

The Refugee Problem and Political Policy of India-A Contemporary Analysis

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Abstract

In present world refugee problem has become a grave humanitarian and political exigency. India, being a vast democratic country has provided shelter to refugees for many decades. However, recent political decision, such as CAA and NRC have brought this refugee policy to the limelight. This research paper seeks to focus the history of the problem of the refugee, its political structure, political and diplomatic impact, the issue of human rights and its reflection on India's External Affairs policy. The aim of this research is to comprehend the definition of refugees, to understand their legal status, to review the responsibility of the Indian government in internal and international arena and to highlight the exact scenario through statistics and case studies. In this research paper the policies which are given proper care are Rohingya refugees' issue, the viewpoint of the refugees coming from Afghanistan, Bangladesh etc. towards Indian administration and UNHRC and above all, the role of various international or national organisations. India has not, till date, signed the UN Refugee Convention of 1951, so much so that the legal protection of refugees is controversial. In conclusion, some recommendations have been presented e.g. requirement of a uniform policy at national level, emphasis on the government's cooperation with the UNHCR, upliftment of the lifestyle of the people of the refugee camps and development of coordination with the local people. I hope this research paper will not be meant for policy makers only, rather it will provide important information and analytical understanding for the researchers, human rights activists and conscious citizens.

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Introduction

Refugee means one such person who, being afraid of social torture, religious disparity, political infliction, war or violation of human rights, takes shelter in another country in the name of international security.

According to UNHCR towards the end of 2023 more than 120 million people were forcibly evicted from their homestead, a considerable part of which is deemed to be Refugees.

India, owing to its geographical location and historical background, has become a prime destination for the South Asian refugees. In 1947 about 1.5 crore people have been migrated on religious ground. Thereafter, in 1959 due to Chinese aggression around 80000 refugees took shelter in India, Dalai Lama too being included. During 1971 Bangladesh Liberation war about one crore refugees infiltrated in various Indian states especially in West Bengal, Assam and Tripura. During the civil war in Sri Lanka more

than one lakh Tamil refugees took shelter in Tamil Nadu. Of late, due to persecution on Rohingya Muslims about 40000 Rohingyas fled to India. There is no particular mention of the term 'refugees' in Indian constitution; there is no separate law for the refugees in India. Therefore, in order to regulate them, the Foreigners Act, 1946 and Passport (Entry into India) Act, 1920 have been enforced and it is applicable to the ordinary foreign nationals. For this the issue of the protection of the human rights has become legally infirm.

In the present time the implementation of CAA, 2019 and NRC has made the refugee issue more and more controversial. The CAA Act provides the facility of getting citizenship to the persecuted Non-Muslim citizens who have crossed over from Pakistan, Bangladesh, and Afghanistan. On the other hand, lakhs of people have been suffering from the apprehension of being stateless for not having documents in support of citizenship. Many persons observe it to be

conflicting with secular constitutional structure of India (ref: Amnesty International India, 2020, Human Rights watch, 2021). That's why the refugee policy of India has been lying in a profound ethical and legal conflict. On the one hand there is a secular constitution, on the other there remains national security and political reality. This dichotomy has influenced the international glory and responsibility relating to human rights.

Refugee Policy in India and Legal Framework

In spite of being a vast democratic country still India has no government-recognized refugee policy. As a result the decision regarding acceptance, registration, rehabilitation or extradition are taken on prevalent political reality and on the basis of administrative, consideration, which often happens to be obscure and discriminatory.

Prevalent Law: What is stated about the Refugees?

There being no separate law, the refugees are generally treated with the following rules:

1. The Foreigners Act. 1946-it empowers Indian officials to detain or extradite the foreign nationals.
2. The Registration of Foreigners Act. 1939: It allows scope to register and carry on surveillance on the foreigners.
3. The Extradition Act 1962- This is the legal framework to extradite the offenders to foreign countries.

Under these laws both the refugees and ordinary citizens are treated in the same standard, so the refugees do not get any protection.

The Constitutional Stand on Refugees

There is no mention of the term 'refugees' in Indian constitution, because at the time of adoption of the constitution in 1950 India had to witness the inflow of refugees, mainly due to partition. Consequently, the rights and status of the refugees were determined mostly the general principle on justice and human rights.

Article 14 (Right to Equality), 21 (Right to Life and Personal Liberty) have been applicable to the foreigners; the Supreme Court on India in Case National Human Rights Commission versus State of Arunachal Pradesh (1996), passed the verdict that the refugees too are secured under Article 21 of Indian Constitution.

Why India has not signed in UN Refugee Convention?

Till now India has not signed in the convention on refugee in 1951 and 1967 protocol. India claims this is meant for post Second World War reality, the reality of the condition of the refugees in South Asia is different and it can interfere in India's national security and internal political stability. Nevertheless, not being a signatory India keeps up limited co-operation with UNHCR-specially in the fields of registration, refugee card and rehabilitation etc.

Role of UNHCR in India

Within India UNHCR can work only among some limited refugee groups e.g. Afghan, Iranian etc. Without the formal approval of Indian government, UNHCR cannot continue its activities in the entire country, so much so that refugees like the Rohingyas, despite being supported by UNHCR, are not assured of their official recognition and security.

Challenge to the good administration and Human Rights

As they have no legal amulet they are deprived of education, health service, employment and legal aid; they are confined

for long in the refugee camps and are at risk of human trafficking; though they appeal for political shelter, it has no approved system. For this international Human Rights Organisation like Human Rights Watch (2021) and Amnesty International India (2020) termed the refugee management system in India as ' justice less and indefinite'.

Citizenship (Amendment) Act, 2019 and NRC

India has passed citizenship (Amendment) Act or CAA, through which provision have been kept to offer citizenship to Hindu, Sikh, Buddhist, Jain, Parsee and Christian refugees coming from Pakistan, Afghanistan and Bangladesh. But for the exclusion of the Muslims, this Act had to face stark criticism and created a lot of turmoil and controversy as well, since it is against the principle of secular nature of Indian constitution. Article 14 of

Indian constitution guarantees equality for every one and article 15 offers security against discrimination for belonging to other religious faith. If through this law a particular religious group is given priority, it is conflicting with the constitutional policy. Constitution expert Goutam Bhatia, in his book 'The Transformative Constitution,' (Haper Colling India, 2019) opined CAA to be antagonistic to the fundamental structure of the constitution.

Another process related with CAA is NRC (National Register of Citizen). At first it was effective in Assam and people were asked to produce appropriate documents in support of proving citizenship, as a result a large number of people were left beyond the list. Specially the poor and the people belonging to depressed (scheduled) and Muslim community were marked as D-Voters and questions were raised as to their citizenship. This process, conducted under the supervision of Supreme Court of India left a socially massive impact.

The joint application of the CAA and NRC is very much significant in Indian domestic politics as well as in the international arena. According to Amnesty International Human Rights Watch, these principles are divisive on the basis of religion and opposing to human rights.

Since India is the signatory of Universal Declaration of Human Rights (1948) and international Covenant on Civil and Political Rights (ICC PR, 1966), framing rules that give rise to religious discrimination is conflicting with its international compulsion.

In books like 'Citizenship and its Disconnects' by Niroja Gopal Jayal (Permanent Black, 2013) and 'The Burden of Democracy' by Protap Bhanu Mehta (Penguin Indian, 2003) importance has been given on citizenship, secularism and the foundation of Indian democracy.

On this ground, analysts think Indian Citizenship Act should be reconsidered keeping pace with the principles of constitution and International Human Rights.

Refugee Problem and Security of India, Economics and Human Rights

Here we shall analyse multiple impact of arrival of refugees on India's internal security, economic structure and Human Rights situation. For many decades India has offered shelter to refugees coming from various countries. Anyway, the presence of the refugees is not limited to human rights, rather it leaves a widespread influence on the security of the country, its economic equilibrium and social equality. Realising this reality we need one such analysis in which reconciliation between human sympathy and national interest is maintained [source: UNHCR India report, 2021: Ministry of External Affairs Report, 2022].

Impact of Arrival of Refugees on Security on India

Infiltration of refugees often poses anxiety in terms of security of the country. The union government, time and again, apprehended that there is possibility of extremism or militant activities on the part of Rohingya refugees. According to the security agencies, it is suspected that some Rohingya groups maintain liaison with International militant organisations. [Source: Ministry of Home Affairs, Govt. Of India, Annual Report 2019: Intelligence Bureau Notes on Border Security, 2020]

Economic Impact

The presence of the refugees leaves two-fold economic impact. On the one way the refugee labourers work on very low wage and that results in adverse competition for the local labourers. On the other hand, they are being used as unskilled labourers in construction works and agricultural jobs. However, in long term non formal labour system, deficit in revenue collection becomes inevitable and besides this social expenditure soars. [Source: World Bank, Forced Displacement and Development Report, 2018: NITI Aayog Policy Briefs on Migration, 2020]

Apart from this government has to allocate funds for food, health, education and shelter for the refugees, that puts additional pressure on the state government e.g. for the refugees, 20 lakh in number, coming from Bangladesh in 1971 the Govt. of West Bengal had to arrange for temporary shelter, food and rehabilitation. In the same way the presence of the refugees put extra pressure on the infrastructure and environment, of homes in urban areas, number of bustees increases and obviously civic services are disrupted.

Crisis for Human Rights

Most of Refugees living in India do not have any legal recognition, as India has not signed in Refugee Convention in 1951 and the protocol of 1967. Therefore, the scope of availing their civil rights and fundamental services is limited. A large number of refugees are detained for long time in the refugee camps where the humane situation is pitiable. For most of them it is difficult to enjoy legal aid, since they don't have any official security structure. They are badly deprived of health services, education and habitation.

Especially the women and children refugees are at risk of trafficking, sexual violence and child labour. According to the report of UNICEF and Save the Children, the problem of non-schooling and malnutrition is acute among the children refugees. NHRC, UNHCR and Amnesty International expressed their grave concern over the issue of management of the Indian refugees. In a statement of UNHCR publication in 2021 it has been mentioned that Indian Government should adopt an integrated policy for protection of human rights of the refugees. (UNHCR India Annual Report, 2021; Amnesty International India, 2020; NHRC Report on detention centres, 2019; UNICEF India Child Refugee Report, 2020)

Principle of Indian Foreign Policy and the Question of Refugees on the Basis of International Relations (Elaborate and Informative)

In respect of foreign policy of India the problem of refugees is a multi-dimensional and diplomatically sensitive issue. As the stand of the government of India differs in case of different refugee groups, the duality of diplomatic policy is prominent

Policy towards Tibetan Refugees

In 1959 Dalai Lama along with thousands of Tibetan

Buddhist followers took shelter in India due to Chinese oppression. The Govt. of India offered them political shelter and allowed to form Tibetan Government in Exile having its head quarter in Dharamshala. Special packages are initiated for their education, health, and livelihood. This policy was entirely humane and clear anti-Chinese strategie messege. (Source: Ministry of Home Affairs, Government of India Report, 1960-2020, Tibetan Policy and Support Act, US Congress, 2020)

India on Bangladeshi Refugees

During Liberation War in 1971 about one crore refugees entered India. Camps were opened in states like West Bengal, Assam, Meghalaya etc. India extended its hand of cooperation towards them and brought a permanent solution by liberating East Pakistan that emerged as a new nation, Bangladesh. [Source: Govt. of India write paper on Bangladesh, 1971 EPW, Achiver, "India and the Refugee Exodus" 1971, 1972]

Policy towards Rohingya Refugees

Due to racial and ethnic oppression on Rohingya Muslim in the Rakhaine Province of Myanmar about 40 thousand Rohingyas took shelter in India (UNHCR, 2008). However, the union government termed them as threat to national security and tried to push them back.

In 2017 the Ministry of Home Affairs informed in the Supreme Court that the presence of the Rohingyas "is threat to national security". Their habitation is prohibited in various states and they are kept in detention centres. [Source: Supreme Court Case: Mohammed Salimulla vs union government of India, 2021, UNHCR India Report, 2018, Ministry of Home Affairs Notification, 2017]

India Geographical Pact, 1951 Convention

Till date India has not signed treaties like 1951 United Nation Refugee Convention and 1967 Protocol. For this legal status and security of the refugees are limited. India has reiterated, time and again, this convention is Europe – centric and in not relevant to the reality of South Asia. However, India maintains limited cooperative relationships and for refugees of certain conditions it initiated the card system and rehabilitation process e.g. Afgan, Indian, Somalian, Syrian refugees.

[Source: UNHCR country profile: India (2022) Rajil Dhavan, Refugee Law and policy in India, 2004. Human Rights Watch Report: "India Obligation under international Refugee Law, 2019.]

Diplomatic Duality and Geographical Impact

In the matter of refugee policy of India there is duality. The three factors that determine India's stand are religion, politics and international strategy e.g. to offer shelter to the Tibetans is a strategic message against China. Offering shelter to the Bangladesh refugees is indicator of political good will but issue of Rohingyas is being judged as a threat to national security. This polity of duality poses a conflict between compulsion of human rights and the foreign policy of country. Inspite of having bigger economic diplomatic influence it (India) has no clear and humanitarian stand regarding the refugee policy; hence questions come up in the international level.

Conclusion

In the refugee policy the conflict between humanity and security is very much prominent. On the one hand India is

known as historically shelter provider; on the contrary recent political and legal chamber have created discrimination towards the refugees. The secular character of Indian constitution has been hit vehemently for sorting the refugees on the basis of religion as per CAA. The implementation of NRC has rendered the future of numberless people who have been evicted from their homeland.

Refugee problem is not only a humanitarian issue, it is a political, social and economic. Long term presence of the refugees might dismantle the equilibrium of demography, create pressure on natural resources and can incite tension rising out of strife with the local communities. Not disregarding these realities India should frame a balanced, inclusive and a policy based on compassion on Refugees in consideration of elementary principles of human rights.

Moreover, in order to keep up the prestige of India in international forum India has to have a candid refugee policy. Even if India does not sign the agreement in United Nation on refugees, yet she (India) should maintain good liaison and condition with UNHCR and other humanitarian organisations. In the present world which is disturbed with war here and there, the refugee problem has become a very common and sensitive one. Since India believes in the principle of 'Basudhoiba Kutmbakam' (the people of the world are our relatives), India cannot shrug off the responsibilities of those ill-fated people who have been driven out of their homelands mainly because of their religious differences. At the same time it is true that some people enter into our territory to increase their presence and thereby bringing change in demography, often they disrupt the internal security and serve as spies to threaten the security and peace. It is almost impossible to distinguish between refugees and infiltrators, so this case has to be dealt with carefully. It has been proved time and again that certain countries have been engaged in cross-border terrorism in the name of religion, their agents exploit the sentiments of innocent people to fulfil their dream of religious supremacy. So it is needless to say as a country India must be sympathetic to the safety and security of the hapless, tortured, evicted people on one hand and on the other it has to remain vigilant to the activities of those who are trying to challenge the sovereignty of the country. But it must be ensured that terrorists or militants should not be linked to their religious identity.

Recommendation

1. It is undesirable to regulate refugees with the law-national refugee law: foreigners Law, separate law should be enforced.
2. To put signature in UN Refugee Convention; it is a footstep to carry out international responsibility.
3. To establish humane detention and rehabilitation system; to ensure separate arrangement for children, women and old people.
4. To frame inclusive law for various ethnic groups including the Rohingyas. To protect secularism.
5. To campaign in favour of consciousness and tolerance so that skirmish can be avoided.
6. To ensure fundamental rights of the refugees; to provide them education, health service, food, habitation and legal aid.
7. To procure nationality implementation of neutral and humane standard, to avoid religious division.
8. Planned return or resettlement program; maintain coordination with international organisation.

If these recommendations are effectively implemented India, in consonance with its history, culture and constitution can set an example of humane and efficacious refugee policy.

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