



Refugee protection in India: the impact of refugee laws on social security and poverty reduction

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Abstract

To better safeguard refugees' social security rights and reduce poverty in India, the researcher will examine the impact of having or not having a particular legislation in place. A total of 4.5 million refugees from nations including Nepal, Myanmar, Sri Lanka, Tibet, Afghanistan, and Sudan live in India's shelter system. In order to better the lives of refugees in India, it's essential to examine whether or not specific laws governing refugees and their social security rights exist in the country. The study's goals are to examine the various refugee-related laws, in particular the various articles related to their welfare and social security on both foreign and national scale, and to look at issues that Indian refugees face in pursuing their life goals and aspirations in other countries. We also need to think about the state's role in providing adequate refugee welfare protection. There is no primary data in this research. Many libraries were inspected, as well as a few online publications and websites, in this respect. Therefore, the researcher will demonstrate that the Indian government's recognition and implementation of the requirements of international agreements for the protection of the interests of refugees is poorly recognised and implemented.

Keywords: refugee, laws, protection, UNHCR

Introduction

Since gaining its independence, India has accommodated in millions of refugees. The Indian government acknowledges Tibetans, Chakmas, and Tamils from Sri Lanka as refugees. As a result, the UNHCR also provides care for other refugees living in New Delhi, such as Afghan, Iranian, Bhutanese, and refugees from Somalia and Sudan. Under its mission, the UNHCR assists these people and offers international protection and aid. "Those who have fled their home countries for fear of persecution due to their race, religion, nationality, membership in an ethnic or social group, or political beliefs are defined as 'refugees' by the 1951 Refugee Convention". Those who have fled their home countries because they lack a nationality and are no longer in the country where they once lived are defined as "stateless persons"^[1].

People who are unable to work because of illness, disability, pregnancy, an accident on the job, or old age have the right to receive social security benefits under the same circumstances. "All other economic, social, and cultural rights are intertwined and reliant on the right to social security. This includes, but is not limited to, the right to enough food and shelter, the right to work, and the right to family safety"^[2].

In point of fact, everyone should be eligible for social security benefits without regard to their health condition, race, ethnicity, age, gender, handicap, language, sexual orientation, religion, income, national origin or social standing. This should be the case regardless of any of these factors. It is only India's basic responsibility to see to it that refugees are able to live until they are able to go back home. Beyond that, India has made efforts to provide education, social security, and medical security only with regard to specific groups of refugees, as well as grants to refugees who are currently living on its territory. But what if the conditions that refugees face when they return home are not suitable for their readjustment? When a person's life is not in danger, that person is said to be secure. For a refugee, the concept of security encompasses not only their physical safety but also their mental wellbeing, financial stability, and social relationships. Due of its position as a leader in south Asia and its compassion, which serves as an example for other governments in the area, India plays an essential part in the treatment of refugees. This is because of both of these factors. India provides sanctuary to one of the world's biggest refugee populations; nonetheless, "the country's laws are discriminatory and unequal, even against members of the same groups, such as Tibetans". As a result, there is an undeniable need for India to adopt fundamental norms for the treatment of refugees that are in line with those established by the international community. In addition to enacting a specific domestic legislation, India mandates the acceptance of foreign aid and provides the UN High Commissioner for Refugees and other non-governmental organisations with unfettered access to oversee refugee organisations. As a result, India has to revise its policies on refugees since the country lacks an appropriate legal basis and the future for refugees may be precarious and difficult. As a result, the researcher is going to take into consideration the duties that India has under international and national

structures in order to achieve the goal of providing appropriate protection to refugees already residing inside India's borders.

Indian social security rights for refugees

Refugees in India are no strangers to the issues associated with unorganised labour, such as poverty, a lack of access to good drinking water and appropriate food, big families, and a high incidence of infant mortality. Being uninsured and undernourished in the case of foreign nationals, India has retained the authority to implement its own local legislation. Refugees have been dealt with diplomatically and administratively. Only a tiny percentage of Indians are covered by the country's centrally planned social security system. "India's social security plans generally encompass the following categories of social insurance: pensions, health insurance, maternity benefits, gratuity, and disability". Unorganized sector workers and their employers do not have access to these programmes, however those who work in the organised sector are eligible for coverage under the aforementioned programmes.

As a result, the "United Nations High Commissioner for Refugees (UNHCR)" reviewed alternative timeframes to handle problems including refugee visas and work permits. Foreign nationals, especially refugees, are likewise protected by the Indian constitution insofar as the protection of life and liberty is concerned. To sum it up, refugees have a stake in Articles 14, 21, 25(1), 27, and 28(3). Nobody, Indian citizen or refugee, may be denied their right to life and liberty under the Indian constitution. The state government is willing to put up with the threat of one group of people to another. Work and non-discrimination rights are guaranteed to refugees, as well as a wide range of other rights, such as the ability to travel to court hearings and access to education and employment, as well as the right to life, enterprises like agriculture and art, and the freedom to choose where they live ^[3]. When it comes to granting work permits, certain nations' refugees obtain them, while those from other countries are denied them. To be clear, the Foreigners Act of 1946 deals with foreign nationals temporarily or permanently staying in India, however the word "Refugee" is not defined in this statute. "Foreigner" is defined as "a person who is not an Indian citizen" under this law. "Although people have a right to demand essentials such as universal education, housing, a social security system and the right to seek work, the legal underpinning for these rights is citizenship. According to the National Human Rights Commission (NHRC), "the current law consulted by authorities with regard to refugees and asylum" seekers does not include the term "refugee," and this lacuna places refugees along with immigrants in a vulnerable position" because the term "refugee" does not appear in the Foreigner Act 1946, which is the current "law consulted by authorities with regard to refugees and asylum seekers". Refugee status in India is thus an insufficient legal ground for a person to get access to the advantages of a country" ^[4].

As a point of reference, it should be recalled that refugees in India do not have the right to work, but they may do so with the consent of the Indian government. Because of the enormous number of jobless people in India, they are often not permitted to work. A stable and self-determined existence is possible only if one has a source of income. The only way for a person to attain social mobility is if they have a steady source of income. "But there is always an exception, like the Tibetan refugees in India, who have the right to work and are self-sufficient via their own businesses". Tibetan refugees have been barred from the Indian government's social security programme, which provides health insurance to the impoverished Indians who fall below the poverty level. Because of this, "in collaboration with the Central Tibetan Administration and the Micro Insurance Academy, Malteser International has launched a community-based health insurance scheme tailored specifically to the needs of Tibetans living in India". There are now at least 23,000 Tibetans who are in a position to safeguard themselves against the unanticipated costs associated with their medical treatment. The concept for "health insurance is based on the Indian system", which is still in its early stages and has served as its inspiration ^[5].

Resettlement in agriculture, horticulture, and animal husbandry, as well as the construction of institutes for educating refugees in the manufacture and sale of Tibetan's handicrafts, were all advocated by the Indian government as ways to improve the welfare of Tibetan refugees. Their rehabilitation includes the provision of opportunities for wage-paying work in agriculture, agro-processing and handicrafts. Handicrafts and winter clothing are only some of the items they offer in their tiny businesses ^[6]. In addition, the Indian government provided Tibetan refugees who entered the country in the 1970s with an "Indian Residential Certificate for the purpose of identification, permission to work, domestic travel rights, an Indian identity certificate that allowed them to travel outside of India, and medical treatment" ^[7]. As a result, during the course of the last many decades", the Tibetan population has coexisted tranquilly with the surrounding people ^[8].

However, in contrast to Tibetan refugees, Sri Lankan refugees in India face significant challenges as a result of policies implemented by the Indian government. These policies prevent Sri Lankan refugees from obtaining secure "employment and contributing to the general welfare of the society, which guarantees that they will be forced to work as an exploited, informal, and unorganised labour force". Because of this, a significant number of female immigrants end up becoming the targets of sexual harassment as well as salary discrimination ^[9]. As on the 26th of January, 2014, the Comprehensive Health Insurance programmes of the Chief Minister were made available to Sri Lankan Tamil refugees even if they were residing outside the camps that were managed by the state government. "There are now 34,826 people who have registered themselves as refugees with the local police stations, and this would be beneficial to them" ^[10]. A different set of immigrants, the Chakma and Afghani, were forced to find employment in order to survive; they mainly work as seasonal agricultural labourers for a lesser wage than the locals. And this has often sparked conflict with the local population. Other

refugees make a living by selling the food and other necessities that are cultivated within the camps where they are being housed. Furthermore, Myanmar immigrants in India encounter problems due to their poverty and lack of education compared to other refugee groups. "According to lawmaker Shashi Tharoor in his book "India Shastra," refugees from countries like Myanmar, Afghanistan, Iran and Somalia have had to suffer major disadvantages because of technical and legal obstacles"^[11].

"The Indian government made an attempt to isolate the new issue rather than allowing it to merge with the previously existing complex of difficulties, thereby preserving the equilibrium of the labour market, as outlined in the preceding scenarios". Because their labour can be obtained at a cheaper rate than the market price, refugees from east Pakistan and other refugees in India commonly participate in economic activities. This does not disrupt the equilibrium of the labour market^[12]. In the case study known as "NHCR vs. State of Arunachal Pradesh," heard by the Supreme Court of India, a significant number of Chakmas originally from East Pakistan were forcibly relocated and eventually settled in Arunachal Pradesh after consulting with the former NEFA Administration. They were also given some land after consulting with the indigenous people in the area. In this particular instance, Chakma refugees have filed a complaint alleging that they are being subjected to oppressive measures with the intention of being expelled from the state of Arunachal Pradesh by means of physical coercion. The Chakma people filed a complaint of being persecuted with the NHCR in the year 1994. "The verdict states that the state of Arunachal Pradesh is responsible for ensuring the life and personal liberty of each and every Chakma, and the Union of India is responsible for providing such extra force to defend the Chakma people's life and personal liberty". As a result, there must be a specialised refugee labour programme that caters to both employers and refugee labourers in order to reduce the risk of conflict with host labourers.

India's International Responsibility

Because refugees move from one state to another, the issues that they generate have an international dimension because there are often two or more governments involved. There is no oversight from the United Nations on India's policy towards refugees. In the context of international law, the status of refugee is established by a convoluted web of rules that span national, regional, and international levels. The United Nations Convention on the Status of Refugees from 1951, as well as the Protocols Relating to the Status of Refugees from 1967, are both examples of legal documents that are recognised on the international level. The 1951 Refugee Convention requires contracting states to offer work, including self-employment, and to carry out professions in accordance with the most advantageous treatment afforded to foreign persons in similar situations. Furthermore, under Chapter IV of the same treaty, assistance systems have been established to provide refugees with rights regarding their travels, work, housing, public education, and so on. These rights include the capacity to vote in elections, access to public education, and other things. In this regard, Sub Article 1 of Article 24 of the 1951 Refugee Convention states that "the contracting states shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters such as employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibility, and any other contingency which acquaints them with."

That stated, "India is neither a signatory to this convention and its accompanying protocols, nor does it even have a separate refugee statute. However, India has taken several efforts and initiatives to meet its international commitments with regard to refugees. The International Covenants on Civil and Political Rights (1977) and the International Covenants on Economic, Social, and Cultural Rights (1979) are two examples of India's adherence to international human rights treaties". According to Article 9 of the recent convention, the parties to the agreement accept "the right of everyone to social security and insurance." The Indian government has accepted a number of international treaties that recognise refugees' social security rights, such as the 1951 Refugee Convention;

1. According to "Article 22 of the Universal Declaration of Human Rights", "Everyone as a member of society, has the right to social security and is entitled to realisation through national effort and international co-operation and in accordance with the organisation and resources of each state of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality." "Social security is an essential part of every person's human rights, and it must be achieved via national effort and international cooperation in order to ensure the dignity and freedom of all peoples."
2. For refugees and stateless individuals, "India is also a signatory to the International Labour Organization's Convention No. 18, which provides social security for all citizens of the signatory state". The goal of this agreement was to ensure that the same rules applied to foreign employees and refugees as they did to their own citizens. Considering that not all the countries that would join the refugee convention were ILO members as well^[13].

However, because "the obligations under Article 24(1)(a) of the Refugee Convention are immediately binding and apply to all state parties in developed countries, poor states often avoid the economic covenant's obligations by relying on its duty to gradually implement it and/or on its authorization for poor states to exclude non-citizens from the scope of economic rights. SSI, a programme operated by the Social Security Administration, provides social security for refugees in the United States, a signatory to the 1951 Refugee Convention". Those refugees who have lived in the United States for at least a year and have paid Social Security taxes are also eligible for disability payments. The social security payments received by refugees in Australia are identical to those received by Australian residents under the same circumstances.

Also in the constitution, India has Article 51, which encourages respect for treaty obligations and international law among organised people, but the article begins: "the state shall endeavour to; therefore, this sentence does not denote any obligations of the Indian state regarding international law¹⁶," while the parliament has a responsibility under treaty obligations for the enactment of municipal law for incorporation. The Indian government has attempted to meet its international obligations by providing humanitarian assistance and various forms "of protection to refugees who have entered its territory, but the sovereign governments do not recognise or implement the provisions of international conventions" in a manner that ensures refugees' safety and well-being is adequately protected.

Conclusion

As the preceding paragraphs have shown, India's approach to the refugee crisis is primarily one of humanitarian concern. India has failed to adopt a separate legislation to govern refugees' or give a constitutional solution to the tremendous refugee issues that have troubled the nation. As a result, India must update its refugee legislation to be in line with international standards and to better serve both the "humanitarian needs of refugees and the national security objectives of the country". As a result of the UNHCR's limited role as an international watchdog, Indian policymakers have a compelling reason to create a framework for a uniform national law on refugees that serves the interests of the government of India, the "United Nations High Commissioner for Refugees", and the refugee communities themselves. When the Indian government or any other government treats refugees unfairly and discriminatorily, then the consistent national legislation helps to alleviate that. As a result, India's refugee policy must be reformed, and the Foreigners Act of 1946 has to be amended or supplemented to better differentiate between refugees and labour migrants. Clearly, India will be able to better safeguard this group of persons inside its borders by this modification. Unwanted migrant labourers who get refugee status are a huge issue for India, and determining the term of the refugee may be the solution to that problem. As an example, for other kinds of refugees in India, India might create a legislation that takes into account the plight of Tibetan refugees and the rights they have as a means of providing better protection for refugees and reducing poverty among these particularly vulnerable populations.

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