



A Case Study Of Refugees – A Special Reference To Rohingya Refugees In India

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Abstract

A large number of people every year leave their homes due to conflict, persecution, human rights violation, climate change and natural disaster. The United Nations estimates there are about 60 million refugees and internally displaced people in the world. Refugees remain the most marginalised and excluded of all social groups. Refugees lack a voice of their own and many times they remain invisible. By and large, they remain outside the public consciousness or imagination experiencing a high degree of alienation, marginalisation and exclusion from the larger society. Refugees face many challenges beyond their basic humanitarian needs, including being at risk of major human rights abuses. Protecting them involves building peace, developing democracy and enhancing national stability as well as providing food, water and shelter. Parliaments and MPs have a vital role to play providing protection through the adoption and implementation of international agreements such as the 1951 Refugee convention and laws specific to their own countries. It is in this background the present study is an attempt to examine the issue of Rohingya refugees in India. Along with this the work also focuses on India's response to this Rohingya issue.

Keywords:- Rohingya Muslim, India, Refugee, International law, Human rights

Introduction

Every year many millions of people around the world are uprooted from their homes by conflict, persecution, human rights violation, climate change and natural disaster. The United Nations estimates there are about 60 million refugees and internally displaced people in the world. Refugees remain the most marginalised and excluded of all social groups. Refugees lack a voice of their own and many times they remain invisible. By and large, they remain outside the public consciousness or imagination experiencing a high degree of alienation, marginalisation and exclusion from the larger society. Refugees face many challenges beyond their basic humanitarian needs, including being at risk of major human rights abuses. Protecting them involves building peace, developing democracy and enhancing national stability as well as providing food, water and shelter. Parliaments and MPs have a vital role to play providing protection through the adoption and implementation of international agreements such as the 1951 Refugee convention and laws specific to their own countries (Figures at a glance).

Objectives

The study is based on two objectives;

1. To examine the issue of Rohingya Muslim refugees in India.
2. To highlight India's response to the Rohingya issue.

Methodology

The present study is a secondary one and for collecting data researcher will rely on secondary sources. Secondary sources include books, journals, articles, thesis, and internet sources and so on. To fulfil the objectives researcher will follow historical analysis and descriptive method of analysis.

Definition of Refugee

A refugee is a person who has been forced to flee their own country due to persecution because of their race, religion, nationality, political opinion or membership in a particular social group (such as, members of the LGBTQ community). The persecution a refugee experiences may include harassment, threats, abduction or torture. A refugee is often afforded some sort of legal protection, either by their host country's government, the United Nations High commissioner for Refugees (UNHCR) or both. Article 1 of the convention relating to the status of Refugee, 1951 defines Refugee as "any person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or potential 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 or unable or unwilling to return to it". (What is a Refugee? Definition and Meaning | USA for UNHCR)

Such concrete definitions are predicted on an implicit argument that:

- (a) a bond of trust, loyalty, protection, and assistance between the citizen and the state constitutes the normal basis of society;
- (b) in the case of the refugee, this bond has been served;
- (c) persecution and alienage are always the physical manifestations of this served bond ; and
- (d) These manifestations are the necessary and sufficient conditions for determining refugee hood. (Bolesta, 2003)

The term refugee shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of nationality. Thus, refugees are the persons whose basic needs are unprotected by their country of origin, who have no remaining recourse other than to seek international restitution of their needs, and who are so situated that international assistance is possible (Bolesta, 2003).

International Laws governing refugees

The rights of refugees are protected by the United Nations High Commissioner for Refugees (UNHCR). In its mission statement, the UNHCR claims that its primary purpose is to safeguard the rights and well being of refugees and to ensure that everyone can exercise the right to seek asylum and find safe refuge in another state, and to return home voluntarily. These efforts, it claims, are guided by the 1951 UN Refugee Convention, and by its 1967 protocol (Protecting Refugees).

The 1951 Convention contains a number of rights and also highlights the obligations of refugees towards their host country. The cornerstone of the 1951 Convention is the Article 33. According to this principle, a refugee should not be returned to a country where he or she faces serious threats to his or her life or freedom. This protection may not be claimed by refugees who are reasonably regarded as a danger to the security of the country, or having been convicted of a particularly serious crime, are considered a danger to the community. (The 1951 Refugee Convention - UNHCR)

Other important rights contained in the 1951 convention include :

- (1) The right not to be expelled except under certain, strictly defined conditions (Article 32)
- (2) The right not to be punished for illegal entry into the territory of a contracting state (Article 31).
- (3) The right to work (Articles 17 to 19).
- (4) The right to housing (Article 21).
- (5) The right to education (Article 22),
- (6) The right to public relief and assistance(Article 23)
- (7) The right to freedom of religion (Article 4)
- (8) The right to access the courts (Article 16)
- (9) The right to freedom of movement within the territory (Article 26) and
- (10) The right to be issued identity and travel documents (Article 27 and 28).

(The 1951 Refugee Convention) Some basic rights apply to all refugees. A refugee becomes entitled to other rights the longer they remain in the host country, which is based on the recognition that the longer they remain as refugees, the more rights they need. The 1967 protocol removes the geographical and time limits that were part of the 1951 convention (Convention relating to the Status of Refugees).

Indian laws and regulations governing refugees

For India, refugee status is determined on the circumstances of each case. They often take the help of the UNHCR in verifying the people's background and circumstances which may lead to their situation and help in their resettlement as well. Thus, India do take into consideration of the five principles grounds given of the definition given by UNHCR, well founded fear of persecution on the basis of race , nationality, religion or member of a social or political group or other cases such as armed conflict or climatic conditions in their country. Other principles which can be look upon is the principles of genuinely at risk which have to pass the test of substantial and real danger of persecution. (Refugee Status Determination - UNHCR India)

India doesn't have any statute or framework for the protection of refugees in India and mainly depends on the circumstances of each individual case which is suitable for the status of refugee. In India a refugee is given the same status as a ' Foreigner ' under the Foreigner Act, 1946 which states , " a person who is not a citizen of India " which is also refer to an ' alien ' under the Article 22 of the constitution of India, 1950 and Section 3 of the Citizenship Act 1955. (Human Rights of Refugees and Asylum Seekers in India) Under the India laws, an alien is given all the protection which is given to a citizen on human right basis, this, some of the legal protection available for a refugee are – Refugees in India are considered as Foreigners or Alien under the India law is given protection of fundamental rights under the constitution of India. This includes Right to Equality under Article 14, Right to Life and Personal Liberty under Article 21, Right to profess their own religion under Article 25 and Right to Education and Social Security. Refugees are well given the basic protection when they take refuge in India. (India Needs a Refugee Law)

Problems and Prospects for Refugees

A refugee crisis is one of the foremost human rights problem faced by the world community today. Refugees face problem because the provisions mentioned in the convention relating to the status of Refugee 1951 are limited and narrow (Convention relating to the Status of Refugees). The problem arose when determining the status of refugee itself as the definition provided only limited scope, 'fear of persecution' in which the test of such persecution was based on the convention guidelines where only five grounds as expressly stated i.e. religion, race, nationality, political opinion and social group was mentioned, however in reality there are other factors which may led people to leave their home country such as war and conflict, economic or ecological or climatic factors. This gave the opportunity for some states to close the door on refugees rather than giving them refuge. Moreover, it provides no obligation to states to provide any assistance to refugee until and unless they are signatory to the convention and provide no account of effect on the receiving state which resulted in the irregular migration of people (Refugees and the International System).

A Case study of Refugees – A special reference to Rohingya Refugees in India

There are new refugees who set foot in India who came from Myanmar and are known as the Rohingya Refugee. They are originally from the Arakan region in the Rakhine province, however the Myanmar government does not recognise them as the ethnic community of the country justifying that they have their roots in Bangladesh and are commonly known as Bengali. The Rohingya community have been struggling more or less like stateless people for more than 35 years. After a riot and conflict broke up in 2012 the Rohingya Muslims have found to be in constant oppression and violence which can even be said as a case of genocide in which cause them to flee their home land altogether. They came to India, which they entered illegally through Bangladesh and into West Bengal and Assam to which they would travel up to Delhi and Jaipur to get themselves registered under the UNHCR refugee status (The Rohingya people—facts and information). However only a few were registered and most of them are considered by the government as illegal migrants.

India's Response Towards Rohingya Refugees

India was quite silent when the Rohingya Refugees first laid foot in the country, but this does not mean that the refugee can actually rest now. Some are allowed to work for small wages for survival but that is also a problem face by them as most of them do not have their documents at hand and only a few have the UNHCR Refugee card, even which is only limited help to them. They do not have the aids for health nor education and nor a proper shelter home, they are all cramp up in the camps that the NGOs provides for them. This kind of treatment lasted only a while when the Indian government and the Indian Intelligence agency was always at their have a lot of doubt the vulnerability of the Rohingya Refugees (Why India is refusing refuge to Rohingyas).

It was alleged by the government that Rohingya Refugees are illegal migrants who came crossing the borders northeast India illegally and smuggling of people, movement of howala and indulge in human trafficking. They do not have any document and detail that will qualify as a foreigner under the Foreigner Act, 1946 moreover they provide fake Indian Identity Card like Voter ID or PAN card under the government of India. The government also expressed concerned that Rohingya will use up the national scheme and resources which are made available for the Indian citizen only which will turn deprive the citizen of resources such as medical, employment, housing and educational facilities. The government also fears that the Rohingya might be associated with terrorist groups and that the national security of the citizen is the foremost priority to India, especially when a large number are concentrated in Jammu and Kashmir region where there is continuous unrest of conflict and violence (Jain, 2021). Thus, lead to the decision of the Indian government to decide to deport the Rohingya Refugees back to Myanmar on August 9, 2017, on which 40, 000 Refugees are said to be deported except a few 14,000 who were registered under UNHCR. This decision was criticised by United Nations as well as the world community. The National Human Rights Commission also intervened on August 18, 2017 in the matter standing against the deportation of Rohingya refugees as it is believed that this will cause harm and treat for them which is a violation on humanitarian ground (India: Rohingya Deported to Myanmar Face Danger). On the other hand, an appeal was filed by two Rohingya refugees against their deportation to the Supreme Court by Mohammad Shaqir and Mohammad Salimullah who are registered refugees under the UNHCR.

The Influx of Rohingya Refugee is a National Threat for India

The influx of the Rohingya refugees is not surprise but what they brought along with them was not welcome by India. It is noted by the Intelligence agency that noted since the 2014 Burdwan Blast, in West Bengal; in which Mohammad Kahlid a Rohingya was arrested who confessed to had been trained by Pakistani Taliban and suspected that Jaish -e- Muhammad Chief Masood Azhar and Lashkar -e- Taiba founder Hafiz Saeed, both notorious terrorists who operate out of Pakistan and exclusively target India, have come out in support of the Rohingya. The threat arising from this backing can be divided into two parts: Ideological and operational, which gave aids to the Arakan Rohingya Salvation Army (ARSA) and some of them are hiding in the refugee's camp (India's Rohingya Terror Problem: Real or Imagined?). Most of the Muslim terrorists have vowed to take revenge for Muslim people oppression in Myanmar.

It is also seen that there is little truth to any of what is claimed by India, as Rohingya refugees are in no condition to have any access to any terrorist group, as they are poor and mostly uneducated with little access to basic needs while ISIS and other terrorist group would need technology and internet which is the main method to recruit them. There is no

chance of them to direct contact the Rohingya refugees with the high security and surveillance by India. Moreover, the Arakan Rohingya Salvation Army, ARSA seems to be perception –savvy and has rejected the jihadist label for fear of losing credibility on the world stage as well as condemned groups such as al Qaeda and ISIS (Psychology of Terrorism). There are no evidences or prove to such connections and the only crimes recorded so far are petty crimes of theft and fraudulent cases. Thus, to allege them of such hideous crime need strong prove and evidence before India deport them back to the place which will actually be a threat to their life.

Legal Protection towards Rohingya Refugees in India

Rohingya Refugees are entitled to some basic rights and protection which are given all refugees in India. The Constitutional Rights and the principle of ‘Non- refoulement’ – The Constitution of India has provided the citizen and foreigner alike the basic fundamental rights guaranteed in the Part 3 of the Constitution. Thus, Rohingya Refugees have the right to Equality (Article 14), Right to Life (Article 21) , Right to Religion and Right to Freedom of Movement. The Indian judiciary have time and again upheld the fundamental rights to provide the refugee with rights and liberty protection under the Constitution of India (India and Refugee Policy). Thus, under the Constitution of India the right of non-refoulement is also covered under the ambit of right to Life .Non-refoulement is the principle of customary international law which means that asylum seekers and refugee should not be forced to be return to the country which they might be likely to be persecuted or face any threat to their life. Thus, Rohingya Refugees should not be deported knowing they might be persecuted, especially when the situation in Myanmar does not allow them to return back.

India has the right to deport and give permission to stay to refugee without being question, however, if the refugees are decided to be deported, they should be given the right to be heard according to the due process of laws. This is the basic principle of natural justice and if Rohingya refugees are being asked to be deported without availing this right to them will be a violation of the principle of natural justice ('Right Not To Be Deported' Is Ancillary To A Fundamental Right Available Only To Indian Citizens : Supreme Court In Rohingyas Case, 2021).

Rohingya people also face discrimination even in India in which they are segregated from the rest of the refugee in India. There is no rational reason for classifying the Rohingya from the other refugee groups and depriving them of the same refugee protection as they have given to others. The segregation of the Rohingya refugees if solely on communal grounds is a gross discrimination on the rights to equality and religion (India Abandons the Rohingyas).

Rohingya Refugees are considered to be the most persecuted group in modern world and situation in Myanmar is an ‘ ethnic cleansing ‘ of the minority which is deeply condemn by the world community. They have gone through many hardship and discrimination for many years and for India to turned a blind eye is a morally and humanitarially wrong.

Conclusion

Every year many millions of people around the world are uprooted from their homes by conflict, persecution, human rights violations, and natural disaster. Displacement either within or outside of national borders is one of the world’s most intractable humanitarian and developmental problems. India always has a good relationship with Myanmar. But since the inflow of Rohingya Refugees are becoming out of hand and the Myanmar government are giving a silent respond , India is force to take action to deport the illegal migration of 40,000 Rohingya who were taking refuge in India, reasons being that they are illegally crossing the borders of India without any proper document that may verify them and thus violates the Foreigner Act, 1946 and more importantly they poses a threat to the security and peace of the country (Displacement, Natural Disasters, and Human Rights, 2008). The Supreme Court on the case said that a balance should be made between national security and human rights. Instead for better protection of refugees in India it should have a codified law on refugees status , as depending on the Foreigner Act 1946 is not relevant to refugees , as refugees characters and needs are completely different from a mere foreigner, which will provide protection and security to the refugees in India. It should provide proper guidelines and procedure of refugee’s management in the country, on the basis of their nature and circumstances rather than on individual basis.

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