



Dr. Charu Mathur

Associate Professor, Dept. of Political Science
Atma Ram Sanatan Dharma College, University of Delhi
New Delhi- 110021
Ph. 8586982298

Abstract

All human rights are the essence of human life. Human Rights exist in every person by virtue of being human. Former Chief Justice of India, Dr. Justice A.S. Anand said, "Human rights are bestowed upon human beings by nature and are based on mankind's increasing demand for a decent civilized life in which the inherent dignity of each human being is well respected and protected." "God, who gave us life, gave us liberty at the same time," said Thomas Jefferson.

'Human Rights are listed in the Universal Declaration of Human Rights and several other International Conventions and Covenants.' They bestow political, socio-economic, cultural and civil rights on all individuals, whether citizens, refugees, or migrants.

Humanitarian Justice to refugees – that desperately distressed species – has no limitation of time and space and nations which refuse refugees access to minimal rights are guilty of nationalist bigotry, geographical idolatry and global inhumanity. "A refugee is a person who has been forced to escape from his or her country of origin and transverse international borders due to "well-founded fear of persecution, on account of race, religion, nationality, political opinion, or membership of a social group." (As per 1951 Convention on status of Refugees)

In this paper, we shall discuss the basic rights of refugees and why their protection is a legal necessity. The refugee crisis is a human problem. It is the responsibility of all nations and a civilised world. Certain fundamental rights cannot be denied to people who migrate as refugees from one area to another. The only way to solve the expanding issue of forced migration in the modern world is to have a global and universal allegiance to human rights as well as rights protecting refugees. The number of displaced, homeless and unsettled individuals is expected to stay high in the upcoming years due to the extent of human rights abuses that drive people into exile. All countries should give complete and comprehensive adherence to the **1951 United Nations Refugee Convention, on its 75th Anniversary.**

Keywords: Human Rights, Refugee, UN Refugee Convention

Introduction

The human rights organisation urges nations that have yet to ratify the UN Refugee Convention of 1951, the foundation of global refugee protection, to do so immediately and without hesitation. Governments want to focus on keeping refugees away from their borders, even while the number of individuals in need of international protection keeps rising.

A refugee is a person who has been rendered homeless, is not in the 'country of his origin' and his social world has been broken down. It can contribute to two inferences. First, it offers a

meaningful classification of refugees, on a continuum that runs from destruction of the refugee's social world to its persistence even as they move. At one extreme, there are refugees whose social world almost collapsed in flight, who lost relatives and livelihood. Such were the survivors of the Nazi concentration camps, who had no one left in the world and no home to return to. Then there are the refugees, such as the Ethiopian and Afghan refugees, whose social circles were further limited by their escape but who managed to preserve or create new connections.

The United Nations Convention on the Status of Refugees (1951) states that the cultural, social, economic and civic refugee rights, should be protected and upheld. The refugee rights regime is "set in a wide-ranging, if perhaps not fully adequate or integrated measure of respect for the basic dignity of the refugees."

In its 77th year, Article 14 of the Universal Declaration of Human Rights (UDHR) reiterates, "Everyone has the right to seek and to enjoy in other countries asylum from persecution".

'Refugee rights' has gained extra popularity due to the UN Declaration of the General Assembly of 1985 on the "Human Rights of Individuals who are Non-Nationals of the Country in which they Live". It stated, 'refugees are aliens or non-nationals in the country where they have taken shelter.'

The 1951 Convention on the Status of Refugees describes them as "a person who is outside the country of his nationality, due to well-founded fear of persecution, and is unable or unwilling to return to it." A point to be highlighted is that refugee rights are not given upon fulfilment of certain conditions. Refugees become eligible for the same only after verification of their refugee status. Also, they will be governed by the refugee rights of the country where they have sought shelter.

The Convention relating to the Status of the Refugees, 1951, is known as "the Bible of Refugee Rights", and the 1967 Protocol, together, is like the Bill of Rights for Refugees, which states the minimum standard of treatment that should be given to a refugee.

The Constitution of India is committed to the objectives of democracy, liberty, equality, justice, socialism, and secularism. It also transformed these policy goals into positive law by incorporating chapters on Fundamental Rights and Directive Principles of State Policy. The fundamental rights are justiciable and the power of enforcement rests with the Supreme Court and the High Court.

The various rights given in the International Covenants have been incorporated in the Indian Constitution. India; neither has a formal refugee law and nor is a party to the 1951 Refugee

Convention, but has effectively managed the difficulties at the political and administrative levels.

'The Refugee Convention lists the principal rights which the Contracting States undertake to grant to refugees, subject to the exceptions related to each country's particular requirements. Grouped under several headings in the 1951 Refugee Convention, viz., General Provisions, Judicial Status, Gainful Employment, Welfare and Administrative Measures, these rights constitute the most comprehensive list yet drawn up in favour of the refugees.'

All rights of Refugees are dependent upon their Right of Asylum. Article 14(1) of the Universal Declaration of Human Rights (1948) provides this right for every individual, but as per the international law, the right to grant asylum is the prerogative of the State. "India has for long served as a haven for refugees of different types. It has a great and unbroken tradition of generosity to the needs of refugees." (James C. Hathaway)

The Refugee Rights as per the 1951 Convention, are:

Treatment in General

The Convention says that all contracting states shall provide to Refugees, if not more, but at least the rights given to aliens within the country. "Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from the Convention."

While making laws related to aliens, one thinks about people with proper travel documents and not a group of people who might not have any identity proof. The refugees aren't treated at par with aliens. In this connection, **Article 6 of the Convention** may be read as the interpretative clause, which implies that 'any requirement which the particular individual would have to fulfill for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, except the requirements which by their very nature, a refugee is incapable of fulfilling.'

Exemption from Reciprocity

The crucial reciprocity principle in relation to how foreigners are treated varies from state to state based on Municipal laws. Only a restricted

exemption from the application of this principle is allowed by the Convention. After three years of residency in the nation of refuge, the refugees are not subject to legislative reciprocity. Articles 7(3) and (4) of the Convention also provide for additional exemptions of broad significance, such as the right to rights and benefits that they were already enjoying at the time of admission and the potential to enjoy rights and advantages beyond these.

Exemptions from Exceptional Measures

This article addresses extraordinary actions that can be taken against the person, property, or interests of foreign state citizens. "It also forbids the Contracting State from taking such actions against a refugee who is officially a citizen of the said state just because of that nationality." Article 44 of the 1949 Geneva Convention, which addresses the protection of civilians during times of war, is consistent with this clause of the 1951 Refugee Convention.

Personal Status

Article 12(1) of the Refugee Convention deals with personal status, and states:

"The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence."

The Convention does not define the term 'domicile', and the differences on this issue between the Common Law nations on the one hand, and the European and the Latin American countries on the other are well known. However, as laid down in Article 12(2) of the Convention, 'the rule established in the interest of persons who have severed all connections with the country of their actual or former nationality, does not affect the rights previously acquired by them in the latter country'.

Quasi Consular Functions or Administrative Measures

Refugees face legal problems due to lack of assistance of diplomatic or consular functions of the representative of their country. Administrative assistance in this regard is provided to them as laid down in Article 25(1) and (2) of the Refugee Convention. In the absence of evidence to the contrary, documents or certifications in this

manner will be accepted as official documents and will take the place of official documents sent to foreigners by or via their national authorities.

A considerable role was played by these so-called quasi-consular functions in the protection of the refugees in the past when documents or certificates were issued to them which would otherwise have been given to them by their national authorities.

Specific Rights

Article 7(1) of the Refugee Convention says that "the refugees be accorded the same treatment as is accorded to aliens does not apply to a wide range of specific rights. In these issues, they enjoy preferential treatment." These are categorised as follows:

Freedom of Religion

"Freedom to practise, preach and propagate religion and freedom as regards the religious education to their children, within the territory of the host State."

Access to Courts, including legal assistance

A refugee is entitled to unrestricted access to all Contracting States' legal systems. In terms of access to courts, he will be treated in the same way as a citizen, including receiving legal aid and being immune from *cautio judicatum solvi*.

Wage-earning employment

"The States party to the Convention shall accord to refugees, lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment."

Self-Employment

The member states must provide the most advantageous treatment to a refugee who is legally on their territory, including the ability to start commercial and industrial businesses and to work independently in agriculture, industry,

Liberal Professions

'Member States shall provide to refugees legally staying in their territory, who hold degrees recognized by the educational institutions of that State and desire to practice a liberal profession.' The issue of refugee employment rights arises quite frequently in the National reports. Whereas protection of the national labour market has

always been a priority of states, recent recessionary pressures have contributed to calls in many industrialized states for a tightening of restrictions on foreign labour. Employment rights for recognized, convention refugees, in most developed states are nonetheless generally superior to Convention requirements, with problems for refugees arising more often from the implementation of legislation than from deficiencies in statutory provisions themselves. It is in the granting of the Right to Work to asylum seekers whose status remains undetermined.

According to Article 17, as stated above, refugees have the right to engage in wage-earning employment. Furthermore, 'refugees who have lived in the country for more than 3 years, or who have a partner or child who holds the nationality of the host country, are exempt from the restrictive requirements placed on foreigners for the protection of the domestic labour market.'

Article 17 is thus designed to secure for refugees access to wage earning employment, which has historically been reserved exclusively for the host country's citizens, or aliens benefiting from a reciprocity agreement. It is intended to "obtain for refugees the advantages which government sought to have granted to their own nationals." The refugees are denied the support of their governments and cannot be dependent on any mediation or 'good offices' by their state of origin to negotiate a bilateral agreement.

Articles 18 and 19 of the Convention regulate self-employment and liberal professions and oblige signatory states to treat refugees in these areas at least as favourable as that given to foreign nationals in general.

Seemingly, those who drafted the Convention intended to provide limited employment opportunities to refugees, those also authorized by the national authorities, where they seek shelter. Social factors like a lack of work possibilities, racial discrimination, and administrative roadblocks can also prevent refugees from exercising their right to work. In addition to the overall lack of work possibilities in many nations, refugees experience even greater unemployment rates than native-born people, which may be a sign

of "concealed discrimination" against refugees from particular regions of the world.

In addition to xenophobia, other obstacles for refugees are language difficulties, educational differences, bureaucratic obstacles and cultural barriers etc, often prevent refugees from realizing their 'right to development'.

For Convention refugees lawfully staying in their territory, developed states grant employment rights, but obstacles for refugees arise due to social condition, for fear of displacing nationals in search of employment, thereby engendering local hostility.

Housing

'To the extent that the issue is governed by laws, regulations, or the authority of public authorities, the Contracting States are required to offer refugees who are lawfully residing on their territory housing that is as favourable as possible and, in any event, not less favourable than that given to foreigners generally in the same circumstances.'

Elementary Education

"The Contracting States shall accord to refugees the same treatment as accorded to nationals with respect to elementary education."

Right to Public Relief and Assistance

"The Member States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals."

In case the refugees are unemployed, nor are they permitted to seek employment, to sustain themselves, then their basic needs should be met through public assistance. Almost all refugees require public assistance at some point or the other, until they can adapt to the host society adequately to achieve success in the labour force. Due to these obstacles, refugees often remain dependent on social assistance for some time.

Labour Legislation and Social Security

In terms of labour laws and social security, refugees who are legally residing in member states will receive the same treatment as citizens. This includes 'compensation, working hours, overtime plans, paid holidays, minimum employment age, apprenticeship and training, women's and youths' employment, occupational diseases, maternity,

illness, disability, old age, death, unemployment, etc.' Additionally, the fact that the beneficiary resides outside the borders of the Contracting state will not impact their access to compensation for a refugee's death brought on by an occupational disease or an injury sustained on the job.

An evaluation of compliance with the public assistance provisions of the Convention must take cognisance of the fact that the poorer countries of the South, which host the vast majority of the world's refugees, simply lack the resources to provide for their sustenance. With some exceptions, such as India's historic determination to finance refugee relief operations independently, it is international relief organisations, particularly the UNHCR, which collaborate with Southern host states to deliver basic services to refugees. Though the nationals in many countries of Africa and Asia do not themselves have access to the type of formal social assistance scheme envisioned in the Convention, but, conditions in these regions... demand that priority attention be given to meet basic survival needs. For instance, UNHCR programmes for Afghan refugees in Pakistan provided relief assistance such as cash, tents, construction material for mud huts, food, household items, blankets, cooking utensils, fuel, water and medical dispensaries. Under the Convention, states not only equate resident refugees to nationals in the operation of all forms of public assistance, but also try not to discriminate among and between refugee populations in the granting of relief, whatever the number of refugee populations or limited resources. India provides an example in that, it provides generous assistance to refugees from Tibet, East Pakistan and Sri Lanka.

Fiscal Charges

"No fees, charges, or taxes of any kind, higher or different from those imposed on their citizens in comparable circumstances, may be imposed on refugees by the Contracting States."

Artistic Right and Industrial Property

"A refugee will be granted the same protections as citizens of the country where he regularly resides in regards to the protection of industrial property, including inventions, designs or models, trademarks, trade names, and rights in literary

works." (UN Convention on Status of Refugees, 1951)

Right of Association

Regarding trade unions and non-political, non-profit organisations, "the Contracting States are required to provide refugees who are legally residing on their territory with the same advantageous treatment as foreign citizens under the same conditions."

Movable and Immovable Property

Regarding the purchase of movable and immovable property, "the Contracting State must provide refugees with treatment that is as beneficial as practicable and, in any case, not less favourable than that given to foreigners in similar situations."

Rationing

"Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals."

Identity Documents and Travel Papers

Authorities of the country, where the refugees have taken shelter, must issue Identity documents and travel credentials, because refugees are not protected by the government of their home country. These must be granted to refugees who are legally residing in their country for the intention of travelling outside of it, unless there are other compelling national security or public order grounds. This also applies to documents. Additionally, "the Contracting States will recognise and treat travel documents issued to refugees under prior international agreements by parties in the same manner as if they had been issued in accordance with this article."

Freedom of Movement

According to any rules that may apply to foreigners in similar situations generally, refugees who are legally resident on a member state's territory have the freedom to choose where they live and to travel around the country without restriction.

States signatory to the Convention 'should not unnecessarily restrict the movement of refugees within the internal territory.' Article 31(2) of the Convention governs 'restrictions on the freedom

of movement of refugees 'unlawfully' in the territory of a contracting State,' encompassing asylum seekers whose status is not regularized.

The above mentioned Article 26 states that freedom of movement is subject to rules that apply to foreign nationals in similar situations. Restrictions on foreigners' access to frontier areas, strategic zones, places affected by natural disasters, areas of revolt, civil war, and extensive police operations were among the priorities of the Committee that drafted the 1951 Convention.

The freedom of movement of recognised refugees is unrestricted in developed nations, but this is not the case in less developed nations, which usually host much larger refugee populations, mainly due to administrative convenience or security concerns.

In brief, restrictions on the freedom of movement of both asylum seekers and refugees remain common. Such problems as exist in industrialized states tend to involve unduly harsh restrictions on the freedom of movement of refugee claimants pending a determination of their claim. The situation is more complex in less developed states, where formal status determination systems are not always employed.

Principle of non-Refoulement

"The right to non-refoulement, a core principle of international law, prohibits a state from returning (or "refouling") an individual to a country where they would face a real risk of serious harm, such as persecution, torture, or other inhumane treatment." Most of the International Conventions and international human rights treaties, as well as customary international law, all uphold the principle of non-refoulement.

The necessity of paying attention to the issue of Refugee Rights that are special to refugees in the matrix of the general principle of cooperation expressed in pertinent characters and statements may be the way to wrap up this brief examination. This puts into perspective our description of the international burden-sharing principle as an international law custom.

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