed by the Human rights committee, the committee on the rights of the child, and the committee against torture over the treatment of refugees by state parties to the respective.

International action for refugee did not start until the 1920. Assistance to refugees was provided throughout 1920 by Dr, Fridtjof Nansen. League of Nations on June 27, 1921, established the office of the High Commissioner for refugees and Nansen was appointed the first High Commissioner. Nansen devised a so –called League of Nations passport, a travel document that gave the owner the right to more freely across national boundaries. After the death of Nansen in 1930, the Assembly of the League of Nations dissolved the High commissioner's post and the task of the protection to refugees was entrusted to the Nansen international office for refugees. The problem of refugees assumed unproportionate dimensions after Hitler's accession to



power in 1933 and his annexation of Austria and of chechoslovakia and after the World War II which dislocated the civilian population.

After the beginning of the Second World War, the first international agency concerned with the problems of refugees and displaced persons was the United Nations Relief and Rehabilitation Administration (UNRRA) which was established in 1943. Its broad objectives included the relief, maintenance, rehabilitation and repatriation of the United Nations nationals who had been displaced as a result of war – UNNRA concentrated on distributing relief, supplies, such as food, clothing shelter and medicines. It also provided relief services with trained personal and aided agricultural and economic rehabilitation.

In 1946 General Assembly of U.N.O. created a organization the international refugee organization (IRO). A preparatory commission for IRO, PCIRO was established on July 1947, took over the functions and activities previously exercised by UNRRA on behalf of refugees and displaced persons. By the time it had ceased its operation in 1952, IRO had reselted more than a million displaced persons and refugees in new homes throughout the world.

The General Assembly of UNO on December, 1950 adopted the statue of the office of the United nation High Commissioner for refugees (UNHCR). UNHCR came into existence on January 1951. The High Commissioner is required to report annually to General Assemly, through the ECOSOC. The office also devlopes appropriate policy to curb the refugees problems. The statue of the UNCHR provided that the High Commissioner shall seek the opinion of an Advisory committee on refugees, if it is established The UNHCR initially focused its fefforts on aiding refugees in Europe after World War Ii but is later decade efforts was shifted to resetting refugees who were the victims of war. UNHCR has been an active office for the cause of refugees.

Convention on the status of refugees

The most important international instrument drawup relating to problems of refugees is the convention relating to the status of refugees of 1951. The convention inforced on april 22,1954. The convention applied according to para 2 of article 1 only to those persons who had become refugees before January 1,1951. In order to widen the scope of the convention, protocol relating to the status of refugees of 1967. So in these international instruments defined the right and duties of refugees and made provisions for various aspects of their everyday lives, including the right to work, education, public assistance and social security and their right to travel documents.

The main provisions of the convention are follows :-

- I- Personal status of Refugees
- II- Movable and immovable property.
- III- Civil Rights.
- IV- Treatment of Refugees.
- V- Illegal entry of Refugees.
- VI- Expulsion of Refugees.
- VII- Travel documents.
- VIII- General obligations.
- IX- Prohibition of expulsion or return.
- X- Access to courts.



Basic human rights of Refugees

The following basic human rights of refugees –

- 1- The right to freedom of opinion and expression
- 2- The right to freedom from torture
- 3- The right to freedom of thought, conscience and religion
- 4- The right to life, liberty and security
- 5- Freedom from discrimination
- 6- Right to protection against refoulement
- 7- Right to seek Asylum.
- 8- Right to return

Refugees in India

India has neither acceded to the 1951 refugee convention nor enacted law for the protection of refugees, although it has always been willing to the host of forcibly displaced persons from other countries without adopting legalistic approaches to the refugees issues. However a number of refugees are not recognised as refugees but foreign nationals temporarily residing in india. These persons are assisted by the UNHCR and provided international protection and assistance under its mandate. In the absence of accession to the refugee convention by india and any national laws on protection of refugee the legal status if individuals recognizes as by the government of india is not clear. So India is not legally bound to provide rights to refugees laid down in the above instruments.

In the absence of any refugees law refugees are treated in india like aliens. They are regulated by the ‘Registration of Foreigners Act, 1939’, which applies to all foreigners and by the Foreigners Act,1946. The Act of 1946 empowers the state to regulate the entry,presence and departure of aliens in india.

In Hans Muller of Nuremburg V/s Superintendent presidency Jail, Calcutta and other,- a Question arose as to whether there Is any law in india, vesting the executive Government with power to expel a foreigner from india, as opposed to extradite him. The supreme court observed that – Entries 9, 10, 17, 18 and 19 in the union list confer wide powers on the center to make laws, among other things, about admission into and expulsion from india.

The discretionary and unfettered powers of the central Government to expel aliens including refugees is inconsistent with article 32 para (1) of refugee convention of 1951. The powers of the central govt to expel an alien are also inconsistent with article 13 of the international covenant on civil and political rights,1966.

Justice J.S.Verma, Chairman of the National Human Rights Commission Observed, “ The provisions of the (1951) Refugees convention and its protocol can be relied on when there is no conflict with any provisions in the municipal laws.”

Therefore the legislation is likely to have far reaching impact on the refugee issues but no serious attempt has been made to enact any law perhaps because of the lack of general awareness as to their problems and also because of the misconception that refugees are an undesirable lot. It is desirable that domestic legislation is enacted to provide rights to refugees as they are also human beings.

The Judiciary has sought to fulfil the void created by the absence of national laws by its landmark judgement in the area of refugee protection. The Indian constitution provided that some of the fundamental rights guaranteed under Part III of the constitution shall be available to “ all persons”, and



consequently, they are available to refugee as well. So it extended the guarantee of Article 14, 20, 21 and Article 22 to non citizens including refugees.

The decision of supreme court given in National Human Rights Commission v/s State of Arunachal Pradesh (AIR S.C. 1996), is relevant regarding the protection of the some of the rights to refugees and is worth mentioning. In this case courts observed that the settlement of chakmas in large number in Arunachal Pradesh. The special provisions made in the constitution would be set at naught if the state tribal population is allowed to be invaded by people from outside. The tribals therefore consider chakmas as a potential threat to their tradition and culture are, therefore keen that the latter do not entrench themselves in the state.

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