



E-ISSN: 2790-0681
P-ISSN: 2790-0673
IJLJJ 2024; 4(1): 103-107
<https://www.lawjournal.info>
Received: 10-11-2023
Accepted: 15-12-2023

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Recent tendencies of unauthorized immigration and refugee migration problem in India: A critical study

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DOI: <https://doi.org/10.22271/2790-0673.2024.v4.i1b.99>

Abstract

The problem of Migration particularly in reference of India is one of the biggest crisis in the present scenario of the country. Non-stop entries of Refugees from various neighbouring countries have created a restless situation before the native citizens of India and challenged the peace and tranquility of whole Nation. In the roots of this problem, the framework of National and International refugee law, seems to be wholly and solely responsible. The weaker structure of Refugee Law both on the sides of National and International level has awfully unabled the Indian Administration to prevent the unauthorized incomings of the foreigners from the frontiers of the foreign countries. India is still neither a party to the Refugee convention 1951 nor its protocol of 1967. People from Bangladesh, Shri Lanka, Myanmar, Afghanistan and even from Pakistan are unauthorizedly entering into over country because the economic condition of the above noted countries is very meager and pitiable and a great political upheaval is prevailing there throughout. Amendments in International and National Law in the light of the present circumstances should be made and enforced forthwith to save India from this giant problem. India's foreign policy should be given a new shape keeping in view the existing circumstances of the world. We now must make such firm and stagnant laws to keep avoid all the impediments which can make India a weaker in future. Legislation of Indian Refugee Act is the utmost necessity to the present time and must be done on top priority basis.

Keywords: Unauthorized immigration, refugee migration, internally displaced persons (IDPS), stateless persons

Introduction

Migration Problem in India: The problems of refugees in India is a burning problem not only before our country but equally also before the whole world. This problem of course is a ubiquitous issue of 21st century. No medicine in the form of law is yet available which can satisfactorily cure this disease. It has disrupted the peace and tranquility of many countries of the world and endangered the security of their people.

This problem of refugees is not only confined upto the peripheries of India but it also encapsulates the boundaries of International borders. To resolve this problem needful and timeful amendments, in national and international law are ungently required for. The problem of refugees is moreover International cum national and can be solved when an International level commission be set up with the purpose to look into the matter in the light of present circumstances of refugees.

The problem of refugees means displacement of a group of people from one country to another or from one part of country to another part of the country. These may be refugees, internally displaced persons, Asylum seekers or migrants. This unlawful transmigration creates a lot of trouble to the sheltering countries. In my view a national commission ought to be set up for refugees and internally displaced persons to solve this hazardous problem. In 2019 the UNHCR estimated the number of forcibly displaced persons to be 79.5 million in the whole world, out of which 26 millions were refugees and 45.7 million were internally displaced person and 4.2 millions were classified as asylum seekers.

The problem of the Refugees is very old. This problem is being faced by many countries. Refugees are victims of human rights violations. They are a distinct group of Individual without the protection of a National State. This Word 'Refugee' took birth in France. The word Refugee was used for the first time in 1685 in the charter of Revocation of the Edict of Nantes where the Protestant Huguenots had to leave France for sheltering in other countries under the fear of religious persecution created by Luis, the king of France.

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In 600 AD Aethelberht, King of Kent, first time codified the rights of Refugees and provided them shelter in the churches. Lakhs of Huguenots took Asylum in the countries like German, England, South Africa and Netherland under the fear of being converted into Catholic in France after the Edict of Fontainebleau in 1685.

A total Number of refugees living in India as on 31-12-2014 were 2,89,394 from 28 countries of the world which was recorded by ministry of Home affair in March 2016. This number of refugees living in India was legally accepted but did not include the number of Rohingyas and Bangladeshi Migrants as they were unlawfully living in India. According to the report of UNHCR about 73% Refugees live in the neighboring countries leaving the countries of their own origin.

United Nations High Commissioner for Refugees (UNHCR) is the main organization to provide international protection to refugees and assist them in other manners. In India National Human Rights Commission (NHRC) is the body which has been given statutory status by protection of Human Rights Act 1993 (Amended by 2006 Act) which is responsible to protect the refugees and promote their human rights. In the case of NHRC V/s Arunachal Pradesh, the Supreme Court held that the State is bound to protect the life and liberty of every human being whether citizens or otherwise. But under the present circumstances of our country, the verdict of the Supreme Court seems very difficult to be implemented because India is densely over populated country. It does not have the sufficient sources of economy to look after the interests of all refugees living as the citizens of the country.

The problem of Refugees is a national cum international problem in the present scenario. This problem in India is becoming more horrible day by day as compared to other countries of the world, keeping in view the issue of over population of the country. Taking serious consideration upon this problem of Refugees, Honorable Supreme Court of India has directed Indian government to update the National Register of Citizens (NRC) of 1951 in the case of Bangladeshi infiltration in Assam. The apex Court further directed the Government of India to identify such people trespassing in India from foreign countries and trying to settle down themselves here unlawfully. Such people should immediately be stopped and sent back to their homelands without any appeal.

This subject also calls for an explanation with regards to difference among Refugees, Asylum seekers, internally displaced persons, Migrants and Stateless persons. Under the general perception of Refugee, Refugee is the person who leaves his country and seeks shelter in other country for multiple reasons such as -Threat of War, Internal disputes, External Aggression, Violence, Violation of Human Rights and Disturbance in public order. Under these circumstances, the sheltering country or The United Nations High Commissioner for Refugees (UNHCR), after being fully satisfied with the present position of that time, can grant them the status of Refugee. This procedure is known as Refugee Status Determination (RSD). This is granted to a Refugee by both ways: Under National laws by the sheltering country or under International Laws by the United Nations High Commissioner for Refugees (UNHCR).

Asylum seekers are those who desert their own countries and beg for shelter in any other country. This may be due to

political reasons, threat of war or for other reasons. Such people are treated as Asylum seekers until their prayers for citizenship are granted by the sheltering country. As there is no such law in India, therefore only United Nations High Commissioner for Refugees can sanction the prayer and convert the status of Asylum seeker into Refugee. Internally displaced persons are those who have been compelled to leave their homes or residential territory owing to armed conflicts, Violence, Human Right Violation or Human made Disasters but they should not have left the frontiers of: their country. Kashmiri Pandits are the burning example of internally displaced persons who were compelled to leave their homes by Pakistani invaders.

Migrants are those who leave their homes for shelter and settle themselves down in some other places in their own country or in other country in search of employment or for some other reasons. The stateless persons are those persons who have not acquired the citizenship of any country or their citizenship has already been terminated on account of not complying with rules of citizenship or violation of such rules of the country. If we cast a look at Bangladesh "during the UPA Government. Shri Prakash Jaiswal. The Union Minister of State for Home Affairs. has stated in Parliament on 14 July, 2014 that there were 12 million Bangladeshi infiltrators living in India whereas in November 2016 Kiran Rijju, the Minister of State for Home Affairs in NDA Government, reported this figure about 24 million increased just the double number as compared with Shri P. Jaiswal report within a minimum period of two years only.

The growth of Rohingya Muslims is perennial in India whereas the Myanmar Government abrogates 'to give nod' to Rohingyas to be their citizens in general. Only around 40 thousand Rohingyas are taken up as legitimate citizens of Myanmar. The 1982 citizenship law of Myanmar does not recognize Rohingyas as ethnic group. In spite of the disapproval of the Myanmar Government, the Rohingyas have been residing there for last 35 years unlawfully. Practically they are stateless people. Minister of state for Home Affairs Kiran Rijju informed Parliament in August 2017 that there were about 40,000 Rohingya Muslims living unlawfully in India. According to Centers Estimates, Rohingyas population has increased four times of the previous data over the last two years. In 2015 it was estimated to have been 10,500.

There has been up surge in the number of Afghanis since last few year in India. It is due to the result of American administration failure to victory over the terrorists organization of Taliban. Now Taliban group has defeated the Afghanistan forces and is ruling over the Afghanistan. America has left Afghanistan with Its forces being badly defeated by the forces of Taliban.

It should be seriously acknowledged that illegal migration has caused much trouble in the peaceful life of the countrymen. Most of the infiltrators live in the disguise of Indian citizens and get all types of facilities from Indian Government. They also by hook or crook obtain their fake Ration Cards, Aadhaar Cards and Voter ID etc. and thus cheat the country.

It is to be clarified that the problem of illegal migration by refugees has become chaotic all around for the peace and harmony of the original inhabitants of India. The security of the National frontier has also come under threat. The problem of Internally Displaced Persons is also a serious concern before the nation in the Present wake up of time. It

is not confined upto single state alone but it exists in many other states as well.

International Refugee organization (IRO) was built on 20 April 1946. This organization was assigned with the responsibilities of rehabilitation of the refugees but the functioning of this organization came to an end in 1947. International Refugee organization was dissolved in 1952 after the completion of rehabilitation of 1 million Refugees. Even today lacs of the people living in Iran, Iraq, Syria, Oman, Yamen and Afghanistan were being compelled to leave their homes and to take shelter in other countries of the world because of the fear of terrorist organization of Islamic State of Iraq and Syria (ISIS).

Apart from it, lacs of the people have been separated from homes due to civil war in Syria and Yamen. Rohingya Muslims have also sheltered in different countries of the world because of internal conflict raised between Myanmar Army and Rohingya Muslims. India has been facing the problem of Refugees since the partition of India. The Refugees who come to India from Iran are known as Persians. These Persians left Iran due to religious and cultural disparity. Due to persecution caused by the Muslims of Iran, these refugees settled in the States of Gujrat and Maharashtra of India. The problem of refugees got more complicated when British India divided into India and Pakistan. Even after partition, Hindus, Sikhs and Muslims continued to come to India from Pakistan unlawfully under the tedious circumstances.

Owing to dispute of China with 14th Dalai Lama, India faced the problem of Tibetan Refugees in 1959. More than 1,50,000 Tibetan Refugees came to India with Dalai Lama and about 1,20,000 Refugees sheltered themselves in India in different states of Ladakh, Himachal Pradesh, Sikkim and some other states. Apart from it, about 1,00,000 Chakmas and Hajongs Refugees were compelled to leave former East Pakistan, now known as Bangladesh, due to the construction of Kaptai Hydro Power project in 1960-62 on the river of Karnaphuli. These Refugees took shelter in India and settled down in the States of Assam, Mizoram, Tripura and Chiefly in Arunachal Pradesh. Some of the Refugees had acquired citizenship of India.

Now the number of Bangladeshi Refugees is bigger than other refugees because the Pakistani army had committed genocide of East Pakistanis (Bengalis). Indian Government provided shelter to them. Pakistan was divided into East and West Pakistan in the war of 1971 as India and Pakistan. East Pakistan was given the status of an Independent nation as Bangladesh. Hindu Refugees of Bangladesh are still coming to India being exploited by Muslims of Bangladesh. Muslim Refugees are also coming to India from Bangladesh in the hope of living a better life. Even today more than 20 million of Bangladeshi are living in India unlawfully. Few of them have acquired the Status of Refugee.

Similarly, about 1,00,000 Tamil Refugees are living in India. These Refugees took shelter in India owing to the Internal conflicts between L.T.T.E. organization and the government of Sri Lanka. These Refugees are chiefly living in the States of Tamil Nadu, Karnataka and Kerala of India. Since 1979-89, about 60,000 Afghanis took shelter in India due to the reason of war raised between Soviet Union and Afghanistan. Many of them are still living in Delhi, the capital of India. In the same way, Rohingya Muslim Refugees have become a great challenge to India in the present time. Owing to drastic mutual conflicts between the

Buddhist community and Rohingya Muslims of Myanmar, thousands of Rohingya Muslims have sheltered in India, although they have not yet got the status of Refugee. At present about 40,000 Rohingya Muslims are living in India as Described by the United Nations in 2013 that Rohingyas are one of the most persecuted minorities in the world.

It is difficult to ascertain as to how old is the history of Internally Displaced Persons in the world. But in the year 1990, this problem was acknowledged as a distinguished problem. These people turned homeless owing to the calamities caused by Natural Disasters, Conflicts, Violence, Violation of Human Rights and by any Development Project of the government.

The Internal conflicts, disputes and wars have become the main reasons for migration of the original inhabitants of the neighboring countries of India. These Refugees have created many problems before the nation which have endangered the internal security of the country. The trespassers coming day by day are increasing crisis in our country. At present India is facing the problem of Muslim Refugees from Myanmar and Bangladesh. The largest number of illegal migrants chiefly belongs to aforesaid two countries only. Increasing number of Internally Displaced Persons within the territory of India have also created a huge problem before our government.

These instruments are evaluated by the Ministry to deal with the personal cases of the masses of the country. India is not a party to the convention so it is not bound to provide rights to the Refugees as described in the conventional International Law. Actually, there is no clear-cut law about the arrival and stay of refugees in India. The number of Refugees entering in India is increasing larger and larger day by day. It has created a great problematic situation for our government. These refugees mostly belong to the neighboring countries like Bangladesh, Pakistan, Myanmar, Afghanistan, Sri Lanka, Nepal and Bhutan. Seeing the large number of entry of refugees every year, it is the duty of the government to constitute such laws which can prevent unauthorized entries of the refugees into our country. Unless and until rigid and stable laws are formed the problem of refugees will remain as it is. At present national and international laws pertaining to vulnerable issue of refugees are not optimum to solve their problems.

The matter of unlawful shelter of refugees is also a serious concern before our government. Central government and the Supreme Court both have expressed their lines of action to eradicate this problem. The central government is very strict against the shelter of such refugees and as such is planning to send them back to their homelands. For this purpose, it is very necessary that such refugees should be identified in the country. In the case of Assam Public works vs. Union of India the honorable Supreme Court had ordered to update a register of National Citizens of 1951 (NRC) in state of Assam to distinguish and identify between the refugees and National citizens of India. In compliance with the Supreme court order, the central government has decided that (NRC) shall be rolled out across the country in the upcoming years. Refugees problem is a threat to India and should be solved on the first priority. It is a matter of regret that many agitations were raised against NRC. The agitators were ignorant of the lethal repercussions on this problem. Through this research paper it is suggested that central government should think of the total expulsion of Refugees from India as early as possible.

The problem of Internally Displaced Persons with special reference to India is getting widespread in different states of India like Jammu & Kashmir, Assam, West Bengal, Telangana, Chhattisgarh, Andhra Pradesh, Jharkhand, Uttar Pradesh, Haryana, Uttarakhand and Himachal Pradesh. According to U.N. report 2019 more than 50 lacs displaced persons were compelled to quit one part of nation to another part due to Natural calamity, Internal conflict, violence and unemployment. The number of Internally Displaced Persons are increasing every year in different territories of our country.

Through this research paper I intend to suggest that our government should take serious steps for framing the National Refugee Act as soon as possible. On the basis of realistic grounds under the present set up of circumstances. Seeing the calamities faced by the country, the present research work tells about over the arrival of migrants and trespassers coming to India from different parts of the world, is the call of the hour. This would prove to be an instrumental solution to the existing crisis of the country. The present research work has its own importance in the present vivid critical circumstances of our country. This research paper not only talks about of providing undue shelter to Refugees but also makes us know how they illegally occupy our lands and property for of their shelter and settlement. This research work tells us how the native citizens of the country are suffering. They are being deprived of their peaceful living owing to the unauthorized encroachments and possessions over their lands and properties by these refugees.

The national security of the Indian citizens has come under threat due to unlawful infiltration. The rights of the countrymen are snatched from them. The problems of Terrorism and Naxalism are extremely increasing in our country. The resources and commodities of the native citizens are used by these Refugees. The national citizens of India have the first and foremost right over their resources and commodities but they are being deprived of their rights without any protection of law.

This research paper suggests that our legislative body of Government should be conscious enough and March ahead to constitute such laws which must strictly bar the entry of such Refugees in future. It must be the responsibility of the National Government to check out the entrance of the people coming in our country. Through this research paper, it is suggested that the government of India should work hard on the line of sending the Refugees back to their homelands. This objective can only be achieved by the formation of a National Refugee Commission. It has been observed that in the absence of such commission the number of Refugees is increasing considerably and the problem of refugees is becoming more & more violent day by day. Under humanitarian laws the government is providing food and shelter to them which of course is not a part of legislative right. This research paper invites the attention of the central and state Governments of India to disallow entries of foreign Refugees by framing strict relevant laws in this matter.

This research paper is meant to be dedicated to research scholars of law as well as other scholars and intellectual citizens of India who are deeply interested in examining the problems of Refugees and Inter State Persons throughout the country. This research paper is device to deliver a message to all countrymen, politicians, and social reformers

to demand the government to constitute stable and forceful laws in solving the problems of Refugees within the framework of the constitution.

The laws relating to Refugees migration are not vivid and wide. They are confined within specified framework of laws and regulations. The problems of Refugees have not been taken up as a thrilling challenge to our countrymen. For its right and justified evaluation, the problems of Refugees should be taken up with deeper observation and mutual discourse in a forum at national level. All countries which are victims of the problem of Refugees must unite together to find out its peaceful and wholesome solution.

There is no specific law on refugees in India even upto now. India is neither a party to the Refugee convention of 1951 nor its protocol of 1967. No. definite legislation about refugees is as yet available in India, except that of foreigners Act of 1946, Human Rights Act, 1993 (Amended) 2019 and sum relevant Articles of constitution. A bill under the title of Refugee & Asylum (Protection) Bill was drafted in the year 2009 and a bill under the title of Protection of Refugee & Asylum Seeker Bill 2015 was also drafted but unfortunately both the bills fell down in Parliament and could not become the part of legislation.

The Government of India tried to be a part of Refugee convention from time to time in the year of 1967, 1992 and 1994 but all in vain. The Ministry of External Affairs considered the convention and protocol to be treated as partial regime for Refugee protection.

Indian constitution provides the fundamental rights and guarantees them to all citizens of India under its IIIrd part. The Refugees of India are also benefitted by these rights.

Supreme court of India, in the case of Louis De Raedt & others vs Union of India & others held that Article 21 of the constitution protects life and personal liberty to all persons. Even the foreigners are also not deprived of these fundamental rights except the procedure otherwise established by law.

Many countries have proper rules for governing the Refugees. All possible protections are provided to them by these sheltering countries in respect of their food, shelter, safety, security and livelihood problems.

National Human Rights commission of India is also of the view that drafting and adoption of refugee laws is very essential. Unfortunately here in India no such legal framework has been introduced till today.

There are only few countries in the world who host a large population of refugees although they are neither a party to the U.N Refugee convention 1951 nor its protocol of 1967. such countries also do not have any specific laws and policies regarding Refugees. Most of these countries specifically belong to Middle East and rest of Asia, for example, Egypt, Jordan, Lebanon, Malaysia, Pakistan and India. India is also facing the Refugee problems alike other countries of Asia.

India is a country where many Refugee groups coming from different nearby countries have settled down. It is still following the transitory polices about Refugee Settlement.

Uptil 2023 India does not have its own polices and legislation to deal with the problems of Refugees. These problems become more complex owing to the diversified Culture, Religion, Language and Racial differences. Rohingya and Bangladeshi Refugees are the super hit concern of the nation at present. According to the latest report of 2023 of The Economic Times of India, total

number of Refugees Sheltering in India up to year 2022 are 4,05,000 out of which only 2,13,578 are recognized /registered as Refugees by Government of India and about 1,60,085 are unregistered Refugees but from the reports of macrotrends and world Bank (2023), the figure of Registered Refugees in India is 2,42,835 of 2022.

This topic has been selected for critical analysis over the problems of Refugees affecting our countrymen adversely now and then. Unfortunately our government has not made any legislation soothing to the problems of Refugees. For instance - Rohingyas from Myanmar, Bengalis from Bangladesh and even many Hindus from Pakistan are coming for shelter in India. This problem of Refugees is a threat to future generation of India. Therefore, this research paper highlights the hurdles that occur in the way of providing solutions to this ever burning problem of the refugees existing in the country now a days.

The present research paper purports for an approach for providing a wholesome, comprehensive and soothing solution to this wide spreading problem of refugees. India is a great hit by this problem after independence upto now. All our efforts made in this direction have not brought any better results. I have tried my best to go into the deeper layers of this problem and have come to the conclusion that national and International commissions be formed under the guidelines of legal experts and Jurists of International repute.

I am therefore of the opinion that the necessary consideration as has already been pointed out by me should be brought into implementation without causing any delay. Only then and then this problem of refugees can be won over. I hope that my research work will prove a mile stone in the controversial and stormy circumstances of today's India.

Conclusion

India's refugee challenges, advocating for national and international commissions to address the issue. It points out historical refugee movements from Iran, Pakistan, Bangladesh, Afghanistan, Sri Lanka, and Myanmar. Highlighting the lack of specific legislation on refugees, it urges prompt action to formulate comprehensive laws and policies to manage refugee flows while safeguarding the rights of both refugees and native citizens.

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