

Should India Sign Refugee Conventions?

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Abstract: The concept of migration from one country to another due to fear of persecution has led the International community to think collectively about the cross border mass movement due to crisis and its management. The humanitarian approach to be adopted and various international law and agencies come into action as and when there is crisis in any state and the threat of death is imminent on the people who run for safety of their near and dear ones. The laws governing immigration of receiving country are overshadowed by the International laws governing movement of citizens of one country to another and on the grant of refugee status these refugees enjoy certain rights that are inalienable. After the crisis is over in their country of origin these refugees return back provided the conditions are conducive for their return. They may intend to stay in the country in which they have taken refuge due to their business or same cultural ties. Though the principle of non-refoulement is applicable during the crisis but unwarranted stay in country other than their country of origin may lead to demographic change and may jeopardize the national security as well. The extra-burden which these refugees/ illegal immigrants put on resources is yet another dimension that is to be looked by the Government. The number of people registered with UNHCR and actually residing in India has huge difference. UNHCR should come forward and liberally fund various welfare programs for Refugees/ illegal immigrants. The Constitution of India endows every person to live a decent life and all the duties towards persons who have fled their country of origin due to violence / fear of persecution and directs the State to do the duties without discrimination between citizens and non- citizens. Indian laws are already in conformity with the International Refugee Conventions and if country leadership has to take a call they should while expressing reservation for non-refoulement and resettlement of these people in our country keeping in view the national security.

Keyword: UNHCR; citizens; immigrants; refugees; non-refoulement; persecution.

I. INTRODUCTION

India has age old tradition of protecting the life of immigrants/ refugees and asylum seekers. The country has seen lots of tension in the neighbouring countries and same has resulted into flooding of India by these people and always shouldered its responsibility as good neighbour. According to the available data presented by Minister of State for Home Affairs Sh. Kiren Rijju in March 2016, a total of 289394 refugees were living in India (as on 31.12.2014) from 28 countries which also included stateless people and this figure does not include Bangladeshi and Rohingyas migrants. Tamil Nadu, Delhi, Uttarakhand houses majority refugees as TN houses 102478, Delhi 10161, Uttarakhand 11768 and Chattisgarh 62890. The people from Pakistan 8799 and Bangladesh 103817 also have come to India to seek refuge.

The number of illegal persons from Bangladesh and Myanmar (rohingyas) is much higher.

The international convention which deals with refugees is Convention on Status of Refugees, 1951 and the Protocol 1967 attached with it. The refugee has been defined as-

“...a person owing to well founded fear of being prosecuted 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, is unwilling to avail himself of that protection of that country; or who, not having nationality and being outside a country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it.”

Non-Refoulement: No contracting state shall expel or return a refugee in any manner whatsoever to the frontiers of

territories where his life or freedom would be threatened. Article 3 of the Torture Convention states: "No state party shall expel, return (refouler) or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture." The Government of India does not recognize the term Refugee, the Government has issued long term visas to these immigrants whom it recognizes as such or identified by UNHCR.

Registration of Foreigners Act, 1939, Foreigners Act, 1946, Indian Citizenship Act, 1955 and Passport Act 1967 empowers Central Government to regulate entry of illegal immigrants. Though as per the Registration Act 1939 it is mandatory for the foreigners to register the while entering and leaving India but hon'ble Courts took liberal view in respect of these illegal immigrants and stayed their deportation or refoulement. The rights available to these immigrants are:

- ✓ Right to equality (Art. 14)
- ✓ Against double jeopardy
- ✓ Right to life and personal liberty (Art. 21) includes right to privacy, medical assistance, shelter and against custodial violence.
- ✓ Right against arbitrary arrest (Art. 22)
- ✓ Freedom of religion (Art. 25)
- ✓ Right to seek judicial intervention (Art. 32)

These immigrants though entered the territory of India without valid documents were not tried for violation of domestic laws of India due to humanitarian aspect attached with their forced migration. They entered India as they have every reason that in case they do not flee from the country of their origin they may be persecuted and their human rights shall be in jeopardy. The hon'ble SC of India while interpreting Art. 21 held that it encompasses the duty of the State to provide every possible help to the Chakmas residing in the Arunachal Pradesh in *NHRC v. State of Arunachal Pradesh*. The principle of non-refoulement had its interpretation when hon'ble SC decided the case *P. Nedumaran v. Union of India* when hon'ble Court upheld voluntary repatriation and directed UNHCR to ascertain their consent whether given voluntary or not.

The immigrants who fled their country due to apprehension of persecution (refugees) and those migrated due to rich resources and good policies but without valid documents needs to be have fair differentiation. The people who migrated due to violence / atrocities being committed upon them should no doubt are staying in India and although lakhs of such people have migrated in India and only few hundreds have been identified as refugees by UNHCR. In spite of such slow pace of identification by UNHCR these illegally staying immigrants have not pushed back to their country of origin though the conditions in their country is conducive for their overall growth and development. They are putting extra burden on the economic and other resources and due to International conventions which India has not ratified and humanitarian approach of the hon'ble Courts in India. UNHCR should fund the programs for these people and should do the head count properly so that when situation in their country returns to normal they are persuaded to repatriate voluntarily. It will be added advantage if the biometrics of these people are captured so that proper identification cards can be issued by UNHCR.

India is not signatory to these International Conventions on Refugees and their rights accruing/ flowing from the fountain of International Law are almost implemented in letter and spirit. Though the skeptical role played by UN body on Refugees during the atrocities committed on people of Bangladesh by the Armed forces of Pakistan has not faded in the memory of Indian peoples. Moreover the champions of these illegal immigrants/ refugees should come forward and ensure their settlement in the countries other than India as the people of India have right to enjoy the resources to optimum utilization. The obligation which the countries (signatory to conventions on refugees) have to follow are followed in the form of judicial decisions and other conventions to which India is signatory. Any country who is signatory to this convention has to implement the objectives in the form of enactments and modifications in the domestic laws and moreover Refugees convention has not signed by major Asian countries. Even some countries like Malaysia has the policy of soft deportation which literally means the state actors do not allow people (illegal immigrants) to enter their country's territory. They turn blind eye towards such a humanitarian cause of refugees and asylum seeker and asks UNHCR to assume responsibility of their protection and assistance.

The Immigration Act of Malaysia are so stringent that in case employment is provided or is allowed to stay in premises these illegal immigrants the person employing or providing shelter shall be liable for financial/ penal sanctions. The situation for refugees in Malaysia remains extremely precarious as they are in constant fear of arrest, detention, judicial caning and financial penalties. Those immigrants who were unable to register themselves with the UNHCR were at greater risk of being deported (non-refoulement). From the discussion it has become evident that India despite non-signatory to the various International Conventions on Refugees is implementing the provisions with sincerity and even Indian Courts are not treating these with judicial caning. The Indian Courts are taking international laws/ conventions into account before adjudicating or interpreting any law and even the directs the UNHCR to ascertain the voluntary repatriation of illegal immigrants/ refugees. The Constitution of India is taking good care of persons in distress who have fled their country of origin due to apprehension of persecution and even if India does not sign the Conventions on Refugees these poor people will lose nothing.

II. CONCLUSION

Moral ambiguity was built into India's Foreign Policy. There is urgent need for deft policy by India. These forced migrations of the people into porous borders of India with neighbouring countries has burdened the resources and Indian economy. The hon'ble Courts including Supreme Court of India have always championed the cause of these illegal immigrants. Domestic laws for foreigners living illegally in India are well in place however the Indian Courts have taken liberal view in consonance with International Humanitarian Law (the policy of non-refoulement) as their repatriation to country of origin may have led to ethnic cleansing or mass genocide. The immediate relief during the crisis has always

been provided by this country but these immigrants (have other country of origin) also owe responsibility/ duty to voluntary repatriate to their mother land as soon the crisis is over. India is developing country and moreover it owe its resource to its own citizens. In order to compete with China to assert its power in the region, the same should not be at the cost of resource sharing with immigrants. Although much of the principle of non-refoulement is discussed in all International Conventions and Codes for the refugees however no where it is discussed that as soon the crisis is over the UNHCR shall ensure the safety and repatriation of these immigrants though illegally staying. They talk of resettlement and voluntary repatriation of these people but India cannot afford the same keeping its population and land in mind as it has 2nd largest population to sustain and it cannot add additional burden of population on its resources. There is urgent need to apprise the UNHCR who is the watchdog for refugees all over the world should refund all the expenditure incurred on the upkeep and safety of these immigrants and proper count should be done so that their repatriation is effected as soon as the country of their origin returns to normalcy and in case they are not interested in going back then UNHCR may settle them in developed European countries where their needs can be properly addressed as these developed nations have more than sufficient resources. As India is doing all the duties enshrined in the Convention on Refugees despite non signatory nothing will change if it

ratifies the same with some reservations as to non-refoulement as well as resettlement of these illegal immigrants /refugees in third country.

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