



## PROTECTION OF REFUGEES : A HUMANITARIAN CRISIS IN INDIA

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### Abstract

*India has seen large influx of refugee population throughout history but does not have specific domestic law governing the treatment of refugees and asylum-seekers. Despite being a non-signatory to refugee convention, India has an obligation under international law to protect asylum-seekers which it has traditionally honored. Though India does not have a national framework in refugee law, yet in 2006 the Supreme Court ruled that the right to life and personal liberty as enshrined in Indian constitution protects refugees from forced repatriation. So the present article aims to inform the world India's endeavor to foster respect and improve their situation in India with a mission to assist asylum seekers in basic human rights and accessing justice system.*

**Keywords:** Protection, Refugee, Humanitarian Crisis, Saranarathi, Genocide, Asylum, Chakmas, Repatriation

India is a country having a long historical tradition of welcoming refugees from all over the world. Throughout our five thousand old known history we have always welcomed refugees with open arms and given them a place of honour and dignity in our society. For example many of them are Americans, Persians, Syrians, Palestinians, Ethiopians, Afghans and Christians. Indian Government has not signed United Nations Refugee Convention of 1951 and the 1967 protocol due to financial constraints. Refugee problem is increasing day by day due to genocidal activities and inhuman activities. Refugee problem does appear to have any end in the near future. However there is no uniform legal framework to protect refugees. India still is a host to diverse groups of refugees, the country has no specific laws or cohesive policy for refugees. So refugees' problem was acknowledged to have international dimensions and requires a global co-operation. Since India is a poor country with limited resources it is hoped that the world community will understand India's difficulties in this connection. Indian Judiciary does recognize the refugees and the refugee law to certain extent and it is independent and not subordinate to Government and in many occasions it has censured the Government and played an activist and creative role in recent years and has introduced refugee law into our legal framework through backdoor's but the front doors has been shut by the executive.

**Refugee :** A refugee is a person who flees for refuge (shelter) to another country or has left their home land or place of residence due to unavoidable and oppressive circumstances and are not prepared to go back to their original place. Sometimes they are also called as Saranarathi who takes shelter in another country as a fugitive.

The Convention relating to status of Refugees of 1951 defines refugees under Article-1 as – Any 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 a fear is unwilling to return.

**Rights of Refugees and their protection :** Refugees are victims of gross human rights violations. They are a distinct group of individuals without protection of

National State. The linkage between human rights and refugees is clear in the sense that while gross violation of human rights makes it possible for refugees to return home safely. So the problems of refugees are of international character because of the involvement of two or more states in the sense that they flee from one state to another state. So their problem cannot be sorted without international co-operation. India is a country governed by a rule of law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before law and equal protection of law. So also, no person can be deprived of his life and personal liberty except according to procedure established by law. Thus, the state is bound to protect life and liberty of every human being be it a citizen or Refugee. So, the State Government can tolerate threat by one group of person to another group of persons. It is duty bound to protect the treatment group from such assaults and if it fails to do so it would fail to perform constitutional and statutory obligations. So, those giving threats would be liable to be dealt with law. So State Governments must act impartially and carry out its legal obligations to safeguard several aspects of Refugee's everyday life such as – Right to work and non-discrimination; Right to education, employment on wages and salaries; Right to public assistance; Right to social security; Right to travel to courts since they are not in a position to use their own national passport; Right to life, business, such as agriculture, art, cottage industry; Right to health and well being; Right to choose their place of residence and to move freely within territory; The Right not to charge taxes of any description higher than those which are or may be levied on their Nationals in similar situations; Right not to impose penalties on refugees who have illegally entered into their territories without authorization; Right not to expect a refugee lawfully in their territory or on grounds of National Security or Public Order; Right to marriage and self help; Right to acquire both movable and immovable property; Right to form association which must be non-political and Non-profitable; Right to enjoy asylum and Right to return to their own country. So National Human Rights Commission (NHRC) established by Protection of Human Rights Act of 1993 can also play an active role in



protecting Human rights of refugees. The Commission is competent to investigate suo motu or on the basis of protection of the violations of Human Rights. Today it is expected approximately that in India there are 1,80,000 refugees. There is a urgent need of a comprehensive legislation to deal with refugee problem and it has to be passed keeping in view Supreme Court's judgments and International instruments.

**Implementation of international Humanitarian treaties Convention in India :** There is no law in India which contains specific provision obliging the state to enforce or implement the international treaties and conventions including implementation of humanitarian law that directly deals with principles of International Humanitarian Law. The UNCHR must invent or discover permanent solutions or relief to refugees and must see that they should not be transferred to a country where they apprehend that they may be tortured, and an International declaration for welfare and protection of refugees has to be complied by states to see that standards of minimum behavior of states with refugees is not condemned and their protection, relief and welfare is restored on humanitarian grounds. There is need for protection of rights of refugees and improve their situation in India with mission to assist asylum seekers in realizing basic human rights and accessing the justice system. India continues to grant asylum and provide direct assistance to some 2,00,000 refugees of neighbouring states. A positive development was seen in 2012 when government agreed to issue long term visa to refugee and asylum seekers.

**Role of Judiciary :** Indian Judiciary is the guiding sentinel which preserves the rule of law so in a recent case before Supreme Court as to Chakma refugees from Bangladesh in - National Human Rights Commission Verses .State of Arunachal Pradesh<sup>1</sup> Wherein the Supreme Court has laid down that the State of Arunachal Pradesh was under Constitutional obligation to protect and safeguard the life, health and well being of Chakmas so the courts directed the state to take measures necessary for ensuring life and personal liberties of Chakmas. It was noted that a large number of Chakma migrants had crossed the Bangladesh Border and entered Assam, Tripura and Arunachal Pradesh. The Supreme Court held that Chakma refugees who had come from Bangladesh due to persecution (when Bangladesh was under Pakistani rule) cannot be sent back to Bangladesh as they may be killed there and thus be deprived of right to life under Article-21. The state was directed to protect each and every Chakma and repel any attempt to drive them out of the State and India is expected to respect International Treaties and Convention of humanitarian law. However in Shishuwala Pal Verses. Union of India<sup>2</sup>In this instant case the petitioner who was admittedly refugee had entered India in 1971 from East Pakistan (now Bangladesh) were claiming themselves to be Indian citizen on the basis of their long stay in India and being said to be relatives of some Indian citizens. The petitioners had not shown what steps they had taken for acquisition of Indian citizenship. It was held that mere long stay which was unauthorized did not confer citizenship

rights. The petitioners were permitted to enter into India as refugees. The Apex Court in Rev Mons Sebastiao Francisco Xavier dos Remedios Monterio Verses. State of Goa<sup>3</sup> Examined the scope of Geneva Convention Act 1960 and observed the efficiency of the Act and thus the act by itself does not give special remedy it does give indirect protection. The Indian government offered Rev father Monterio Indian Nationality and citizenship which he refused and retained his Portuguese nationality. As a Portuguese nationality he could only stay in India on taking out a permit. He was therefore rightly prosecuted under the law applicable to him since no complaint was made about the trials as such the appeal was dismissed. In Arunachal Pradesh Verses. Khudiram Chakma<sup>4</sup> It was stated that Chakmas are foreigners in accordance with Citizenship Act – 1955 and therefore they are not entitled to all fundamental rights enshrined in Part III of the Constitution. The right to enjoy asylum has to interpret in the light of instrument as a whole. It implies that although an asylum seeker has no right to be granted admission to a foreign state equally a state which granted him asylum must not later return him to country. However the Supreme Court in Louis De Raedt Verses. Union of India<sup>5</sup> Held that Article 21 of Constitution protects life and personal liberty of all persons. So aliens of Indian Territory shall not be deprived of those rights except according to procedure established by law.

**Conclusion :** To conclude refugee problem in India today is a global issue. A successful stream of humanitarian crisis has highlighted the plight of victims as well as the threat of forceful repatriation to starvation and found them in a hopeless situation and on the edge of clawing for mere survival. A myriad of specialized and regional human rights instruments have sprung from the foundation of International bill of human rights. So Article – 51 A has cast on every citizen the duty to promote harmony among all the people of India to have compassion for living creatures and to develop humanism and abjure violence. Thus humanitarian legality and concern for refugees' status is writ large in Indian Ethos. So legal, socio-economic medical, psychological, educational, vocational protection is the need of the hour. So UNHCR should work with host Government, U.N country teams, civil society to find out comprehensive solutions for refugees in years to come.

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