

“Refugees and Human Rights”

*Joseph Cyriac
Cooperative School of Law
Thodupuzha, Kerala*

ABSTRACT

Refugees are victims of numerous human rights violations. The rights of migrants are well enshrined in the international human rights treaties, it does not matter whether a person is a foreign national, worker, tourist, asylum seeker or refugee. In order to eliminate the wide spread discrimination of the migrants there must be proper implementation of the laws that protect the rights of migrants and their families. In most of the cases migrants move from one state to another in search of job within the nation itself or to a foreign nation and refugees are migrants from foreign nations. The gross human rights violations increase the flow of refugees and restoration or respect for human right allows refugees to return to their nation, this is the linkage between human rights and refugees. This article is written with an objective of explaining the migration policies and programs and its various legal social and political aspects. The refugees are ethnic minorities in a nation and they must be protected. The role and binding nature of the international covenants and conventions are vested on the sovereign nations. In a civilized society the sovereign nations must also be able to think by considering the humanitarian aspects. The rights of migrants can only be assured by proper reporting systems, interstate communication system and individual communication system. Society is always looking at migrants as second class persons and the social attitude towards the migrants are discriminatory. No law can give a better status to the migrants unless and until there is a change in the attitude of the society.

Keywords: Ethnic minority, Stateless, Universality of rights, Declarations

INTRODUCTION

Refugees are migrants from foreign nations and they continue to be a distinct category of people. They are persons who left their nation to escape from persecution or military action. Article 1 of the Convention Relating to the Status of Refugees 1951 defines refugees 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 fear, is unwilling to avail himself of the protection of that country, or who not having a nationality and being outside the country of his former

habitual residence as a result of such events, is unable or, owing to such fear; is unwilling to return to it."¹

From the above definition it is clear that only those persons who are facing serious human rights violations and are forced to migrate from their respective states are refugees. They are said to be political refugees which is different from economic refugees, ordinary migrants or those who leave their country for pure personal convenience. Most of the refugees migrate from their nations because of gross human rights violations. Such human rights violations or persecution may arise from torture, convention, discriminations of race, sex, religion, nationality, language or membership of a particular group and other reasons may be regarded as the cause of it.

The fleeing of a person from his own state may be the result of the politico-economic system of a state. In some nations the government denied certain ethnic minority from conducting trade and as a result they were forced to migrate to other nations to earn a *through* living, they may be considered as politico-economic migrants. In such a case the *policy economic done for an overtly political motive and is directed only at the members a certain ethnic group.*² Refugee status is granted only to those persons who are outside the country of his nationality. As long as a person remains within the territorial jurisdiction of his home country he is unable to avail the International protection. Refugees are different from internally displaced persons within the jurisdiction of their home country.

HISTORICAL DEVELOPMENTS

Refugees all over the world were affected by several human rights violations. In order to prevent such violations several initiatives were taken by the international organizations. The problem of refugees is of international character as there is involvement of more than one State. International action for refugees started in the year 1920 at the initiative of Dr. Fridtjof Nansen of Norway. His contributions played an eminent role in the creation of world public opinion in favor of the creation of international instruments for the protection and assistance of refugees. On 27th June 1921 for the protection of the Russian refugees League of Nations established Office of High Commissioner. On August 20, 1921 Dr. Nansen was appointed as the first High Commissioner. He devised Nansen passport which gave the owner of the passport to move freely across national boundaries and the same was adopted by more than 50 States. After the death of Nansen in 1930 the Office of High Commissioner got abolished and its task was transferred to the Nansen International Office for Refugees in 1931. The problem of refugees increased after the World War II and it dislocated the civilian population.

¹ Also see Article 1 of Organisation of African Unity(OAU) Convention governing specific aspects of Refugee Problems of September 10, 1969 in Africa and Cartagena Declaration in Latin America.

² Animesh Ghosal and Thomas M. Crowley `Refugees and Immigrants: A Human Rights Dilemma` in Human Rights and world community edited by Richard Pierre Claude and Burns H. Weston, p. 99

After the beginning of the II world war the first international agency which took the matter of refugees was United Nations Relief and Rehabilitation Administration (UNRRA) which was established on November 9, 1943 by a 44 nation agreement. Most of the refugees were unwilling to return to their home countries as they lost ties with the nations of origin. The UNRRA concentrated in the supply of reliefs such as food, clothing, fuel, shelter and medicines. *UNRRA also provided camps, personnel and food for the care and repatriation of millions of displaced and refugees after war*³

The International Refugee Organization (IRO) was established as a temporary organization, the constitution of which was approved by the General Assembly of United Nations on December 15, 1946. It ceased its operation in February 1952. IRO was formed with an objective of repatriation and it replaced UNRRA. The assistance provided by IRO includes vocational trainings, orientations for resettlement, maintenance of refugees in camps and other training services.

The IRO was replaced by The United Nations High Commissioner for Refugees (UNHCR). The UNHCR came into existence on 1st January 1951 and it was initially established for a period of three years. The work of UNHCR was purely for the betterment of human beings that is it gave eminence to humanitarian, social, and non political works. The primary focus of UNHCR was aiding those refugees displaced after the Second World War, but in later decades it focused on resettling refugees who were the victims of war. In recent years UNHCR was also involved in programs for IDP also.

The most important international instrument drawn up relating to problems of refugees is the Convention Relating to the Status of Refugees⁴. The convention speaks about numerous provisions it includes the following:

The personal status of refugee shall be governed by the law of the country in which he is having his domicile and in case of stateless person the country in which he resides. The rights of the parties particularly with regard to marriage shall be respected by contracting parties. *The contracting states shall accord to a refugee treatment as favorable as possible and in any event not less than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.*⁵

The convention states that those countries which are contracting to the convention shall at least grant minimum civil rights to the refugees. Such rights include right to work, the right of social

³ The Soviet Union did not permit UNRRA to operate in the Soviet Zone.

⁴ The convention was adopted on July 28 1951 by the United Nations Conference of Plenipotentiary on the Status of Refugees and stateless persons convened under the General Assembly Resolution 429(V). dated December 14, 1950.

⁵ Article 13.

security, the right to freedom of religion, educational rights, the right to access courts and the right not to be discriminated on the basis of race, religion or birth place. Chapter IV of the convention speaks about the welfare of the refugees it suggests that the refugees should be treated in the same way as the nationals and they should be provided with all those basic facilities offered by the nation such as rationing system and distribution of products and services. The contracting states shall not impose additional duties, charges or taxes on the refugees.

The contracting states shall not impose penalties for the illegal entry of refugees who who had crossed the borders without authorization from a place where their life or freedom was threatened. Article 32 states that the contracting states shall not expel a refugee lawfully in their territory save on grounds of national security or public order. Reasonable time must be given to the refugees by the contracting states to seek legal admission to another nation. Article 28 of the convention lay down that the contracting states shall issue travel documents to the refugees to move from one nation to another. Such a travel document was issued on the basis of sympathetic considerations to the refugees who are unable to obtain travel documents for the purpose of travel outside the nation.

Article 2 of the convention speaks about the general obligations that every refugee has the duty to conform to the laws and regulations of the nation and there is an obligation to maintain public order. Article 33 of the convention states that no contracting state shall expel a refugee to a nation was the life or freedom of such a refugee is threatened on account of race, religion, place of birth or membership of a particular group. Article 16 of convention on status of refugee state, says that all refugees shall have free access to the courts of law of all contracting states. This right is given to assure justice to all those migrants and to prevent the human rights violations that the refugees are facing.

REFUGEES IN INDIA

India is not a signatory to the Refugee Convention of 1951 and its Protocol of 1966. The government has considered the Refugee Convention and its Protocol several times that is in 1967 and 1992-94. India is not a signatory to the Convention as it is formed as a Euro-Centric law. It means that the peculiar aspect of other nations was not considered and most of the developing nations are of similar view. Since India is not a party to the convention is not legally bound to provide the rights mentioned in the above instruments.

India in the past has not enacted any domestic laws in connection with refugees. In the absence of any law with regard to refugees it is difficult to identify the refugees and to provide them with the rights. It is very important to have legislations for refugee issues in order to identify their problems and to protect their rights. The legislation can play an eminent role in safeguarding the nation and it considers the refugees as human beings and it provide them with those rights.

The rights provided under part III of the Constitution is available to all persons. It includes the right guaranteed under Article 14 of the Constitution and it provides for equal protection of law, protection in respect of convictions is provided under Article 20, Article 21 of the constitution guarantees right to life and personal liberty to all persons and right to protection against arbitrary arrest and detention is provided under Article 22 of the constitution are also available to the refugees. In the case of *Louis De Raedt v. Union of India*⁶ the Supreme Court held that the Article 21 of the constitution protects the life and personal liberty of every person and it includes the aliens within the territory of India. The foreigners are not vested with the rights or freedoms provided under Article 19 of the Constitution. In the case of *Arunachal Pradesh v. Khudiram Chakma*,⁷ it was stated that Chakmas are foreigners in accordance with the Citizenship Act of 1955 and therefore they are not entitled to fundamental rights enshrined in part III of the Constitution. The flow of foreigners from the foreign nations to the state of Assam and Tripura was very high due to the Kaptai Hydel Power Project in 1964. The court has stated in many cases that our country is on which give eminence to rule of law. Our constitution is something which considers both citizens as well as non citizens. It includes rights such as those provided under Article 14, Article 19, Article 20 Article 21, Article 22 etc.

National Human Rights Commission was formed in the year 1993 to protect the basic human rights of people and this also includes protection of human rights of refugees also. The Commission has also acted in an effective manner with regard to the rights of Sri Lankan refugees who were illegally detained in the state of Tamil Nadu. The rights of those person who has suffered gross human rights violations from their home nations must also be protected in most of the cases such persons will migrate to other nation in order to protect themselves from such violent attacks to the basic rights of a man.

The National Human Rights Commission in its Annual Report of 2000 – 01 has expressed the need to have national legislations to protect those rights of the refugees also which are fundamental in nature. The Commission states that there should be laws and the laws must be framed to protect the rights of the people and not to take away their rights. Every State is vested with a moral duty to protect their fellow beings who may be foreigners or refugees. Even if we look into our constitution in several places it uses the term persons it means that the right is not just limited to Indians that is the citizens.

The foreigners as well as the refugees must also be provided with the right to get access to the courts to seek legal remedies. The access to courts and legal remedies can ensure to a person that his or her legal rights are protected and there is no denial of justice on the basis of race of a person. All those rights which are basic and without which a human can't live must be protected

⁶ . 3 S.C.C.(1991) p. 554

⁷ 1 S.C.C. (1994) p.614

then only we can say that a nation is civilized. The face of civilization must be the protection of the rights of all persons.

The UNHCR plays a vital role for the development as well as for the betterment of the conditions of the refugees and their status. It also deals with the individual asylum seekers. Once a refugee is identified UNHCR promotes as appropriate in the individual circumstances which are local integration, voluntary repatriation, resettlement to a third country.

STATELESS PERSONS

A person who knowingly or unknowingly does not possess the nationality of any particular person is known a stateless person. A stateless person is the person who has lost their original nationality and a person who has not acquired the nationality of another state. It may also occur through the birth of an illegitimate child to an alien mother whose national laws will not be applicable to the child or through the birth of a legitimate child to stateless parents. Those stateless persons were not given any protection under international law. The Universal Declaration of Human Rights, after considering the gravity of the problem added to Article 15 that each person is entitled to have a nationality and the nationality of a person cannot be taken away arbitrarily. The Convention relating to the status of stateless persons was adopted in 1954. The enactments of the laws defining the status of stateless persons actually aimed at the protection of the rights of the stateless persons. The main aim of such laws is to prevent the ill treatment and degradation of the stateless persons. The national sovereignty and the supremacy of laws of the nations are still affecting the status and recognition of the stateless persons. The betterment of the rights of the stateless person can only be assured through the cooperation and acceptance of status of stateless persons by all the nations.

CONCLUSION

There exist numerous persons who are stateless. The rights of those stateless persons must also be protected. If those who are refugees or stateless is denied from their rights then no civilization or civil society can be assured. Developments should not be against humanity and human values, the growth of the society can be assured on through the proper treatment of all persons as human beings. It means that nations should not act as profit making business institutions. The human values must be given eminence. Nations should not forget that people migrate from one nation to another as they have no other means for survival and existence. In most of the cases the migration from one nation to another is because of gross Human Right violations. States should not ignore the rights of refugees. Nations should take steps for the protection of the rights of refugees and for the betterment of the standard of living of those who are refugees and stateless. Nations should consider refugees as ethnic minorities and they must be given shelter and protection for a better world that offers a better life to the people.