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I, Dr. Pradeep Kumar, hereby declare that the particulars given above are true to the best of my knowledge and belief.

Sd/-

Date: January, 31, 2020 **Dr. Pradeep Kumar**

COVID 19 Crisis and Jurisprudence

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"Those who can make you believe absurdities can make you commit atrocities"

.....(Voltaire French thinker 1765)

Abstract

This working paper aims at hypothesizing as to whether the present covid-19 crisis originated on 31st December 2019 from the Wuhan laboratory Institute of Virology, a province of the People's Republic of China, shall be the turning point of global socio economical jurisprudence causing deaths of millions citizens worldwide along with its disastrous impact on human, social and economic levels and now is spinning on the point of needle of International Court of Justice(ICJ) under Article- 75 of the Constitution of world health organization (WHO) as many more members countries of who have lodged complaints and lawsuits against the Govt. of China before the said ICJ

Keywords: *Covid-19, Socioeconomics, WHO - Constitution, Article – 75 Wuhan province of china, Virology*

Introduction

The Chinese Health authorities by 31 December 2019 informed the World Health Organization (WHO) about the several cases of respiratory failures, reasons not known and thereafter on 20 January 2020 confirmed the transmission of Covid 19 corona virus beyond control. The WHO declared it a pandemic on 11th March 2020, epi-centred in the Wuhan Laboratory institute of Virology. The Govt of India imposed Lockdown and social distancing w.e.f 21st March 2020 in order to arrest its spread and the periodicity thereof being continued as yet. The whole world seems to be stagnated owing to mounting death-dance of population worldwide originated in the Wuhan province of the people's Republic of China of which the number figures more than 11 Lacs 70 thousands till date (eleven Lacs seventy thousands). No proper vaccines are yet found administrable under clinical trials.

Many international countries have filed lawsuits and complaints against the China Republic before the International Court of Justice at Hague over Covid -19 and the Novel corona virus. SARS-COV-2 on the conduct of China violating Articles 21, 24 and 64 the WHO – constitution. But the Jurisdiction under Article 75 of the WHO-constitution is being vehemently argued by the Chinese defence lawyers with the standpoint of Lack of Jurisprudence and Lack of Enforcement power. Conclusively, by the conjoint study of WHO-

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Constitutional Articles 21, 22, 75, 64, 63, 18 etc there appears to be a preliminary impediment and Conflict of Articles in between in general and in particular whether ICJ could enforce its order and thus the socio-Economic –Jurisprudence across the world constitution shall be subject to a greater interpretative conclusion and curvatures.

In our Indianism concept, the Goddess of Learning, Maa Saraswati, is the 'Pure –Science' while her glamour-sister, the Goddess of Wealth, Maa Laxmi is the 'Applied –Science, Likewise the Articles of any constitution (WHO or its constituent-Basic Document 49th Edition up to 31 May 2019 Annexure I. Members of WHO individual constitutions, Articles are pure science and Rules applied Science within the encompassment of the New Jurisprudence ,the pristine glamour of Law ,still needs a reversal radical study in view of arousal of cometic. Covid 19 crises as to whether it was plan demic or Pandemic or both.

Preface

After going through the introductory through the introductory part of Covid -19 Potential legal actions against China Vide William Julie .Attorney Law, Paris Bar Wj@ Wy advocate.com and Sophie Menegon DM@ wjavocate.com and Peter Tzeno, a recipient of the diploma of the Hague and WHO –constitution, chapter (I)(to XIX) Article 1 to Article 79 read with World Health Assembly WHA Resolutions 51.23 (15 September 2005) and WHO –Basic Documents 49th Edition 2020 up to 31 May 2019 Rules 224 paged and Annexure altogether up to paged 238 and time Line of the Covid -19 pandemic Chronology detailed in the Languages downloaded (Vide https:// en.m.wikipedia.org /wiki / Timeline of Covid -19 pandemic in January 2020 72/72, IT appears that Now the higher time has come to introspect the fate of International Legal actions taking China to the International court of Justice over Covid -19 already initiated at the instance of various international Member states of WHO under Annexure1 of the said Rules of Procedure of World Health Assembly ,WHO –BD -49th Edition.

The Jurisdiction of ICJ /Article 75 of WHO constitution under chapter XVIII – contemplates 'any question on dispute concerning the interpretation or application of this Constitution which is not settled by negotiation or by the health assembly shall be referred to the International Court of Justice in Conformity with statue of the Court unless the parties concerned agree on another mode of settlement.

Now the question arises, if the Respondent –China does not agree/to be in ad-idem, then the Verb and Vibrancies of Functions Article No2 under chapter 11 of the WHO (i.e Jurisdiction of settlement to ICJ) constitution can't achieve its objective as envisaged [(a) to (v)= at Article-2 (i a ,22 sorts of functions)

As perArticle-76 of WHO constitution ICJ can provide an advisory opinion on any Legal question arising within the competence of organization/WHO if the Director –General on behalf of organization appears before the ICJ as prescribed in Art 77. As such an advisory opinion does not equate to any directive order if any dispute be referred to court under Art 70. Out of altogether XIX-Chapter in WHO Constitution, despite Chapter VI (The executive

Board, Art24 to 37 +committees chapter VIII Art 38 to 42) there exists no any Executive Enforcement of 'ICJ' advisory opinion on any Legal issue or dispute redressal mechanism by and between the member of the WHO at ANNEXES –I at page 227 constitutional Basic Documents 49 the Edn. The Chapter IV Art 9, supplement 2006 categories the Organs (a) Health Assembly (b) Executive Board (c) The Secretariat Art 9 to 37 but the most pertinent functions under Ary.18 of the Health Assembly nowhere empowers to any executive power instead shall have the Authority to make recommendations as per Art.23/CH. V to members with respect to any matter within the competence of WHO

The overall survey of functions of Health Assembly Art 18 /ch V only to recommendations. Even the legal capacity privileges and immunities under Chap. XV/Art 66 in the territory of each member though to supervised by organization, but only subject to any advisory opinion by the ICJ with regard to any competence of the organization Art 74 to 77 of Chapter XVIII. Thus WHO does not acquire any absolute autonomy from the constitution Even the amendments adopted up to 31 May 2019 /contents page 1 to 223 nowhere provides to the Executive Board of WHO in its Procedural Rules begins at page 207 Board subject to its constitutional mandate /though the Director-General shall ex-officio to the Board on the technical, administrative and financial implications vide page 213 of 49th EDN Basic documents but lost at ART 75 if dispute arises.

Etymologically the New Jurisprudence ,the grammar of Modern Law ,takes and includes within its sweep the political social economic and cultural behaviouristic study of global populations and henceforth the Covid 19 crisis falls .Within the purview of New Jurisprudence ,the philosophy of Law .The China has violated the WHO-IHR at 23May 2005 (Health Regulations) as to public Health Emergency of international arena as envisaged in Article 64 of WHO Constitution by not promptly providing exactly and timely official statistical and epidemiology reports to the organization WHO as an obligation under Article 63to65 chapter XIV,WHO- Constitution. As such, the ICJ &ICC &PCA International Court of Justice, International Criminal court, Permanent Court of Arbitration are competent to apply their Jurisdiction power to such unprecedented Covid -19 crisis.

Findings of Covid 19 crisis and Jurisprudence

1) To assess and ascertain the tectonics of Covid 19 crises transformation impacts on socio economic Jurisprudence.
   It needs the social research to man to man interactions while dealing with certain trade matter. But the problematic opaque is to strictly follow the physical distancing and social distancing.
2) To study the impact of Judiciary-enforcement-power
   Practically if any judicial finding is not enforced then it becomes at length an absolute inertia of rest and no third force can be applied there too.
3) To study the verb and vibrancy of the legal proceedings already initiated against China and its Remedial Measures since the human Race on the verge of perditions. It is observed that any legal proceedings without any enforcement of its order are but a futile exercise.

4) To study the Remedial strength of Judiciary on sociological fronts of the human population if any since highly affected by Covid -19 crisis.
5) To study the changeability in Economic fronts, if any and to study of changes if any in General Jurisprudence
6) To study the enforcement –Executive power of International Court of Justice
7) To study enforcement-power of International criminal court
8) To study the power of PCA (Permanent court of Arbitration)
9) Whether the Covid 19 crisis is a plan-demic or pandemic or both at the instance of super-power-conflicts?
10) Whether the world populations are in the Laboratory Experimentation for the 3rd world war between the virological weapons &Atomic weapons enriched superpower and supremacy Establishment of Super power by 2030+?
11) Whether the 122 members in WHO Annexure I are silent Litigants against China before International court of Justice without any Executable Judicial Judgement against such Sino visible crime against global Humanity
12) Whether the Covid 19 crisis comes under the purview of Force –Majure clause beyond the human control?
13) Whether the virtual world shall engulf the physical world? (Covid -19 Social Distancing consequences)

Conclusion

In conclusion, it is inferentially surmised that the mounting disastrous decline of global homogeneous socioeconomics owing to Sino created covid-19 crisis shall be definitely adjudicated by the International Court of Justice by a historical executable poetic judgment in favour of the suffering WHO-members countries like USA, Australia, Italy, France many more law suitors /complainants under WHO-Constitution in order to enshrine the multiculturalism ethos of increasing global contracts and interactions(exhortation to love thy neighbour) in terms of consolidating global composite cultures so that the excess Sino cupidity of becoming the only singular superpower of the world by 2030.

It is the firm belief of Indian Philosophy that the beautiful mind concept of co-existence among global nations including China shall be again at status-quo-ante and the earth planet shall get rid of Covid-19 panic and the socioeconomically equilibrium shall be restored in the least possible time. Above all the triumph of beautiful human mind.

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Drinking Water and Legal Respect of Water Resource in India: Rights and Obligation

Dr. Chandra Shekhar Rai[1]

Introduction

Water is precious gift of nature, fundamental to life, livelihood, food security and sustainable development in India. India has more than 18 per cent population, but has only 4percent of world renewable water resources and 2.4 per cent of world lands area. The right to water is well enshrined in law despite the absence a specific mention in the Constitution. The real challenge does not relate to the confirmation of its existence but rather to its actual content and effective realisation. While in several cases courts have clearly confirmed the existence of the right they have not provided much elaboration concerning its content.

This is appropriate since it is not the courts responsibility. In such circumstances where the legislature has failed to take the challenge, there is a big gap exist in the legal framework. The Courts have been at the forefront of an explicit discussion of the fundamental right to water. There is no uniform law regarding right to water though the various states have adopted legislation concerning urban areas. There is no framework legislation addressing basic water either at the union or state level.[2] There is thus no state that has a basic set of legal principles governing water supply. Similarly, while quality standards have been defined in different contexts, there is no legislation that makes these standards binding on anyone supplying water.

The Right to Water in International Human Rights Law

While water has not been explicitly recognized as a self-standing human right in international treaties, international human rights law entails specific obligations related to access to safe drinking water.

Recognition of the serious problem of water scarcity and attempts to address them earnest in 1970s from the international community. In 1972 the United Nations Conference Environment held in Stockholm identified water as one of the natural resources that needed guarded.[3] Five years later in 1977, the United Nations Water Conference held at Mar Argentina issued a Mar del Plata Action Plan which was designed to address the problem resources. The Action Plan

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[2] Basic water is used instead of drinking water since the latter only covers a limited part of the content of the right to water. On the definition of basic water, see K.J. Joy & Suhas Paranjape, 'Water Use: Legal and Institutional Framework' in RamaswamyIyer (ed.), Water and the Laws in India 213, 221 (New Delhi: Sage, 2009).

[3]Brundland, GroHarlen and Mello, Sergio Vieira de (2003) 'Right to Water, World Health Organization Publication, Geneva

consists of a number of recommendations and resolutions, pertaining the crucial issues in water sector. The recommendations include assessment of water resources, water use and efficiency, policy, planning and management, etc. The resolutions addressed such as community water supply, agricultural water use, research and development, river commissions, international co-operation and water policies in the occupied territories. An agreement was to proclaim the period 1981 to 1990 as the 'International Drinking Water Supply and Sanitation Decades' during which governments
would assume a commitment in the drinking water supply and sectors.[4]

The debate on right to water was begun with this Mar del Plata conference. Resolution II on Community Water Supply declared the content of right to water for the first time, i.e. "all people whatever their stage of development and their social and economic conditions, have the right to have access to water in quantities and of a quality equal to their basic needs". As such Mar del Plata conference was a milestone in the debate on right to water, provided the basis for further discussion even continuing today. But a shift in the concept of water from a common basic need to a commodity can be seen in the following conferences. One of such important conference was the International Conference on Water and Environment held in Dublin in 1992. Principle 4 of the Dublin Statement proclaims that – "Water has an economic value in all its competing uses and should be recognized as an economic good". Yet the statement clarified that within this principle "it is vital to recognize first the basic right of all human beings to have access to clean water and sanitation at an affordable price". It confirmed the right to water at an affordable price and not free of charge. These conferences recognized the past failures in realizing the economic value of water, which in their opinion ultimately lead to the wasteful practices.

In 1996 the world community witnessed the establishment of World Water Council (WWC) and Global Water Partnership (GWP) having strong representation of multinational water companies and aid agencies to act as a think tank on water resource matters. In the following years three water forums were held in different parts of the world under the auspices of these bodies. Marrakech Declaration issued in the First World Water Forum held in Marrakech, Morocco, not go as far as Dublin Conference with regard to Right to Water. The Second World Water held in Hague, Netherlands in 2000, recognized that the 'access to safe and sufficient water sanitation are basic human needs'. The Kyoto World Water Forum, 2003 merely stated that - enhance poor people's access to safe drinking water and sanitation.

Regional declarations have also recognized the right to water. The Council of Europe has asserted that everyone has the right to a sufficient quantity of water for his or her basic needs.[5] In 2007, Asia-Pacific leaders agreed to recognize people's right to safe drinking water and

[4]Bruns, Bryan Randolph and Meinzen Dick, Ruth S. Negotiating Water Rights, Vistaar Publications, New Delhi, 2003.
[5]Recommendation Rec (2001)14 of the Committee of Ministers to member States on the European Charter on Water Resources.

basic sanitation as a basic human right and fundamental aspect of human security.[6] In the Abuja Declaration, adopted at the first Africa-South, America Summit in 2006, Heads of State and Government declared that they would promote the right of their citizens to have access to clean and safe water and sanitation within their respective jurisdictions. While these declarations are not legally binding, they do reflect a consensus and a political statement of intent on the importance of recognizing and realizing the right to water.

In 2006, the Sub-Commission on the Promotion and Protection of Human Rights adopted guidelines for the realization of the right to drinking water. These guidelines use the definition of the right to water provided by the Committee that the right of everyone to have access to adequate and safe drinking water that is conducive to the protection of public health and the environment.[7]In 2007, Office of the United Nations High Commissioner for Human Rights (OHCHR) conducted a study, at the request of the Human Rights Council, on the scope and content of human rights obligations related to access to safe drinking water (A/HRC/6/3). In it, the High Commissioner for Human Rights concluded that the time had come to recognize access to safe drinking water as a human right.

A specific obligation in relation to access to safe drinking water has increasingly been recognized in core human rights treaties, mainly as part of the right to an adequate standard of living and the right to health. Obligations related to access to safe drinking water and sanitation are also implicit in a number of other international human rights treaties and are derived from obligations pertaining to the promotion and protection of other human rights, including the rights to life, adequate housing, education, food, health, work and cultural life. In interpreting the right to life under the International Covenant on Civil and Political Rights, the Human Rights Committee, in its general Comment No. 6 (1982), stressed that besides protecting against the active taking of life, the right also placed a duty on States to ensure access to the means of survival and required States to adopt positive measures, notably to reduce infant mortality, increase life expectancy and eliminate malnutrition and epidemics. In its general Comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights underlined that the drafting history of the International Covenant on Economic, Social and Cultural Rights and the wording of its Article 12 (2) acknowledged that the right to health extended to the underlying determinants of health, including access to safe drinking water and sanitation.

At the regional level, both the African Charter on the Rights and Welfare of the Child (1990) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) contain explicit human rights obligations related to access to safe drinking water and sanitation. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988) underlines that everyone shall have the right to live in a healthy environment and to have access to basic

[6] Message from Beppu, 1st Asia-Pacific Water Summit, Beppu, Japan, 3-4 December 2007.
[7] E/CN.4/Sub.2/2005/25. The guidelines are intended to assist Government policymakers, international agencies and members of civil society to implement the right to drinking water and sanitation.

public services (Art. 11.1). The Arab Charter on Human Rights (2004) similarly recognizes the right of everyone to the enjoyment of the highest attainable standard of health, for which States should ensure the provision of basic nutrition and safe drinking water for all and proper sanitation systems (Art. 39).

Although the Revised European Social Charter (1996), the American Convention on Human Rights (1969), and the African Charter on Human and Peoples' Rights (1981) do not explicitly refer to human rights obligations to provide access to safe drinking water and sanitation, related jurisprudence has derived protection of such access from the enjoyment of other human rights, such as the rights to adequate housing, health or life.

Several international guidelines and principles encompass provisions related to access to safe drinking water and sanitation. While not legally binding, these provide useful guidance regarding specific obligations to provide such access, notably for particular groups such as prisoners, workers, refugees and internally displaced persons (IDPs), older persons, as well as indigenous peoples.[8]

International humanitarian and environmental law also specifically protects access to safe drinking water and sanitation. The Geneva Conventions (1949) and their Additional Protocols (1977) outline the fundamental importance of access to safe drinking water for health and survival in international and non-international armed conflicts. The Protocol on Water and Health to the United Nations Economic Commission for Europe's 1992 Convention on the Protection and use of Trans-boundary Watercourses and International Lakes provides that States parties must take appropriate measures to provide access to drinking water and to protect water resources used as sources of drinking water from pollution. The African Convention on the Conservation of Nature and Natural Resources (2003) also provides that its contracting States shall endeavour to guarantee for their populations a sufficient and continuous supply of suitable water.

Right to Water in Indian Constitution

Under the Indian Constitution, the legislative competence of water and water based resources are divided between the Union and States. The Constitution makes water a state subject in express terms while aspects like the Inter-state water disputes are dealt by the Union. All these arrangements may be seen on the three lists (Union, State and Concurrent list) of the VII Schedule of the Constitution. The general policies and the principles for the management of natural resources including water resources are incorporated in Part III and Part IV. It imposes duty on the state to equitably distribute the resource ensuring ecological improvement and preservation.[9] To this effect the Constitution imposes fundamental duties on the citizens for

[8]Standard Minimum Rules for the Treatment of Prisoners; United Nations Rules for the Protection of Juveniles Deprived of their Liberty; United Nations Principles for Older Persons; Guiding Principles on Internal Displacement; ILO Recommendation No. 115 concerning Workers' Housing; Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national security of the Food and Agriculture Organization of the United Nations; United Nations Declaration on the Rights of Indigenous Peoples.

[9] Article 39(b) and (c) of the Indian Constitution and Article 48(A) of the Constitution of India.

the protection and improvement of natural resources. Since water is a basic human need, fundamental right to life gets greater significance for the optimum availability of water for all. The Directive Principles are fundamental in the governance of the country and it is the duty of the state to apply the principles otherwise it could be constitutionally invalid.[10] For adjudication of disputes between the states on inter-state rivers or river valleys the Constitution empowers the Parliament to make laws which may provide the jurisdiction of Supreme Court or High Court.[11]In such a context Supreme Court ruled that clean drinking water is a fundamental rights of all citizens, in Surana Oils /Derivatives (India) Limited case. The Apex Court said that article 21of the Constitution guarantee right to life and it also includes the 'Right to Clean Drinking Water' the court also quoted the Resolution 1977 UN Water Conference that pledges access to clean drinking water for everybody, to which India is signatory.[12]

Judicial approach

Courts have repeatedly discussed water in relation to fundamental rights and confirmed the existence of a fundamental right to water. The Court has, for instance, on various occasions read the fundamental water into the right to life under Article 21of the Constitution of India.[13] High Courts have also taken that confirm the existence of a fundamental right to water.[14] Courts linked the right to water to Article 47 of the Constitution. The High Court of Madhya Pradesh has thus ruled that the state has the responsibility to the health of public providing unpolluted drinking water.[15]In addition to, courts have also outlined some of the general parameters that must guide the realisation of the right. The obligation to provide has, for instance, been recognised as a primary duty of the government violation amounts to a violation of article 21 of the Constitution.[16]The case law can generally be assessed as making a contribution to the recognition of the right and the development of its content. Yet, there have been several controversial decisions with regard to the right to water. In particular, judges have sometimes failed to uphold an understanding of fundamental rights based on the fact that the entitlement is exactly the same for every single individual in the country.[17] This confirms that even if they could, it would be inappropriate to expect courts to provide the totality of the framework for ensuring the realisation of the right. The limitations of the current framework are highlighted in a 2010 order of the Supreme Court. In Voice of India v. Union of India,[18] the petitioner prayed that water should be provided to every citizen free of cost. The court lamented the fact that even after 60 years a citizen of this country is not

[10] Article 37of the Constitution of India.
[11] Article 262of the Indian Constitution.
[12] Singh, Raajen , Water for All, Its Privatization is only solution? Combat Law, June-July, 2004
[13]*Subhash Kumar v. State of Bihar*, AIR 1991 SC 420.
[14] *FK Hussain v. Union of India*, AIR 1990 Ker.
[15] *Hamid Khan v. State of Madhya Pradesh* , AIR 1997 MP 191. Para 6.
[16]*Vishala Kochi Kudivella Samrakshana Samithi v. State of Kerala*, 2006 (1) KLT 919 para 3. Similarly, in *Lucknow Grih Swami Pańshad v. State of Uttar Pradesh*, 2000(3) AWC 2139 para court ruled that 'it is the bounden duty of the State to assure the supply of sufficient amount of qualitative drinking water to its people
[17]SardarSarovar case mentioned here as well as in *Wazirpur Bartan Nirmata Sangh v. Union of India,* High Court of Delhi (29 September 2006).
[18]*Voice of India v. Union of India*, Writ Petition (Civil) No. 263 of 2010, Order 2010, para 3.

potable water. However, it found that it was unable to grant relief on an all-India basis because water supply is essentially the function of municipal corporations and other local bodies. This constitutes a stark reminder that courts cannot substitute for the executive since they lack the capacity to address day-to-day problems at an individual level. Further, it also highlights the limitations faced by judges that have no legal framework against which they could judge the implementation of the right in a given locality or even in a specific state.

Besides legislative frameworks at the state level, the union has come up with different instruments concerning drinking water. Union government does not have a specific mandate to legislate, a politically sensitive area that has attracted attention for many years. The result has been that the union government has sought to use to the fact that it could introduce programmes and schemes backed incentives to induce states to comply with proposed principles.

For several decades, the basic framework governing rural water supply was the Accelerated Rural Water Supply Programme (ARWSP).[19] Guidelines made some crucial inputs to water supply, such as introducing cut-off level of 40 litres per capita per day (lpcd) as representing minimum level of supply deemed sufficient for each individual.[20] The ARWSP Guidelines have been replaced since 2009 by the Rural Drinking Water Programme (NRDWP). The NRDWP numbers of significant changes to the ARWSP framework. It is in the context of the right to water for specifically ignoring the right to water. Indeed, while the 2009 version of the NRDWP specified water is a 'socio-economic good and demand for basic drinking is a fundamental right',[21] both the reference to a ‘fundamental right’ 'human right' have been expunged from the later version of the NRDWP.[22]

Conclusion

The existence of a right to water is now mostly beyond debate. Yet, it remains lacking from various perspectives. Firstly, as indicated above courts have failed to recognise the right in a consistent manner in the case laws. Secondly, there is no legislation setting out the principles guiding the implementation of the right to water. Thirdly, the use of administrative directions by the union government is procedurally inappropriate to realise the right since they can be modified at any time at the discretion of the executive.

The present situation calls for a much more specific engagement with the substance of the right to water. This requires revisiting some of the tenets of the right to ensure that its basic content is specified and in accordance with the surrounding legal framework. The legislation will also need to address the question of the responsibility of the various factors involved in

[19] Government of India, Accelerated Rural Water Supply Programme Guidelines (ARWSP) Guidelines.
[20] Ss. 2(2) and2(3) of Accelerated Rural Water Supply Programme Guidelines.
[21] S. 12(1), Department of Drinking Water Supply, National Rural Drinking Water Movement Towards Ensuring People's Drinking Water Security in Rural India - Implementation 2009-2012 (2009).
[22] Department of Drinking Water Supply, National Rural Drinking Water Movement Towards Ensuring People's Drinking Water Security in Rural India - Implementation (2010).

water supply. This should not be particularly controversial because the Constitution provides clear framework for devolution of water supply to local bodies of democratic governance.

Thus, panchayats and municipalities are in principle in control of water supply at the local level. Yet, the legislation will have to address some of the thorniest issues that have developed over the past two decades. Firstly, it will need to recall the central role of panchayats and municipalities as well as to firmly assert that all other bodies, such as village water and sanitation committees, water user associations or resident welfare associations, are subordinated to democratically elected bodies. Secondly, even though the international policy framework has been calling on the government to facilitate rather than provide, the legislation must make it clear that the government has no right or legitimacy to withdraw from the responsibilities for which it has been elected.

Numbers of steps are necessary to ensure the full realisation of the right to water for everyone throughout the country. One of the important measures that should be taken is the adoption of legislation bringing together the lineaments of the right into a framework that becomes what everyone experiences on a daily basis.

Refugee Protection in India and its Constitutional Significance

Mr. Abhishek Dubey[1]

Abstract

Refugee protection is a matter of international arena and it requires sensitization from all states as it involves the risk of innumerable lives. The article reveals its introductory account with its background and comparative study. Further, an attempt has been made to rationalize the constitutional aspect of refugee protection in Indian scenario and efforts from the legislation have also been taken to the study. There are several issues in hosting a group of refugees in any state and so being no exception India has also some issues. The situation needs to be dealt with suitable policies and international coordination framed for the purpose, generally in advance. Since, governments have large business to deal with and that too pertains to their domestic matters which are essential to be addressed and so because the external issues are not attended as sufficient as it is required to be. Its need and scope have been discussed with some practical issues of present context and accordingly set of suggestions has been placed before it is summed up.

Keywords: Refugee, Refugee protection, Constitutional Significance, domestic matters

Introduction

Many discussions, texts, research articles, journals and other sources have presented various details, views and analysis pertaining to the protection of refugees worldwide and also in specific Indian perspective till now. The protection and its scope in line with the Constitution of India have also been dealt with by several authors. It has also been an attempt to legislate the protection of refugees in Indian parliament, account of which will be presented in this article in relevant further part, with no final success till date. The international institutions and documents have rolled out enough programmes and mechanisms for the protection of refugees.

India, under its constitutional obligations, renders high level of coordination and resources for the protection of refugees in required way. Now, what is left to examine, plan and discuss is the constitutional significance in order to properly unifying the protection of refugees in India, its finances, mechanisms at government level, policies regarding change of status from refugee to citizen to the extent of pragmatic possibility and other similar issues. In such studies, it shall be highly relevant to account for real constitutional requirement and limit of execution of above policies without disturbing the features permanent in nature.

The induction of new fibre in any polity is a process of decades and India is specific in the sense because its contribution to protection of refugees has been highly appreciable, even when India is not a signatory to the particular international instrument. It is always one side of refugee protection in any country that what has been provided or facilitated so far. But the

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other side is of real scope and suitability of policies, regulations or laws in regard to the sovereignty, process of legislation, structure and procedure of financial sources of that particular country.

In this context, the Constitution of India is highly rated and recognized set of basic rules which has the widest possible scope of its interpretations but is so meticulously designed that it always triumphs its basic structure, even protected by the highest judicial body of the country. Therefore, in executing the proper framework with regard to protection of refugees in India has same significance as structured by the Constitution of India in its different notions, subject to the interpretations.

Further, refugee word itself comes from international territory and so without contextualizing the international intervention the article shall be a document unworthy of execution. So the role of United Nations, other international agencies[2] to be named at relevant place afterwards and the documents issued in the interest of humanity and peace, which are internationally acceptable are of high importance as well as guiding in nature, in order to protect the international movement of humans arisen out of unwanted, unfortunate and opposite circumstances. It is also reasoned by the instance of importance of human life that no constituent document in any country permits or appreciates the known and voluntary loss of human life and others do not prevent or help to prevent. Therefore, even the humanity suggests in clear words to protect humans without putting any classification and the protection of refugees is the exact example of the same, which is in the basic instincts of the Constitution of India.

It is required here to throw a light that what exactly the protection of refugee means in short. On the basis of different international documents and their primary objective the protection of refugees includes recognition as refugee, categorization, registration, local integration, resettlement, voluntary repatriation and further rehabilitation if voluntary repatriation could not take place. The important aspect is that the every human right should be safeguarded properly and sufficiently without any kind of discrimination in execution of all above noted processes of refugee protection. However, the above note is not exhaustive and is matter of general observation, which will further be verified and justified in this article.

Historical Background

To make a general chronological order of international instruments pertaining to the protection of refugees directly and indirectly, it can be enlisted as below before giving logical explanation and conceptual relevance:

- The Universal Declaration of Human Rights, 1948
- The Statute of the Office of the United Nations High Commissioner for Refugees, 1950
- The Convention Relating to the Status of Refugees, 1951
- The Convention Relating to the Status of Stateless Persons, 1954

[2] United Nations High Commissioner for Refugees (UNHCR).

- The Convention on the Reduction of Statelessness, 1961
- The International Covenant on Civil and Political Rights, 1966
- The International Covenant on Economic, Social and Cultural Rights, 1966
- The Bangkok Principles on the Status and Treatment of Refugees, 1966[3]
- The Protocol Relating to the Status of Refugee, 1967
- The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969
- The Convention on the Elimination of All Forms of Discrimination against Women, 1981
- The Cartagena Declaration on Refugees, 1984
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- The Convention on the Rights of the Child, 1989
- The Revised AALCO 1966 Bangkok principles on Status and Treatment of Refugees, 2001
- The Principles on Housing and Property Restitution for Refugees and Displaced Persons, 2005
- The General Comment No. 6 Treatment of Unaccompanied and Separated Children outside their Country of Origin, 2006
- The AALCO's Resolution on Legal Identity and Statelessness, 2006
- The Convention on the Rights of Persons with Disabilities, 2006

Except, The Bangkok Principles on the Status and Treatment of Refugees, 1966[4] all above listed instruments have been extracted from the UNHCR source[5].

It is said that history is a vision and here it is seen that right from 1948 till 2006 the international institutions have contributed to rationalize and facilitate each possible aspects of protection of refugees. As enlisted above, the Universal Declaration of Human rights came in 1948 and it intended to protect the human rights, the inalienable rights, of everyone, which signifies the inclusion of refugees even. Each and every article of the said declaration has included the word everyone which serves the purpose, and also the preamble of this declaration is also supporting the idea. Relevantly, the declaration expressly says that [all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood[6].

Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion,

[3]Asian-African Legal Consultative Organization (AALCO), Bangkok Principles on the Status and Treatment of Refugees ("Bangkok Principles"), 31 December 1966, available at: http://www.refworld.org/docid/3de5f2d52.html accessed on 9 May 2018at 12:30 pm.
[4] *Ibid.*
[5] Basic International legal Documents on Refugees, 8th Edition, December 2011, Compiled By UNHCR.
[6] Article 1, of the Universal Declaration of Human Rights, 1948.

national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty[7].

These words are signifying directly the protection of rights of all persons in all parts of the world and so they are applicable to the refugees also. The same feature applies in cases of International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. Apart from these, all other above noted international instruments are compiled to protect refugees in different ways including some with special protection of women, children, disables and victims of torture and cruelty. Therefore, the protection of refugees is a world practice and by the time this field has shown tremendous growth by widening its arena on different aspects of protection.

Further, India has ratified or has been party or signatory in many of the above instruments and wherever India has not participated due to some different reasons, in principle it has contributed a lot on that subject too. Therefore, the model foundation for enacting law or creating policies relating to protection of refugees, India has ample guiding instruments to travel a contributory journey of humanity.

Comparative Analysis

The comparative analysis of protection of refugees may be performed through some instances and also through implementation level aspects of different international instruments. So far the instruments are concerned; a fundamentally lucid analysis has been summed up by Honourable Guy S. Goodwin-Gill, Professor of Public International Law and Fellow All Souls College, Oxford University as the 1951 Convention does not deal with the question of admission, and neither does it oblige a state of refuge to accord asylum as such, or provide for the sharing of responsibilities for example, by prescribing which state should deal with a claim to refugee status.

The Convention does not address the question of ‘causes’ of flight, or make provision for prevention; its scope does not include internally displaced persons, and it is not concerned with the better management of international migration. At the regional level, and notwithstanding the 1967 Protocol, refugee movements have necessitated more focused responses, such as the 1969 OAU Convention and the 1984 Cartagena Declaration; while in Europe, the development of protection doctrine under the 1950 European Convention on Human Rights has led to the adoption of provisions on ‘subsidiary’ or ‘complementary’ protection within the legal system of the European Union. Nevertheless, within the context of the international refugee regime, which brings together states, UNHCR, and other international organizations, the UNHCR Executive Committee, and non-governmental organizations, among others, the 1951 Convention continues to play an important part in the protection of refugees, in the promotion and provision of solutions for refugees, in ensuring

[7] Article 2, of the Universal Declaration of Human Rights, 1948.

the security and related interests of states, sharing responsibility, and generally promoting human rights.

Ministerial Meetings of States Parties, convened in Geneva by the government of Switzerland to mark the 50th and 60th anniversaries of the Convention in December 2001 and December 2011, expressly acknowledged, 'the continuing relevance and resilience of this international regime of rights and principles...' and reaffirmed that the 1951 Convention and the 1967 Protocol 'are the foundation of the international refugee protection regime and have enduring value and relevance in the twenty-first century'.

In many states, judicial and administrative procedures for the determination of refugee status have established the necessary legal link between refugee status and protection, contributed to a broader and deeper understanding of key elements in the Convention refugee definition, and helped to consolidate the fundamental principle of non-refoulement. While initially concluded as an agreement between states on the treatment of refugees, the 1951 Convention has inspired both doctrine and practice in which the language of refugee rights is entirely appropriate. The concept of the refugee as an individual with a well-founded fear of persecution continues to carry weight, and to symbolize one of the essential, if not exclusive, reasons for flight. The scope and extent of the refugee definition, however, have matured under the influence of human rights law and practice, to the point that, in certain well-defined circumstances, the necessity for protection against the risk of harm can trigger an obligation to protect[8].

It is important to understand that international instruments are part of soft law and so they cannot be strict as domestic legislations, in terms of its implementation. The conventions relating to protection of refugees also purposefully include the soft law feature. It is therefore derived that no international instrument can be conclusive and exclusive law on the subject. As such there is no matter of exhaustiveness of a law in international significance. The states are members of international forum and they are responsible for effective implementation of laws and policies which they agreed upon in international consortiums. It may also be said that because of this reason only the number of international instruments is on higher side, even on a particular subject and all dimensions of a problem may not have been covered in a single international instrument.

Now, some practical instances are presented to make a comparative perspective in implementation of refugee protection laws and policies. The Chakma people of Arunachal Pradesh, a state in northeast India, have been fighting for citizenship for over six decades. Having fled Bangladesh in the 1960s, they think it's time India recognised them. Fleeing Bangladesh had two main reasons for the Chakmas, an indigenous Chittagong hill tribe, to

[8]Guy S. Goodwin-Gill, The International Law of Refugee Protection, 2014, The Oxford Handbook of Refugee and Forced Migration Studies available at: http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-021 accessed on 9 May 2018 at 12:45 pm.

leave Bangladesh, then East Pakistan. "One was the Kaptai hydro-electric power project by East Pakistan, which ruined all the houses on the Chittagong hills. All their lands were submerged underwater, all our houses were devastated. The second reason was religious persecution[9]. The Chakmas are Buddhists and they were a minority in Muslim-dominated East Pakistan. There was a constant fear of religious tensions flaring up.

The Indian government, at that time led by Jawaharlal Nehru, offered the Chakmas a refuge in India. They crossed over the border legitimately, with the consent of the border security][10]. Everyone was given a paper while crossing over. That is the proof that they are legitimately residing in India. But the Chakmas in Arunachal haven't been given refugee status. Since then many families have lost these vital papers: They were uneducated tribal people crossing the border and didn't know much about how things would turn out later on. Many of them have not managed to save the papers from the rains and fires. This has led to serious problems. Interestingly, despite the fact that their legal status is still under process, they are living without fear at least and their rights are maintained and not violated, which were serious trouble in their original country.

In present context in India, the issues of Rohingya Refugees from Myanmar are of vital importance, as the matter has been placed before court of law to decide the legality of Government of India's decision of deporting all such refugees back, as the persecution as per said government is no more existing in Myanmar. As reported, Senior advocate Prashant Bhushan, the counsel for the Rohingya petitioners, pointed out that it was against India's international and humanitarian commitments to welcome refugees fleeing persecution from Myanmar with violence. The conditions are inhuman, and there is no access to either schools or hospitals. Another counsel for the refugees, Ashwini Kumar, said that the Supreme Court has to intervene as the ultimate protector of life[11].

After the bench questioned whether it could decide on matters related to refugees attempting to enter India as against those already in the country. In August 2017, the government had announced that it was planning to deport all 40,000 Rohingya refugees living in the country. On September 18, the government told the Supreme Court in an affidavit that the continued illegal immigration of Rohingya to India had serious national security ramifications and threats. It claimed that inputs from security agencies indicated that some of the refugees had links with terror groups in Pakistan. The matter is still sub-judice.

The important aspect again in the matter says that the refugees are protected even by courts in India, and they have been provided the right to get their matter decided by the court, which is only served because of the better situation and respect of refugee laws concerned.

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[9] Available at https://www.rnw.org/archive/stateless-people-chakmas-arunachal-pradesh accessed on 10 June 2018 at 08:12 am.

[10] *Ibid.*

[11] Available at https://scroll.in/latest/867058/india-cant-become-worlds-refugee-capital-centre-tells-supreme-court-in-rohingya-deportation-case accessed on 25 September 2019 at 01:30 pm.

In above comparative study, it is seen that the effect of refugee protection laws in India has been at least respected to the level of ensuring essential rights. It also shows that the direction of implementing laws and policies on the subject is leading to and passing through legible process and so the ray of hope is always present in legislating properly the concerned subject, as accordance with legal principles and other factors.

Constitutional Aspiration and Foundation

Constitution of India in its preamble, fundamental rights, directive principles of state policy and in union and states relations have glimpses of relevant fibres pertaining to protection of refugees. India is Sovereign Socialist Secular Democratic Republic, where its coverage highlights the respect for all religions and faiths, equality for all, government of people and power to govern in itself with a constitutionally provided head of state.

In such feature the most people aspect is 'people' and that attracts highest aspect of humanitarian realm. Further, fundamental rights are unique in constitutional set up of India that right to equality, right against exploitation, right to freedom of religion and right to constitutional remedies have been provided to all persons within India, which includes refugees also. In directive principles of state policy, which are fundamental in the governance of the country, it is included that [the State shall endeavour to promote international peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations in the dealings of organised peoples with one another and encourage settlement of international disputes by arbitration[12].

The Supreme Court also affirms that the directive principles have been described as forerunners of the U.N. Convention on Right to Development as an inalienable human right[13], which explains the range of both directive principles as well as right to development in case of all persons. Under union and states relations Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. It is iterated by the court also that power to implement treaties belongs exclusively to the Union under Article 253[14].

Interestingly, India has a federal set up and is described as a Union of States[15] and so union is considered as a State in international law, which is only competent to work on the protections pertaining to international realm. India has not passed a refugee specific legislation till now which regulates the entry and status of refugees. It has handled the refugees under political and administrative levels. The result is that refugees are treated under the law applicable to aliens in India, unless a special provision is made as in the case of Ugandan refugees (of

[12] Article 51 of the Constitution of India, 1950.
[13] *Air India Statutory Corporation v. United Labour Union*, AIR 1997 SC 645
[14] *Moti Lal v. State of Uttar Pradesh*, AIR 1951 ALL 845
[15] Article 1(1), of the Constitution of India, 1950.

Indian origin) when it passed the Foreigners from Uganda Order[16], 1972.The constitutional rights protect the human rights of the refugee to live with dignity. The Supreme Court of India is of the view that in the absence of legislation to regulate and justify the stay of refugees in India by asking to perform the duty of safeguarding the life, health and well-being of Chakmas residing in the State and that their application for citizenship should be forwarded to the authorities concerned and not withheld[17].

Enactments governing aliens in India are the Foreigners Act[18], 1946 under which the Central Government is empowered to regulate the entry of aliens into India, their presence and departure from India.

Therefore, the constitutional aspirations and foundations are inclusive of wide scope for implementing the relevant and suitable laws for protection of refugees in line with the international institutions and instruments. It is noteworthy that, as accordance with the polity of India, it is not possible to implement any law, rule or policy of any kind which is found inconsistent with any of the provisions or defeating the intention of the Constitution of India. But in case of the subject matter of international realm and for all humanitarian features it has wide scope, which is also evident from above expressions.

Legislative Response

The refugee problem has been one of the oldest crises since the time of independence of India. Though, to date, a substantial effect on that problem has not been reached yet. Refugees or internally displaced persons or migrants have all been delegated to be governed by allied existing legislations but a separate acknowledgement of their legal needs has not been acknowledged yet. Even though current legislation and judicial interference have, to some extent, addressed the issue but there are major hindrances still visible in determining the larger query at hand.

The matters relating to the refugees in all belong to the international realm. However, after the refugee or group of refugees entered in the territory of India, the responsibility of all kind shifts on the country. The major functions immediately after the entrance of the refugees include the registration, settlement and fulfilment of basic needs. This involves huge concentration and resource of the country. In Indian system, no law on this subject has been enacted till now and functions are performed through general administrative channel. But after several deliberations, the two separate bills were introduced in the parliament in lower house i.e. Lok Sabha in 2015 by two different members of parliament separately on a very short gap of some days.

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[16]National Legislative Bodies / National Authorities, India: G.S.R. 446 of 1972, Foreigners from Uganda Order, 1972, 1972, available at: http://www.refworld.org/docid/3ae6b5218.html accessed 9 May 2018 at 18:40 pm.

[17]*National Human Rights Commission v. State of Arunachal Pradesh and Another*, 1996 SCC (1) 742, Writ Petition (C) No. 720 of 1995.

[18]Act No. 31 of 1946, Enacted by Central Legislative Assembly.

However, both the bills are still pending with the parliament. The details of the bills are discussed here to understand the coverage with regard to the protection of refugees. The first bill was presented by Shri Rabindra Kumar Jena, M.P. with Bill No. 290 of 2015 dated 13 November 2015, namely The Protection of Refugees and Asylum Seekers Bill[19], 2015to provide for, in the interest of upholding the values of international human rights, an appropriate legal framework to process matters relating to forced migration in respect of determination of refugee status, protection from refoulement and treatment during stay.

The statement of objects and reasons of this bill stated that articles 37 and 253 of the Constitution provide an administrative system free from arbitrariness and guarantee equality, fairness and due process of law. Moreover, India is also committed to upholding International Human Rights principles through accession to all major human rights treaties, and adoption of appropriate legislative steps to implement them. While India is still not a signatory to the United Nations Convention relating to the Status of Refugees, 1951 or the 1967 protocol relating to the status of refugees but India does provide protection to a steady influx of refugees every year. As per the records of the Government of India, about 10340 Afghan refugees, 4621 refugees from Myanmar, 80806refugees from Sri Lanka and 1, 01, 148 stateless refugees including Tibetan refugees are staying in India.

Hence, in light of the current global scenario and the European refugee crisis, it is believed that India needs its own legal framework in the form of a uniform law in order to process matters relating to forced migration in respect of determination of refugee status, protection from refoulement and treatment during stay of refugees. The Bill seeks to address the above issues by establishing the posts of the Commissioner of Refugees, the Deputy Commissioners of Refugees and the Refugee Committee.

The Bill also assigns roles and responsibilities to the above-mentioned authorities in order to ensure that refugees in India are meted out uniform rights and privileges during their stay and are justly repatriated. Structurally the bill included the declaration, definitions, exclusion of refugee status, principle of non-refoulement, application for the recognition of refugee, constitution, appointment and functions of authorities, determination of the refugee status, publication of findings and decision, appellate procedure, ceasing of refugee status, rights and duties of refugees, situation of mass influx, refugees unlawfully in India, voluntary repatriation, central government to provide adequate funds, act to have overriding effect, power to make rules. The bill as noted above is still pending and has not been passed.

The second bill was presented by Shri Feroze Varun Gandhi, M.P. with Bill No. 342 of 2015 dated 18 November 2015, namely The National Asylum Bill[20], 2015to provide for the citizenship rules of refugees and asylum seekers. The statement of objects and reasons of this bill states that, since independence, over forty million refugees have crossed Indian borders seeking refugee status against a hinterland of political strife, economic inequality and ethnic

[19]Available at: http://164.100.47.4/billstexts/lsbilltexts/asintroduced/3024ls.pdf accessed 9 May 2018 at 20:30 pm.
[20]Available at: 164.100.47.4/billstexts/lsbilltexts/asIntroduced/3028LS.pdf accessed 20 May 2018 at 13:10 pm.

tensions. Partition of the country led to over seven million refugees being provided emergency relief and resettlement by the Ministry of Rehabilitation. While the issues related to their citizenship rights was, to an extent, dealt of by the Ministry of Rehabilitation, whereas, the issues related to their citizenship rights was, to an extent, dealt with at the time based on provisions of the Citizenship Act, 1955 and subsequent amendments.

However, the refugees from other countries were not mainstreamed in the Indian population. India is a signatory to various human rights conventions on refugees (ICCPR, ICECR, CRC, ECERD, CEDAW) all requiring adherence to the principle of refoulement. However, such international obligations have not translated into legislation at the national level. Refugee conditions in India's urban clusters remain parlous. Housing insecurity remains a significant concern, with most refugees in their areas reporting restricted access to accommodation, discrimination by landlords and eviction due to not having legal documents of citizenship in the country. The country is a refugee haven absorbing Tibetans in 1959, Bangladeshis in 1971, Chakmas in 1963, Sri Lankan Tamils in 1983 onwards and Afghan refugees in 1980. The largest refugee population in India do not fall under the mandate of UNHCR but are nonetheless considered refugees by the Government.

At present, there are over 1,50,000Tibetans and 90,000 Sri Lankans who have fled violence and persecution and sought refuge in India besides 11000 Afghans and 4621 from Myanmar, etc. This provides the country which maintains the culture of tolerance and forbearance with the grave situation of human rights violations if these refugees have to stay as refugees all throughout their lives with generations to follow. As per UNRWA report, of the 19.5 million people term refugee, just 126,800 returned to their countries of origin in 2014.

In such situation it becomes a responsibility of the country to provide relief to the refugees in the situation of strife to give them freedom from arbitrary detention and protection by regularizing them in the citizenry if certain conditions are followed. The structure of the bill includes definitions, registration of refugees, constitution of registration authorities, ceasing of refugee status, general obligations, registration in case of mass influx, granting citizenship right to refugees, exceptional circumstances, repatriation at free will, central government to provide funds, act to have overriding effect and power to make rules. The bill is still pending with the parliament to be passed.

In both bills, which have been presented within the gap of five days, almost common features are poured except that the second bill has additionally advocated for granting citizenship right to the refugees subject to certain qualifications and the bill has included the feature of overriding effect, which will enable the bill to prevail over other laws. However, these both features should not be granted to an act subjecting some matters relating to international realm. Therefore, it is observed that the parliament has deliberations over the matter of refugee and asylum issues but the time has not come to enact any specific legislation till date.

Need and Scope of Refugee Law in India

Convention Relating to the Status of Refugees defines[21] the 'refugee' as "A 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, unwilling to avail himself of the protection of that country.". Therefore, the need to give due importance to humanitarian and human rights aspects in dealing with refugees, the law relating to refugees is needed.

Further, taking refugees into any country involves major risks pertaining to internal security of that country and in absence of some law the loopholes take place. So, in security system also the absence of refugee law is leading to several issues and having a law on such issues will resolve or provide a formal way to resolve the problems relating to national security of that country.

The scope of refugee law is parallel to that of human existence. Refugees are the result of circumstances and it can happen anywhere in the world and because of huge size and diversity on different extents the circumstances leading to create refugees cannot be eradicated fully. Therefore, the requirement of law relating to refugee is indispensible and durable. It is also a fact that the refugee issues are of international relevance but the law relating to refugee is required to manage the issues of that subject arising within that country.

Suggestive Remarks

The article covers the issues relevant to the central idea of the refugee protection in India and its constitutional significance, where on the basis of historical background given with comparative perspective, constitutional aspiration, legislative response and the need and scope of refugee law in India tends to articulate following as suggestive remarks, which is certainly not exhaustive.

The laws relating to refugee in India, as in line with the Constitution of India, should be small piece of legislation and initially the more power of delegated legislation should be appended, so as to analyse the practical checks and balances and also to maintain pace with international law with easy amendments procedures.

Any aspect of the citizenship should not be governed by the law relating to the refugees, being important and severe aspect and necessary amendments as per the requirement may take place in existing citizenship legislation only.

Since the international law is subject to the interpretational jurisdiction of the court and so the regulatory body, due to be constituted, should be in close hands of the court.
The arrangements of finances should be provisioned separately for the expenditure occurring on account of refugees.

[21] Article 1, Para 1 & 2, Convention Relating to the Status of Refugees, 1951.

Conclusion

On conclusion note of the article, it is opined that the refugee protection in India is still in middle of the process, despite the huge affording of the refugees by the country and the constitutional significance backing the refugee protection has been utilized minimal till present scenario and it has enormous scope to be structured by examination, planning and execution. The procedure of refugee protection should be more planned in order to ensure no security threats to the country.

Right to Life does not include the Right to Die in India

Dr. Aniruddha Ram[1]

Introduction

It had been that the most precious fundamental rights or the citizen is right to life guaranteed by Article 21 of the constitution of India. It is the bounded duty of the state under the Constitution to protect the life and personal liberty of a citizen and it shall not be deprived of except according to procedure established by law[2]. The state is liable for the constitutional tort and the constitutional tort denotes the case in which compensation or exemplary damages were awarded by the court while a constitutional right, was violated. Such constitutional remedy was made to partake the character of civil actions. The award of compensation was made only in additions to the normal civil remedies. In the case of *Devaki Nanda Prasad v. State of Bihar*[3]**,** the Apex Court laid down the concept of the constitutional tort and compensation jurisdiction and awarded Rs. 25,000 (Rupees twenty-five thousand) as exemplary costs for harassing the petitioner.

This concept of awarding exemplary costs had been also considered in *Rahul Sah v. State of Bihar*[4]**,** in that case, the petitioner filed the habeas corpus before the court for his immediate relief and prayed for rehabilitation costs, medical charges and compensation for illegal detention. After his release in 1982, the question before the court was whether in exercise of Jurisdiction under Article 32[5], the court can pass an order for payment of money. The two important points decided in that case are that (1) violation of constitutional right given raise a right to a civil liability enforceable in civil court and (2) it formulates basis for a theory of liability under which a violation of right to the personal liberty can give raise to civil liability with the extreme concern to protect and preserve the fundamental right of a citizen. The Apex Court awarded compensation its constitutional obligations to the citizen.

The Apex Court in the case of *D.K Basu v. State of West Bengal*[6], held that the claim in public law for compensation for unconstitutional deprivation of fundamental right to life and property, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortuous act of the public servants. Public proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of indefeasible right

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[2]Article 21 in The Constitution of India.
[3](1984) ILLJ237SC
[4]1983 Cri LJ 1644
[5]Article 32 in The Constitution of India.
[6]1997 Cri LJ 743

guaranteed under Article 21 of the Constitution of India is a remedy available in public law since the purpose of public law is not only civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interest shall be protected and preserved. The right of citizens to life and personal liberty are guaranteed under Article 21 of the Constitution. It is the bounden duty of the State under the constitution to protect life and personal liberty of the citizen.

'Right to die' Is it included in Article 21?

If a person has a right to live, whether he has right not to live. When a man commits suicide, he has to undertake certain positive overt acts and the genesis of those acts cannot be traced to, or be included withing the protection of the 'right to life' under Article 21. The significant aspect of 'sanctity of life' is also not to be overlooked. Article 21 is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can 'extinction of life' be read to be included in 'protection of life'. Whatever may be the philosophy of permitting a person to extinguish his life by committing suicide, it is difficult to construe Article 21 to include within it the 'right to die' as a part of the fundamental termination or extinction of life, and therefore, incompatible and inconsistent with the concept of 'right to life'.

To give meaning and content to the word 'life in Article 21, in Article 21 it has been construed as life with human dignity. Any aspect of life which makes it dignified may be read into it but not that which extinguishes it and is, therefore, inconsistent with the continued existence of life resulting is effacing the right itself. The 'right to die', if any, is inherently inconsistent with 'right to life' as is 'death' with 'life'.

A dying man, who is terminally ill or in a persistent vegetative state that he may be permitted to terminate it by a premature extinction of his life in those to live with dignity, when death due to termination of natural life is certain and imminent and the process of natural death has commenced. These are not cases of extinguishing life but only of accelerating conclusion of the process of natural death which has already commenced. The debate even in such cases to permit physician assisted termination of life is inconclusive. It is sufficient to reiterate that the argument to support the view of permitting termination of life in such cases to reduce the period of suffering during the process of certain natural death is not available to interpret Article 21 to include therein the right to curtail the natural span of life.

Active Euthanasia

Active euthanasia is a crime all over the world except were permitted by legislation. In India active euthanasia is illegal and a crime under Section 302[7] or at least Section 304[8] IPC. Physician assisted suicide is a crime under Section 306[9] IPC (abetment to suicide). Active euthanasia is taking specific steps to cause the patient's death, such as indicting the patient

[7]Section 302, IPC 1860 (Punishment for murder)
[8]Section 304 in The Indian Penal Code, 1860 (Punishment for culpable homicide not amounting to murder)
[9]Section 306 in The Indian Penal Code, 1860 (Abetment of suicide)

with some lethal substance, e.g., sodium pentothal which causes a person deep sleep in a few seconds, and the person instantaneously and painlessly dies in this deep sleep. A distinction is sometimes drawn between euthanasia and physician assisted dying, the difference being in who administers the lethal medication. In euthanasia, a physician or third party administers it, while in physician assisted suicide it is he the patient himself who does it, though on the advice of the doctor. In many countries/ States the latter is legal while the former is not. The difference between "active" and "passive" euthanasia is that in active euthanasia something is done to end the patient's life while in passive euthanasia, something is not done that would have preserved the patient's life.

An important idea behind this distinction is that in "passive euthanasia" the doctors are not actively killing anyone; they are simply not saving him, while we usually apply applaud someone who saves another person's life, we do not normally condemn someone for failing to do so. If one rushes into a burning building and carries someone out to safety, he will probably be called a hero. But if one sees a burning building and people screaming for help, and he stands on the sidelines-whether out of fear for his own safety, or the belief that an inexperienced and ill-equipped person like himself would only get in the way of the professional firefighters, or whatever-if one does nothing, few would judge him for his inaction. One would surely not be prosecuted for homicide. (At least, not unless one started the fire in the first place.)

Thus, proponents of euthanasia say that while we can debate whether active euthanasia should be legal, there can be no debate about passive euthanasia. You cannot prosecute someone for failing to save a life. Even if you think it would be good for people to do X, you cannot make it illegal for people to not do X, or everyone in the country who did not do X today would have to be arrested.

Legislation in some countries relating to Euthanasia or Physician Assisted Death:
Netherlands:
Euthanasia in the Netherlands is regulated by the "Termination of Life on Request and Assisted Suicide (Review Procedure) Act", 2002. It starts that euthanasia and physician-assisted suicide are not punishable if the attending physician acts in accordance with the criteria of due care. These criteria concern the patient's request, the patient's suffering (unbearable and hopeless), the information provided to the patient, the presence of reasonable alternatives, consultation of another physician and the applied method of ending life. To demonstrate their compliance, the Act requires physicians to report euthanasia to a review committee.

The legal debate concerning euthanasia in the Netherlands took off with the "Postma cases" in 1973, concerning a physician who had facilitated the death of her mother following respected explicit requests for euthanasia. While the physician was convicted, the court's judgment set out criteria when a doctor would not be required to keep a patient alive contrary to his will. This set of criteria was formalized in the course of a number of court cases during the 1980s.

Termination of life of Request and Assisted Suicide (Review Procedures) Act took effect on April 1, 2002. It legalizes euthanasia and physician assisted suicide in very specific cases, under very specific circumstances. The law was proposed by Els Borst, the minister of Health. The procedures codified in the law had been a convention of the Dutch medical community for over twenty years.

The law allows a medical review board to suspend prosecution of doctors who performed euthanasia when each of the following conditions is fulfilled:

- The patient's suffering is unbearable with no prospect of improvement
- The patient's request for euthanasia must be voluntary and persist over time (the request cannot be granted when under the influence of others, psychological illness of drugs)
- The patient's must be fully aware of his/her condition, prospects and options.
- There must be consultation with at least one other independent doctor who needs to confirm the conditions mentioned above.
- The death must be carried out in a medically appropriate fashion by the doctor or patient, in which cases the doctor must be present.
- The patient is at least 12 years old (patients between 12 and 16 years of age require the consent of their parents.

The doctor must also report the cause of death to the municipal coroner in accordance with the relevant provisions of the Burial and Cremation Act. A regional review committee assesses whether a case of termination of life on request or assisted suicide complies with the due care criteria. Depending on its finding, the case will either be closed or, if the conditions are not met, brought to the attention of the Public Prosecutor. Finally, the legislation offers an explicit recognition of the validity of a written declaration of the will of the patient regarding euthanasia (a euthanasia directive"). Such declaration can be used when a patient is in a coma or otherwise unable to state if they wish to be euthanasia.

Euthanasia remains a criminal offense in cases not meeting the law's specific conditions, with the exception of several situations that are not subject to the restrictions of the law at all, because they are considered normal medical practice. There are:

- Stopping or not starting a medically useless (futile) treatment
- Stopping or not starting a treatment at the patient's request
- Speeding up death as a side-effect or treatment necessary for alleviating serious suffering Euthanasia of children under the age of 12 remains technically illegal; however, Dr. Eduard Verhaegen has documented several cases and, together with colleagues and prosecutors, has developed a protocol to be followed in those cases. Prosecutors will refrain from pressing charges if this Groningen Protocol is followed in those cases. Prosecutors will refrain from pressing charges if this Groningen Protocol is followed.

Switzerland

Switzerland has an unusual position on assisted suicide: it is legally permitted and can be performed by non-physicians. However, euthanasia is illegal, the difference between assisted suicide and euthanasia being that while in the former the patient administers the lethal injection himself, in the latter a doctor or some other person administers it.

Article 115 of the Swiss penal Code, which came into effect in 1942 (having been approved in 1973), considers assisting suicide a crime if, and only if the motive is selfish. The code does not give physicians a special status in assisting suicide; although, they are most likely to have access to suitable drugs. Euthanasia guidelines have cautioned physicians against prescribing deadly drugs.

Switzerland seems to be the only country in which the law limits the circumstances in which assisted suicide is a crime, thereby decriminalizing it in other cases, without requiring the involvement of a physician. Consequently, non-physicians have participated in assisted suicide. However, legally, active euthanasia e.g., administering a lethal injection by a doctor or some other person to a patient is illegal is Switzerland (unlike in Holland where it is legal under certain conditions).

The Swiss law is unique because (1) the recipient need not be a Swiss national, and (2) a physician need not be involved. Many persons from other countries, especially Germany, go to Switzerland to undergo euthanasia.

Belgium

Belgium became the second country in Europe after Netherlands to legalize the practice of euthanasia in September 2002. The Belgian law sets out conditions under which suicide can be practiced without giving doctors a licence to kill. Patients wishing to end their own lives must be conscious when the demand is made and repeat their request for euthanasia. They have to be under “constant and unbearable physical or psychological pain” resulting from an accident or incurable illness.

The law gives patients the right to receive ongoing treatment with painkillers- the authorities have to pay to ensure that poor or isolated patients do not ask to die because they do not have money for such treatment. Unlike the Dutch legislation, minors cannot seek assistance to die. In the case of someone who is not in the terminal stages of illness, a third medical opinion must be sought. Every mercy killing case will have to be filed at a special commission to decide if the doctors in charge are following the regulations.

U.K Spain, Austria, Italy, Germany, France, etc.

In none of these countries is euthanasia or physician assisted death legal. In January 2011 the French Senate defeated by a 170-142 vote a bill seeking to legalize euthanasia. In England, in May 2006 a bill allowing physician assisted suicide, was blocked, and never became law.

United States of America:

Active Euthanasia is illegal in all states in U.S.A., but physician assisted dying is legal in the states of Orgon, Washington and Montana. As already pointed out above, the difference between euthanasia. And physician assisted suicide lies in who administers the lethal medication. In the former, the physician or someone else administers it, while in the latter the patient himself does so, though on the advice of the doctor.

Oregon:

Oregon was the first state in U.S.A to legalize physician assisted death. The Oregon legislature enacted the Oregon Death with Dignity Act, in 1997. Under the Death with Dignity Act, a person who sought physician assisted suicide would have to meet certain criteria:

- He must be an Oregon resident, at least 18 years old, and must have decision making capacity.
- The person must be terminally ill, having six months or less to live.
- The person must make on e written and two oral requests for medication to end his/ her life, the written one substantially in the form provided in the Act, signed, dated witnessed by two persons in the presence of the patient who attest that the person is capable, acting voluntarily and not being coerced to sign the request. There are stringent qualifications as to who may act as a witness.
- The patient's decision must be an 'informed' one, and the attending physician is obligated to provide the patient with information about the diagnosis, prognosis, potential risks, and probable consequences of taking the prescribed medication, and alternatives, including, but not limited to comfort care, hospice care and pain control. Another physician must confirm the diagnosis, the patient's the patient's decision-making capacity, and voluntariness of the patient's decisions.
- Counselling has to be provided if the patient is suffering from depression or a mental disorder which may impact his judgment.
- There has to be a waiting period of 15 days, next of kin have to be notified, and State authorities have to be informed.
- The patient can rescind his decision at any time in response to concerns that patients with depression may seek to end their lives, the 1999 amendment provides that the attending physician must determine that the patient does not have 'depression causing impaired judgment' before prescribing the dedication. Under the law, a person who met all requirements could receive a prescription of a barbiturate that would be sufficient to cause death. However, the lethal injection must beadministered by the patient himself, and physicians are prohibited from administering it. The landmark cases to declare that the practice of euthanasia by doctors to help their patients shall not be taken into cognizance was Gonzalez v. Oregon decided in 2006.

Washington: Washington was the second Death with Dignity Act, 2008.

Montana: Montana was the third State (after Oregon and Washington) in U.S.A. to legalize physician assisted deaths, but this was done by the State judiciary and not the legislature. On

December 31 2009, the Montana Supreme Court delivered its verdict in the case of Baxter v. Montana_ permitting physician to prescribe lethal indicating that physician aid 66 in dying is against public policy.

Other States in U.S.A.: In no other State in U.S.A. is euthanasia or physician assisted death legal. Michigan banned euthanasia and assisted suicide in 1993, after Dr. Kevorkian (who became known as 'doctor death) began encouraging and assisting in suicides. He was convicted in 1999 for an assisted suicide displayed on television, his medical licence cancelled, and he spent 8 years jail.

In 1999 the State of Texas enacted the Texas Futile Care Law which entitles Texas hospitals and doctors, in some situations, to withdraw life support measures, such as mechanical respiration, from terminally ill patient when such treatment is considered futile and inappropriate. However, Texas has not legalized euthanasia or physician assisted death. In California, though 75 of people support physician assisted death, the issue is highly controversial in the State legislature. Forty States in U.S.A have enacted laws which explicitly make it a crime to provide another with the means of taking his or her life.

In 1977 California legalized living wills, and other States soon followed suit. A living will (also known as advance directive or advance decision) is an instruction given by an individual while conscious specifying what action should be taken in the event, he/she is unable to make a decision due to illness or incapacity, and appoints a person to take such decisions on his/her behalf. It may include a directive to withdraw life support on certain eventualities.

Canada

In Canada, physician assisted suicide is illegal vide Section 241 (b) of the Code of Criminal Procedure of Canada. The leading decision of the Canadian Supreme Court in this connection is *Sue Rodriguez v. British Columbia (Attorney General)*[10]. Rodriguez, a woman of 43, was diagnosed with Amyotrophic Lateral Sclerosis (ALS), and requested the Canadian Supreme Court to allow someone to aid her in ending her life. Her condition wasdeteriorating rapidly, and the doctors told her that she would soon lose the ability to swallow, speak, walk, and move her body without assistance. Thereafter she would lose her capacity to breathe without a respirator, to eat without a gastrotomy, and would eventually by confined to bed. Her life expectancy was 2 to 14 months.

The Canadian Supreme Court was deeply divided. By a 5 to majority her plea was rejected. Justice Sopinka, speaking for the majority (which included Justices La Forest, Gonthier, Iacobucci and Major) observed:

Sanctity of life has been understood historically as excluding freedom of choice in the self-infliction of death and certainly in the involvement of others in carrying out that choice. At the

[10](1993) 3 SCR 519

very least, no new consensus has emerged in society opposing the right of the State to regulate the involvement of others in exercising power over individuals ending their lives.
The minority consisting of Chief Justice Lamer and Justices L'Heureux-Dube, Cory and McLachlin, dissented.

Passive Euthanasia
Passive euthanasia is usually defined as withdrawing medical treatment with a deliberate intention of causing the patient's death. For example, if a patient requires kidney dialysis to survive, not giving dialysis although the machine is available, is passive euthanasia. Similarly, if a patient is in coma or on a heart lung machine, withdrawing of the machine will ordinarily result in passive euthanasia. Similarly, not giving life saving medicines like antibiotics in certain situations may result in passive euthanasia. Denying food to a person in coma or PVS (Permanent Vegetative State) may also amount to passive euthanasia.

Euthanasia can be both voluntary and non-voluntary. In voluntary passive euthanasia a person who is capable of deciding for himself that he would prefer to die (which may be for various reasons e.g., that he is in great pain or that the money being spent on his treatment should instead be given to his family who are in greater need, etc). and for this purpose, he consciously and of his own free will refuses to take life saving medicines. In India, if a person consciously and voluntarily refuses to take lifesaving medical treatment it is not a crime. Non voluntary passive euthanasia implies that the person is not in a position to decide for himself e.g., if he is in coma or PVS.

Conclusion
Abetment of Suicide and Attempt to Commit Suicide: In India abetment of suicide (Section 306 Indian Penal Code) and attempt to suicide (Section 309 of Indian Penal Code) are both criminal offences. This is in contrast to many countries such as USA where attempt to suicide is not a crime.

Section 306 and 309 IPC read as under:
306. Abetment of suicide- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

309. Attempt to commit suicide- Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.

Phycological and Physical Features of Suicide: the main psychological and physical features of suicide are: (1) the victim is under an emotional stress; (2) He or she is overpowered with a feeling or disgrace, fear, disgust of hatred at the time when suicide is resorted to: (3) The main intention of committing suicide is to escape from the consequences of certain acts or events: disgrace, agony, punishment, social stigma or tyranny or treatment etc. (4) The Kind is far away from religious or spiritual considerations (5) The means employed to bring about the

death are weapons of offence or death; (6) The death is sudden inmost cases unless the victim is rescued earlier: (7) The act is committed in secrecy (8) It causes misery or bereavement to the kith and kin.

Right to Life does not include Right to Death: *The Supreme Court in Gian Kaur v. State of Punjab*[11]held that Section 309 IPC is valid and not violative of Article 21 of the Constitution of India. The right to life does not include the right to die.

In *Aruna Ramchandra Shanbug v. Union of India & ores*[12]., the Supreme Court held that both euthanasia and assisted suicide are not lawful in India. The right to life does not include the right to die and that euthanasia could be lawful only by legislation. Both the abetment of suicide under Article 306 IPC and attempt to commit suicide in Section 309 IPC are criminal offence. Section 309 IPC is constitutionally valid.

[11] AIR 1996 S.C 946.
[12] AIR 2011 S.C 1290.

Individual Dispute vis a- vis Industrial Dispute

Dr. Pradeep Kumar[1]

Introduction

In any viable and progressive economy, the growth rate of nation is directly connected with industrial growth and peace. Industrial peace leads to the harmonious relationship between employer and employee. States often attempt to formulate laws and policies in a manner suitable to maximize industrial output which requires a continuous effort from state authorities, employers and employees to bring down their differences and develop a common understating. It is further necessary that key concerns of employers and employees are selected in an amicable way.

In India the legislature with an intent to find industrial peace and harmony has enacted the Industrial Dispute Act, 1947 (I.D. Act) is to make provisions for the investigation and settlement of industrial disputes, and certain other purposes. Section 2(k) of the I.D. Act defines 'Industrial Dispute' Section 2-A of the same act explains that under certain circumstances as *'Individual Dispute'* can be treated an *'Industrial Dispute'*.

The purpose of this paper is to make an analysis of those situation when an individual dispute can be turned as industrial dispute. Its further exposers the viability of treating individual dispute as industrial dispute against the objective of industrial peace.

Industrial Dispute

"Industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.[2]

Essential ingredients of Industrial Dispute

The following are the ingredients of the definition under Section 2 (k):

1. There must be a dispute or difference.
2. The dispute or difference should be between:
   (i) Employers and Employers or
   (ii) Employers and Workmen, or
   (iii) Workmen and Workmen,
3. The dispute of difference must be connected with:

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[2] Section 2 (k) of the Industrial Dispute Act, 1947.

(i) The employment or
(ii) Non-employment or
(iii) The terms of employment or
(iv) The conditions of labour, of any person.

But practically it is observed that in 99% of the cases before the Courts and Industrial Tribunals, the dispute or difference arises between employers and employees only. In *Newspapers Ltd. v. State of Industrial Tribunal, U.P.*[3] case Tajammal Hussain a lino typist was dismissed by the Pioneer Newspapers Ltd[4]. on the ground of incompetence. His case was neither taken up by the union of the establishment nor by any union of allied or similar trade. His case was, however, taken by the U.P. working journalist union, with which the employee has no concern. The government referred the dispute to the Industrial Tribunal for adjudication. The Tribunal ordered reinstatement. The Appellate Tribunal and High Court, successively affirmed. Thereupon, the management preferred an appeal to the Supreme Court.

Industrial Dispute vis a vis Individual Dispute

Section 2 (k) does not clarify it. At first, the Labour Appellate Tribunals and the Supreme Court gave a different opinion. In light of Industrial Dispute vis, a vis Individual Dispute there is three views first industrial dispute cannot be industrial dispute and another it could be industrial dispute and third it can be an industrial dispute if a number of sufficient employees aired the question.

The *fist view* in *Kandan Testile Ltd. v. Industrial Tribunals*[5], *United Commercial Bank Ltd. v. Labour Commissioner*[6] and *J. Chowdhury v. M.C. Banerjee*[7] cases the Labour Appellate Tribunals held that an individual dispute could not be treated as an industrial dispute.

The *Second view* an individual dispute could be treated as an industrial dispute in *Swadeshi Industries Ltd v. There Workmen*[8] and *News Paper Ltd. v. Industrial Tribunals U.P.*[9] the full bench of the Labour Appellate Tribunal held that a dispute between an employer and a single employee could be treated as an Industrial dispute.

The *third view* is that it can be an industrial dispute that must be supported by the majority of the employees of the industry. The controversy is put to rest by incorporating Section 2-A to the Act by the amending Act no. 35 of 1965.

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[3] AIR 1957 SC 532.
[4] The Pioneer was founded in Allahabad in 1865 by George Allen, an Englishman who had great suss in the tea business in north-east India.
[5] 1949 LLJ 875 Mad.
[6] (1951) 1 LLJ 782 SC.
[7] 1950-51 (2) FJR 218.
[8] 1955 II LLJ 404.
[9] (1960) II LLJ 37 SC.

In *Central Provinces Transport Service v. Raghunath Gopal Patwardhan*[10] the Court observed that decided cases in India disclose three views as to the meaning of 'Industrial dispute'.

(1) a dispute between an employer and a single workman cannot be an 'industrial dispute';
(2) it can be an industrial dispute; and
(3) it cannot per se be an industrial dispute but may become one if taken by a trade union or a number of workmen

This Court discussed the scope of industrial dispute as defined in S. 2(k) o f the Central Act, and after referring to the conflict of judicial opinion as to its applicability to the case of a dispute between an employer and a single workman further observed:

"The preponderance of judicial opinion is clearly in favour of the last of the three views stated above, and there is considerable reason behind it. Notwithstanding that the language of Section 2(k) is, wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the union or a number of workmen".

Individual Dispute[11]

Controversy is put to rest by incorporating Section 2-A to the I.D. Act by the amending Act 35 of 1965. Section 2-A says Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.[12]

Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of

[10] (1957) I L. L.J. 27.
[11] Ins. by Act 35 of 1965, S. 3 (w.e.f. 1-12-1965).
[12] Section 2 A (1) of the Industrial Dispute Act, 1947 (Section 2 A numbered as sub-section (1) thereof by Act 24 of 2010, s. 3 (w.e.f. 15-9-2010).

this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.[13]

The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)[14].

Object of Section 2-A

Section 2-A does not make any major difference in the object of the Act. The main object of this section is to give some relief to an individual worker under certain given circumstances. Section 2-A is merely an exception to Section 2 (k). Still all the individual dispute cannot be treated as industrial disputes. Section 2-A applies only to dispute relating to employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman.

Constitutionality of Section 2-A

After the insertion of Section 2-A in the I.D. Act 1947 through 1965 amendment, the management challenged the Constitutional validity of the section on this ground:

(1) The Parliament had no power to convert individual dispute into an industrial dispute.
(2) The 1965 amendment by which Section 2-A was inserted was unfavourable to the legislative scheme of the I.D. Act.
(3) Section 2-A should be struck down as it was violated of Article 14 of the Constitution of India 1950.

Section 2-A effect from 01st December, 1965 by Act no. 35 of 1965 does not cover other kinds of dispute such as bonus, wages, leaves facilities etc. It applies only to dispute relating to discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman. Section 2-A did not provide direct access to the Labour Court or Industrial Tribunal for adjudication of deemed industry dispute which caused delay and untold suffering to the workmen. There is need for direct access was felt not only the labour law experts but also by the highest judiciary of the country.

In view of the above, Section 2-A has been amendment by the Act no. 24 of 2010 which was effect from 19th August, 2010 to empower the Labour Court or Tribunals to adjudicate upon the dispute, as if were a dispute referred to it by the appropriate government. Section 2-A (2) provides for direct access to the Labour or the Tribunal. Any workman who has been discharges, dismisses, retrenches, or otherwise terminates by the employer may now make an application direct to the Labour Court or Tribunal for adjudication after the expiry of 45 days from the date he has made the application to the Conciliation Officer.

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[13] Amendment by Act no 24 of 2010 Section 2A (2) of Industrial Dispute Act, 1947.
[14] Amendment by Act no 24 of 2010 Section 2A (3) of Industrial Dispute Act, 1947.

On receipt of the application of such workmen the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the said dispute and now there is no requirement of reference by the appropriate Government.

Subsection (3) of Section 2-A prescribes the time limit within which such an application must be moved. The period of limitation so fixed in three years from the date of discharge, dismissal, retrenchment or otherwise termination of service.

In the *Newspapers Ltd. v. State Industrial Tribunal Uttar Pradesh*[15] case the Newspapers dismissed an employee. The U.P. Working Journalists' Union, with which the employee had no connection, took VIP his cause. The U.P. Government referred the dispute to a tribunal. The tribunal ordered reinstatement. The appellate tribunal, and the Allahabad High Court, successively, affirmed. In an appeal to the Supreme Court, the Newspapers contended, as they had below, that the reference was terrible because the subject matter of the dispute referred by the U.P. Government was an individual dispute and not an industrial dispute. The judgment of the Supreme Court delivered by Kapur, J., follows, the use of the word "workmen" in the plural in the definition of "Industrial dispute" does not by itself exclude the applicability of the Act to an individual dispute because under Sec. 13 (2) of the General Clause Act.

Conclusion

There are two types of disputes types Industrial disputes and individual disputes. In case of an industrial dispute, any person could sue but initially, there was no right to sue related to a personal dispute. There was no such provision regarding a personal dispute in the original Act. Before the inclusion of Section 2-A, a worker who would have been discharged, retrenched, or otherwise terminated from his services, would have been in great difficulty at that time, unless he obtained the support of a trade union. tax or fails to find a sufficient number of workers to support his affairs. A dispute between an employer and a single employee could be treated as an industrial dispute.

Thus, all controversy is put to rest by incorporating Section 2-A to the Act by amending Act no 35 of 1965. But Section 2-A does not bring all personal disputes within the purview of Industrial Disputes, only those related to the discharge, retrenched, or otherwise termination from his services of anyone workman, whereas other disputes shall not fall under the Industrial Department otherwise.

[15] AIR1957 S.C. 532; (1957) 2 L.L.J. 1.

Legal protection of Geographically Indicated Goods in India

Dr. Vikesh Ram Tripathi[1]

Abstract

Geographical Indication is a type of IPR associated with goods having special quality or characteristics which belong to a particular origin or geography. First of all, this right was recognized in Europe and then rest of world started recognizing Geographical Indications. In India before 1999 the Geographical indication was not recognized as we do not have law which deals with such right. Apart from all other IPRs the Geographical Indication is the community right in which a mark or logo has been used by authorized user to identify or to distinguish specific products which are associated with the specific origin or locality. This Article explores the evolution of the Geographical Indication, its social and legal impact in the society and how and where one can approach and get registered their GI under the Indian legislation and the various remedy available to them in case of infringement.
Key words: Geographical Indication, Goods, Legal Impact, Agricultural Products, WTO, TRIPS

Introduction

Geographical Indication (GI) as the name suggest is an indication applied on the products or the goods of the special and the unique quality and possesses the special characteristics which are unique because of the particular origin of the goods. Geographical indication is a sign affixed to the goods which possess the unique, specific or particular quality or characteristics because of the reason of originated from the particular area or region. These goods have special characteristics which re peculiar to the origin of that goods.

According to WTO, "Geographical Indications are indication which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographical origin". GI protects the interest and the rights of the producers and preclude the third party from using the GI and it preventing its misuse of the GI by the third party whose products are not conform to the desired standard. It does not protect the use of same technique but only prevents the using of same sign which is registered as geographical indication.

It gives protection especially to the agricultural products. It protects the rights of producers and at the same time assures the quality of products to the consumers. GI is like the marketing tool by passing information about product. GI is conferred because of the unique human skill and the climate condition or the environmental factors which leads to the production of the unique and special product or the handicraft.

Historical Background

Europe recognized GI protection firstly and after those other nations started recognition of Geographical Indication. In 19th century the concept of GI began in Europe. Before 1999, there

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is no law in India which relates to the GI. TRIPS agreement was signed by the different nations which are the members of the WTO. Only after the ratification of the TRIPS Agreement the law relating to the GI was introduced by the Parliament in the Regime of IPR.

Some minimum guidelines have been provided by the TRIPS for the goods which are registered as the GI goods. The whole purpose of the Act is to eliminate the unfair competition from the market and to prevent the consumers from the misstatement by the third party regarding the originality of the product.

Under Paris convention the geographical indication is protected as a one of the elements of the IPR under Articles 1(2) and Article 10.

In TRIPS the Arts. 22 to 24 specifically deals with the GI. The Art 23 under the TRIPS prescribes the exclusive and comprehensive protection to wine and spirit and comprehensive protection is not available to other products therefore article 22 has been criticized by many countries and they demand such high level and comprehensive shall also be applicable to other goods in Doha round many nations desired to extend similar level of protection to goods.

Trips agreement was concluded in 1994 during Uruguay round which specifically deals with the GI.
But prior to this TRIPS agreement there were international convention which mainly deals with GI.

1. The protection of industrial property i.e. that is Paris convention 1883
2. Madrid convention 1891
3. Lisbon agreement 1958. For the very first time at the international level the recognition was provided to the appellation of the origin and the provision were made for the registration at a global level.

First two conventions dealt with indication of source and tried on focused on the appellation of origin.

Interested Parties In Geographical Indication

World intellectual properties organisation (WIPO) organized a worldwide conference on GI in San Francisco in 2003. In the symposium the following parties are recognized as the interested parties in terms of GI:

1) Consumers – the GI tag assures the purchaser about its quality and characteristics and therefore they are not being misled by the third party.
2) Gi user – GI user can access the foreign markets and are able to label their products with GI tag which is uniform labelling.
3) Producers and manufacturers – producers and manufacturers are able to obtain generic name for their products and this lead to avoid confusion and that would lead to the higher profit.
4) Government – the Government has to protect the health and rights of the citizens of their country. And thus, the Government would be able to prevent and protect the consumers

from fraud, deception and the confusion. And at the same time protect the economic interest of the producers.

Geographical Indication Under Indian Legislation

In India the legislation related to the GI is contained in the "Geographical Indications of Goods (Registration and Protection) Act,1999[2](Act 48 of 1999)" which was enforced in September 2003. The objectives of this Act are as under:

- Provide widespread legal protection to the GI goods
- Prevent the not authorized user to use the GI
- Protect the innocent consumers from being misguided and deception
- For the promotion of the export of the goods having GI tag

GI Act covers the agricultural and the natural goods which originates in the particular territory or locality and at the same time protects the manufactured goods too.

Under the TRIPS obligation the Parliament of India passed the GI Act in December 1999 to extend the protection to GI in India. The central government notified the rules in 2002 to enforce the provisions contained in the GI Act.

The Central Government establishes the GI Registry at Chennai for the registration of GI, which is headed by the Registrar, who has the responsibility to supervise it[3].

Registration Process

Registration of the GI is not mandatory but the non-registration has its own effect. Therefore, the registration is always recommended. According to the Section 20(1) of the Gi Act any action cannot be taken by the proprietor of the Gi, if that Gi is unregistered as per the provisions of the Act. He cannot institute any suit under this Act. Therefore, the registration provides the means by which relief can be sought under this Act in case of infringement by anyone.[4]

Applicant may apply for the single good or for all of the goods contained in the class of goods classified by the registrar. The International classification of the goods has to be considered by the registrar while classifying the goods.[5]

Registration of the GI also imposes restrictions on the registered GI as the GI cannot be assign, transmitted, pledge, mortgage, issue license or any other such agreement.

Requirements To File GI

- Application on Form GI- 1A

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[2] Herein After, The Act
[3] The Act
[4] *Ibid*
[5] The Act

- Application must contain the details of principle place of business defined under rules of 2002
- evidences which supports the claim of the users
- comprehensive description of the product and its use
- manner and technique of production
- . any other information connected with this Statement which gives the details the designation of the goods as the GI good
- class in which the goods lie (1-34)
- Name & details of the applicants
- affidavit to support the genuine claim
- benchmark and features of the GI good
- copy of the map of the respective territory(certified)
- any required special human efforts and skill

Procedure

The Act provides the detailed and exhaustive provision to deal with the procedure of applying and fetch the geographical indication for their products. In order to apply for the registration, the applicant has to file the application to the Registrar of the GI. The application must be in triplicate and filed by any association of persons or producers or by any authority or organisation established by or under the law representing the interest of the producers of that particular good.A single application is sufficient for the registration of the good under different classes of the goods but there is need to pay the fee according to the number of classes and in respect of each class. The application must be made on the proper and appropriate form provided for the registration[6].

After receiving the application, the registrar will scrutinise the application for the preliminary scrutiny for checking the fault or lack in the application.

And in case if the registrar founds any deficiency in the application, he would intimate the same to the applicant. The applicant has the opportunity to correct the remedy the deficiency in the application. The deficiency must be remedied it within the period of one month of receiving the communication of deficiency from the office of the registrar.

After this the registrar has three options to deal with the application of the registration. He can either accept the application wholly or wholly reject (refuse) the application or can either partly accept and partly reject the application. While refusing the application the registrar has to give the written grounds for rejecting the application. The applicant can on the basis of these grounds of rejection can file his reply within the two months of refusal. And if the registrar again rejects the application, then the applicant can prefer the appeal against the decision of the rejection of the application.

[6] The Act, section 11

According to the Section 12 of the Act, the registrar may withdraw the acceptance if "he is satisfied that the application is accepted in error or the in the given circumstances the Geographical Indication should not be registered". And the withdrawal has the same effect as the application has not been accepted.

After this the application is advertise/ publish by the registrar in the manner provided by the rules[7].

Within three months or extended one month, any person can oppose the application in writing in the manner provided by the rules and at the same time has to pay the fee as provided by the Act.

Then the registrar has to serve the notice of the opposition to the applicant, and then the applicant has to file the counter statement within two months of receiving of notice from the opposing party. Then registrar has to serve copy of counter statement to the party who opposes the application.

Then the registrar shall provide the opportunity of the hearing to the both parties and on the basis of the hearing and the evidence submitted by the party the registrar decides the same.
The registrar shall register the GI if the application is not opposed or if opposed but decided in the favour of the applicant of the geographical indication.

On registration of the GI, the registrar has to issue the certificate to each of the applicant and to the authorised users of the GI. "Under section 17 of the Act the any person claiming to be the producer of the geographical indicated good can apply for the registration as the authorised user of the GI". The whole procedure needs to be completed within the period of twelve months. The same has to be complied with the manner prescribed under the Act and the rules.

Grounds For Refusal

Sec 9 of the GI Act provides cases in which the GI cannot be registered. These are-

- if the GI is likely to cause confusion and deceive
- if the GI is in contravention of the enforced Act
- Comprises & contains scandalous or obscene matters
- if hurt the religious feeling of any sect or class or section
- Otherwise, be disentitled to protection in Court
- if it is a generic name
- if it falsely represents the origin of good

Tenure of Protection (Sec. 18)

[7] The Act

it provides the duration for the validity of the registration. Initially the GI is given protection for the duration of 10 yrs. and further protection is available on renewable basis from time to time as per the rules prescribed[8].

Infringements and Its Settlements

Section 23 of the Act provides that the registration is the primary evidence of the registration of the ownership and the validity of the registration of the GI. And in case of non-registered GI, passing off action can be preferred[9].

According to the section 24 of the GI Act provides that the GI neither be transferred nor be mortgaged at the same time it cannot be assigned and the authorized user cannot issue licence. But it can be inherited on the death of the authorize user[10].

Section 39 provides punishment in case of falsify any GI. It provides imprisonment from 6 months to 3 years and fine from Rs. 50,000 to Rs. 2,00,000[11].

Section 41 provides punishment in case of second or subsequent offence. It provides imprisonment for not less than one year but it can be further extended to three years and fine is also imposed up to 2,00,000 Rs. But judge can reduce the sentence and have to record the reasons[12].

The Section 58(1) of the Geographical Indication Act provides that whenever the validity of the registered Geographical indication is challenged, the Intellectual Property Appellate Board has the jurisdiction to decide the same[13].

As per the section 66(1) of the Act, the courts which are inferior to the District Court have the power and jurisdiction to try the suit in case of the infringement of the Geographical Indication[14].

The section 67 of the Act confers the discretion on the trial court to grant injunction or to award damages whether nominal or exemplary[15].

But Section 55 of the Act put the proviso on these remedies if anything is done or intended to be done in good faith or in pursuance of the GI Act[16].

Conclusion and Suggestions

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[8] *Ibid*
[9] The ACT
[10] *Ibid*
[11] *Ibid*
[12] *Ibid*
[13] The Act
[14] *Ibid*
[15] *Ibid*
[16] *Ibid*

GI ascertains the product and the geography from where that product is coming from. Promotion and the adequate marketing of the GI products resulted in the economic benefit to the producers in all around especially in the rural areas in case of agricultural products. Enhancement in the GI leads to the monetary benefits to the producers and at the same time protects the interest of the consumers as well. GI leads to the raising of standard of living and also raises the demand and popularity of the standard product. Through this the employment opportunities also increases in these areas and thus confers various benefits to the origin place. GI also ensures the quality to the consumer and thus more satisfaction of their wants.

Thus, GI is important IPR to protect the interest of producers as well as consumers and also helps in increasing socio-economic development of the community by GI registration. The GI may provide the means for the development which has been contemplated by the European Union which is reflected in different policies and regulations. The GI contributed in the development in the following aspects-

- Social benefit
- Economic benefit, GI helps in the production of the local products and increase the profit of the producers by increasing the demand of that product
- Consumer
- Producer
- Development of designated area or region
- Increase demand and quality
- Employment generation, as the demand for the product increases it leads to the enhancement in the production which ultimately helps in the generation of the employment
- Governance, more and more GI tagging involves the enhanced participation of the government and the regulatory bodies to serve the purpose of protection and promotion of the interest
- It gives societal benefit by upgrading the standard of living, per capita income and leads to the educated society
- It also leads to the educational benefit as it promotes the knowledge and awareness of the nature and intellectual
- It leads to the cultural development by preserving the tradition and the quality
- It also helps in biodiversity conservation, environmental preservation and thus leads to the environmental benefit

GI has more significance for India is agriculturally based economy and also the handicraft sector of India is also famous for exports and exchange earner of the country. Two-fold protection has been given under The GI Act

1) Protection of interest of the consumers by preventing them from deceived by false imitation.
2) Protection of interest of the producers as the GI ensures that reputation of the producers should not be damaged by false or counterfeiting imitation.

The GI Act provides the exclusive rights to the authorized user of the GI as they producing the GI product with the Special and unique characteristics.

- Economic growth
- Promote rural entrepreneurship
- Producers become the sole seller
- May set monopoly
- The GI protect the production of the special products which are special because of their place of origin
- Consumers are protected from deception as GI tagging ensures the quality of the product and the characteristics associated with the product
- Powerful tool to protect ownership right on natural resources, natural products by production.
- For developing countries GI is a boon because of simple procedure as low cost in comparison to the other forms of IPR.
- No hidden cost
- Whole community can be benefitted
- Helps in promoting local knowledge and development
- Exclusive rights to owners and authorized users to use the indications
- It provides the remedy in case of infringement by instituting the suit
- Owner can recover damages in case of infringement

In diversified society of India, the cultural diversity of the nation brings popular food items, fabrics and handicrafts which are in public domain or in demand due to their uniqueness of quality, way of production or the origin from where they belong and quality, method, climate condition and skill applied by the human.

Gi is boon to the artisans who are poor and who deployed their best efforts to maintain the characteristics and reputation of the product. This will be an add on to the “Make In India” Programme since GI will boosts the manufacturing activities of the small and medium organisations and promote their products in India as well as International market because of the authenticity and the quality ensured by the GI.

Absurd Identities

Mr. Prakash Singh Bisht[1]

Introduction

The thoughtful twentieth century had many writers who created absurd in their literature but no one really acknowledged himself with any movement of such sorts. The reason being its sporadic and scattered development in the first half of twentieth century and then from the middle of the twentieth century it was looked upon as a ramification of the hopelessness and emotional deviation caused by the destruction of the two world wars. Camus was the first one, who, in his essay *'The Myth of Sisyphus'* published in 1942 marked a pattern of the absurd creation in literature and his commentaries on the works of Franz Kafka and Fyodor Dostoyevsky and the mythical characters of Don Juan and Sisyphus corroborated the change in perception of looking into the characters, The characters in the essay were analysed on the basis of their apparent philosophies which can be deemed in the reactions of the characters in various situations. Camus not only talked of the abstract but also its pragmatic aspects and he names the link between the two as absurd sensitivity. The essay's English translation by Justin O'Brien was published in 1955 and it revolutionized the use of absurd in literature and new elaborate commentaries started coming.

Martin Esslin in 1960 published his essay *'Theatre of Absurd'* where he takes Camus' concept of the absurd and picks playwrights Samuel Beckett, Arthur Adamov, Jean Genet, Eugene Ionesco and Tom Stoppard to mark a new type of theatre prevalent in 1950s and named it '*Theatre of Absurd'*. The theme of these plays was based on the absurd pattern but Esslin widens the theme with his elaboration of the styles of these writers. Mainly the structural extension played an important role to elaborate the themes. While Camus mainly focused on the psyche and action of the characters that too related to fiction and mythology only, Martin Esslin mainly elaborates on the structural aspects of the theatre of absurd that relate it to the absurd sensitivity,

Absurd fiction though has its precursors in the nineteenth century when many writers deviated from the general patterns created in literature and in away started questioning the accepted patterns. Nicolay Gogol was one of the first among these Proto-Absurd writers. His main characters in his stories The Nose, The Overcoat, Diary of a Mad Man and his famous novel all show absurd aspects and behaviour. Candide by Voltaire can also be considered structurally absurd in its way of portraying world and mocking the philosophy of Leibnitz and Leibnitzian Optimism. Voltaire in the book sarcastically mocks famous philosophy by Leibnitz that "all is for the best in the best of all possible worlds". Dostoyevsky's works like The Brothers

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Karamazov, The Dream of a Ridiculous Man, White Nights are also precursors of the absurd in literature.

Absurd Creation and Realization of the Absurd

Absurd creation has been deemed to have been limited to certain aspects only, which do not transcend the intricate materialistic world with supernatural abilities to tame a man's life. But is an absurd creation intentional or does it correspond to particular aspects of time and place? In whichever manner one dives into the logic the creation does not seem intentional for it has a variety in structural units of action and philosophy but there seems a certain similarity in the outlook of different absurd creations which obviously binds them to the philosophy of absurd. But is there a realization of the absurd to the absurd creation? The answer comes out negative in an obvious manner and ensues from the previously written thought that the creation of absurd does not seem intentional.

Still there exists binding entities among various absurd creations which elaborate their outlook in a very un-absurd manner. The similarity can be marked in how an absurd character looks at other characters and situations and with a question that does he, even in a whit, considers the world absurd? If one is to think like an absurd creation only snubbing absurd philosophy one might get different perspectives from different absurd creations which again corroborates to the point that an absurd creation does not have a pre-realization of the absurdity of life, its meaninglessness seeps into his thought during the course of his actions in a play or fiction or to be more exact he imbibes the realization of absurd during his confrontations with life.

'The Metamorphosis' is a perfect story of the realization of the absurd. The metamorphosis of Gregor Samsa overnight marks the inception of gradual metamorphosis of his family. While it can be questioned whether Gregor's family members realized the absurd but Grete for sure had the realization though gradual which made the perception of her brother's existence end into meaningless entity. Gregor Samsa succumbs to the realization of his meaninglessness in the world. Rhinoceros is another work of realization of absurd but it exudes a different essence altogether. Berenger's confrontation with life makes him a man with purpose through he remains perplexed till the end and here one witness a twisted absurd creation which succumbs to his seemingly whimsical determination but which holds a fleeting meaning.

However, realization of absurd during the course of a play or fiction by the absurd creation must not be taken as a universal rule for art marks no boundaries and there is other aspect too where it seems that characters have the pre-realization of the absurd but these creations would remain always few and would be difficult to portray in a consummated fashion. Meursault exudes his type of enlightened self in the first lines of the novel The Stranger. His apathy towards the death of her mother presents his way of putting reason to meaninglessness. Even in the last part of the novel Meursault feels liberated on the assurance of his death. An absurd man realized death as a part of his life and not as end. And this is a very reason why an absurd creation has an inherent fascination with death. Estragon and Vladimir has the realization of death in their life and they do not find it weird to just die.

Absurd Fancy

The pick of the matter lies in the fact that man has the tendency to be fanciful and death many times portrays itself to be the ultimate fancy. Some would say immortality is the ultimate thing to be fanciful about, but it is far too fanciful to bear any realization. Rhinoceros provides a good precedence of man's affinity towards certain realizations that appear fanciful in moralistic consciousness but are very realistic the other way. The characters in the play though very much in defiance of the existence of Rhinoceros earlier, accept its form willingly as can be assumed from Berenger's logic to Daisy and from the fact that he remains unchanged till the end. The accepted metamorphosis is the result of the continuous fancy which though precarious sometimes allows man to readily accept some different form in situations of the realizations of different sorts. This transformation though differs from the metamorphosis of Gregor Samsa. It is rather Samsa's metamorphosis that made him entertain the realization of the absurd. Also, the transformation of Samsa is not an accepted one but appears to be sudden and imposed one. The perfect absurd creation thus gets highlighted after the realization of the absurd. But is the classification justified on the basis of the realization only. The answer can be fathomed in deep analysis of the absurd creation.

Absurd and Towards Absurd

Camus differentiated on the basis of hope and universality of characters between the absurd and what one can call 'Towards Absurd'. Camus feels the stream of hope denies the absurdity and it is the universality of Kafka's characters which ensues from the very concept of man's inherent hope. And his differentiation seems reasonable simply for the fact that it is difficult to imagine if these characters (like Kafka's) have realized the absurd in the end and again it seems unreasonable to just discard these characters from under the sky of absurd for there can be no real perceptible slang of their realization possible. In whatever way one discerns the situation direct gain saying cannot be done in this case; there will be a connection between the absurd and towards the absurd.

Though it is hard to just vindicate the basis of realizations only as it sometimes become perplexing when compared to other characters in literature. Jose Arcadio Buendia experiences different kinds of existential realization during his life in Maconda but he is a character far from absurd gives his structure of thought and action is altogether affiliated with purpose and he exudes no real transformation too. Aureliano though at many stages being experiencing the transformation is the only character that is closest to an absurd creation amongst the characters of the novel.

Realization of Hope and Despair

The philosophy of absurd depends on the fact that human reasoning does not tantamount to link the scattered universe or simply humans are so little apart to scan the universe logically. Absurd literature seems to the realization can be logically associated with many contexts. Realizations experienced in the transforming society have always been context sensitive and contagious also. This logic can again be associated with the fancifulness of man.

Conclusion

One such realizations of the 20th century which still remained contagious is the realization of despair. Camus refuses to put hope at the opposite of despair or rather puts both of them at one side only as can be understood in the words of Nikos Kazantzakis' epitaph: "I hope for nothing. I fear nothing. I am free." Or in another sense one can revamp his hope and limit it to freely living through oneself. The acceptance of despair is therefore its rightful way to discard it. Hope and despair thus go hand in hand and can make a person free from never-happening fancies of promised land and nirvana according to this philosophy.

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Dynamics of Crime Relating to Human Trafficking for the Purpose of Organ Removal: Indian Perspective

Mr. Ravi Ranjan Roy[1]

Introduction

Human trafficking has a long history of evolution from the practice of slave trade. The crime has grown into numerous forms of exploitation of people, from the common forms of sexual exploitation and child labour to the uncommon form of organ trafficking and trafficking of person for their organ removal. This topic seeks to introduce the phenomena of human trafficking for organ removal, which has begun to receive numerous attentions from various institutions, organisations, states, and especially the electronic media.

The topic commences with the brief history of human trafficking. It then considers the evolution of organ transplantation that has fuelled the black market for organs, leading to the trafficking of persons for the purpose of their organs. The problem of human trafficking as a global problem, and particularly human trafficking for the purpose of organ removal, are considered alongside the factors responsible for the continuation of this crime.

Human trafficking is a major international policy concern of the twenty first century. Although human trafficking is often confused with human smuggling and migration given that these practices also involve the movement of persons, but there are important differences between them. The United Nations "protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organised crime" (otherwise known as the Palermo protocol) defines:

"'Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring, or receipt of person, by means of threat or use of force or, other forms of coercion, of abduction, a fraud of deception, of the abuse of power, or position of vulnerability or the giving or receiving of payment or benefit to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at the minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, or practice similar to slavery, servitude or removal of organs"[2].

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[1.] GA RES 55/25, 8 Jan 2001, Annexes I and II. The Organized Crime Convention Trafficking Protocol entered into force on September and December 2003 respectively. September 2004, 117 States are Parties to the Trafficking Protocol. See Signatories Convention against Transnational Crime and its Protocols at <http://www.unodc.unodc/en/crime_cicp_signatures.html> (last visited: 25 Sept 2004). For a drafting process instruments, see, A Gallagher 'Human Rights and the New UN Protocols on Trafficking Migrant Smuggling: A Preliminary Analysis' (2001) 23 Human Rights Quarterly 975.

This definition can be broken down in three Constituent Elements

The act (what is done) Recruitment, transportation, transfer, harbouring or receipt of persons. The means (how it is done) threat or use of force, coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, or giving or receiving of payments or benefits to achieve the consent of a person in control of the victim (why it is done) For the purpose of exploitation, including the removal of organs.

Under the Trafficking in Persons Protocol, all three elements must be present to constitute 'trafficking in persons. The only exception is the case of trafficking in children, when, according to Article 3(c) of the Protocol, the 'acts and 'purpose' elements are sufficient to establish the crime of human trafficking, and no 'means' need to be involved.

Trafficking in persons for organ removal is also defined and prohibited in other international/regional instruments, such as: The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,[3]The Council of Europe (CoE) Convention on action against trafficking in human beings.[4] The non-member States that have participated in its elaboration and by the European Union, as well as for accession by other non-member States.[5] The Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victim.[6]

Trafficking in persons for the purpose of organ removal is not a new phenomenon. Over the years, the crime has received significant attention from media, NGOs, academia and also from international and regional actors such as the Special Rapporteur on trafficking in persons, especially in women and children and the Special Representative and Co-ordinator for Combating Trafficking in Human Being Organisation for Security and Co-operation in Europe.[7] The issue was also taken up at the UN Economic and Social Council and the General Assembly, which, e.g., in 2013 adopted resolutions that inter alia request UNODC to collect and analyse information of trafficking in person for organ removal and encourage Member States to provide

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[3] United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children Child Prostitution and Child Pornography, ed. p. 227 Doc A/RES/54/263 United Nations Treaty Series Vol. 2171 (2000),

[4] Council of Europe Convention on Action Against Trafficking in Human Beings, in 16.V.2005. CETS 197 (Warsaw2005). Article 4 States.

[5] As of 20 Feb 2015, the Convention has been ratified or acceded to by 43 States, i.e. 42 CoE Member and one non-member State,
http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=&DF=&CL=ENG;
Treaty Office. Belarus, CoE

[6] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (2011).

[7] office of the special representative and co-ordinator for combating trafficking in human beings. "Trafficking of human beings for purpose of organ removal in the OSCE region: analysis and findings." Organization for security and co-operation in Europe, Vienna, 2013, www.osce.org/secretariat/103393?download =true

to UNODC evidence-based data on patterns, forms and flows of trafficking in persons, including for the purpose of the removal of organs respectively.[8]

Trafficking in persons for the purpose of organ removal

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (Trafficking in Persons Protocol) supplementing the United Nations Convention against Transnational Organized Crime (Organized Crime Convention) requires States parties, in Article 5, to criminalize trafficking in persons for organ removal as defined in Article 3. The Trafficking in Persons Protocol is the first international legal instrument that gives a definition of trafficking in persons for the purpose of organ removal.

According to Article 3(a) of the Trafficking in Persons Protocol: 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Convention applies the definition of trafficking in persons as laid down in the UN Trafficking in Persons Protocol and seeks to strengthen the protection afforded by the Protocol and other international instruments.

Trafficking in persons for the purpose of organ removal versus organ trafficking

The terms organ trafficking or trafficking in organs and trafficking in persons for organ removal are often used interchangeably. Trafficking in persons for organ removal, however, is specifically defined in the Trafficking in Persons Protocol, and does not encompass the term trafficking in organs or organ trafficking.

In 2008, the Council of Europe and the United Nations agreed to prepare a "Joint Study on trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs". The Joint Study was published in 2009 and identified a number of issues related to the trafficking in human organs, tissues and cells which deserved further consideration.

In summary, the Joint CoE/UN Study concluded the, following:

- Trafficking in organs and trafficking in persons for organ removal are different crimes though frequently confused in public debate and among the legal and scientific communities. In the case of trafficking in organs, the object of the crime is the organ, whereas in the case of human trafficking for organ removal, the object of the crime is the

[8] E.g. E/RES/2013/41, 2013/41. Implementation of United Nations Global Plan of Action to Combat Trafficking in Persons, 25 July 2013 and A/RES/68/192, Improving the co-ordination of efforts against trafficking in persons, 18 December 2013.

person. Trafficking in organs may have its origin in cases of human trafficking for organ removal, but organ trafficking will also frequently with occur no link to a case of human trafficking. The mixing up of these two phenomena could hinder efforts to combat both phenomena and provide comprehensive victim protection and assistance.

- Both the Trafficking in Persons Protocol and the Council of Europe Convention on action against trafficking in human beings provide a consistent and unanimous definition of trafficking in persons and effectively address the issue of human trafficking, including for the purposes of organ removal. There was thus no need for an additional international legal instrument dealing specifically with human trafficking for organ removal.
- There was, however, no single definition of trafficking in organs that had achieved international consensus, even though such consensus was essential to combating the practice. Additionally, none of the existing international legal instruments addressed the consensual removal of organs for financial gain or comparable advantage and/or outside of the approved domestic systems. The report identified a need to develop a dedicated international legal tool, which builds on an agreed upon definition of trafficking in organs, includes provisions for the criminalization of this practice, along with provisions targeted to its prevention, and to victim protection and assistance.

Ultimately, the Committee of Ministers of the Council of Europe (CoE)[9] established an ad-hoc Committee of Experts on Trafficking in Human Organs, Tissues and Cells and tasked it with the elaboration of a draft criminal law convention against trafficking in human organs. The ad-hoc Committee held a total of four meetings and elaborated a draft Convention against Trafficking in Human Organs. The draft text of the Convention was finalised by the European Committee on Crime Problems in December 2012. The Council of Europe Convention against Trafficking in Human Organs was eventually adopted by the Committee of Ministers in Strasbourg, on 9 July 2014.

Thus far, the Council of Europe Convention against Trafficking in Human Organs[10] is the only international treaty[11] that specifically deals with trafficking in human organs, seeking to prevent and combat trafficking in human organs, to protect the rights of victims and to facilitate co-operation at both national and international levels.

India's Obligation to Uphold the Un Trafficking Protocol

Almost a decade after signing the United Nations Convention against Transnational Organized Crime (UNTOC), India officially ratified the Convention and its three Protocols, including the UN Trafficking Protocol, on May 5, 2011. The process of ratification formally indicated the State's consent to be bound by the terms and provisions of the UNTOC and its Protocols. However, India has a dualist regime with regard to international law and international treaties.

[9] Decision-making body of the Council of Europe, comprising the Foreign Affairs Ministers of all the member states, or their permanent diplomatic representatives in Strasbourg, www.coe.int/t/cm/aboutCM_en.asp.

[10] Opened for signature on 25 March 2015.

[11] The Convention is open for signature by Council of Europe member States, the European Union, and States enjoying observer status with the Council of Europe; non-member States can, subject to an invitation by the Committee of Ministers, sign and ratify the Convention even before its entry into force.

This means that, according to the Indian Constitution, ratified treaties do not automatically have the force of law in domestic courts.[12] However, the Indian Constitution states that the Government of India must adhere to its treaty obligations and "endeavour to…foster respect for international law treaty obligations in the dealings of organized peoples with one another." In *Gramophone Co. of India v. Birendra Bahadur Pandey*[13], the Indian Supreme Court declared that the Constitution itself must be interpreted in light of any international treaties that India has ratified.

In addition, the Supreme Court in *Vishaka v. State of Rajasthan*[14] established that provisions of international treaties might be read into existing Indian law in order to "expand" their protections. Moreover, in the absence of domestic law, "the contents of international conventions and norms are significant for the purpose of interpretation." Thus, although India has not expressly incorporated the entirety of the UN Trafficking Protocol into its national law, the Indian government is nonetheless required to adhere to all of its obligations under the Protocol. Moreover, in line with the judicial precedents discussed above, the anti-trafficking provisions of the Indian Constitution, Penal Code, and other domestic legislation should be interpreted in light of the UN Trafficking Protocol and other international treaties to which India is a party.

Constitutional Protections and Trafficking

India has addressed trafficking both directly and indirectly in its Constitution. There are three Articles spread over Fundamental Rights in Part III and Directive Principles of State Policy in Part IV which address trafficking related issues. Provisions on Trafficking in the Constitution of India:

- Article 23 Fundamental Right prohibiting trafficking in human beings and forms of forced labour.
- Article 39(e) Directive Principle of State Policy directed at ensuring that health and strength of individuals are not abused and that no one is forced by economic necessity to do work unsuited to their age or strength.
- Article 39(f) Directive Principle of State Policy stating that childhood and youth should be protected against exploitation. India has a written Constitution, and though the above provisions make India's mandate on trafficking clear, penalizing and tackling trafficking is dealt with by legislation.

The Constitution specifically mentions trafficking in human beings as well as forced labour and also indicates the special protection to be provided to vulnerable groups in society. The Constitution of India discusses provisions on trafficking at two levels – one, at the level of Fundamental Rights which are basic rights available to all, irrespective of caste, creed, sex, place of birth, etc., and two, at the level of Directive Principles of State Policy.

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[12] *Jolly George Verghese v. Bank of Cohin* AIR 1980 SC 470.
[13] 1984 SCR (2) 664.
[14] (1997) 6 SCC 241.

Fundamental Rights are justiciable and can be directly enforced in a court of law, whereas Directive Principles of State Policy are non-justiciable and cannot be directly enforced in a Court of Law. However, Directive Principles play a major role in shaping the policy of the State and may sometimes be the basis that legislation is built on. As a Fundamental Right in Article 23, trafficking in human beings is prohibited as are all forms of forced labour. According to Directive Principles of State Policy in Articles 39(e) and (f), the health and strength of workers should not be abused. It prohibits exploitation of persons to perform work which is unsuitable for them. It also specifically protects children and youth against exploitation of any kind. While the provisions in the Directive Principles of State Policy do not mention trafficking, it mentions exploitation which is a key element in trafficking.

Immoral Traffic Prevention Act, 1956

India's Immoral Traffic Prevention Act, 1956 is the only legislation specifically addressing trafficking. However, it does mix up issues of trafficking and prostitution and is currently pending amendment. It penalizes trafficking of women and children for commercial sexual exploitation.

Miscellaneous Legislations Relevant to Trafficking

Indian Penal Code, 1860

Section 370 - Trafficking of Person.

Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First - using threats, or

Secondly - using force, or any other form of coercion, or

Thirdly - by abduction, or

Fourthly - by practising fraud, or deception, or

Fifthly - by abuse of power, or

Sixthly - by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1 - The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2 - The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.
(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.
(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.
(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Section 370A - Exploitation of a trafficked person.

1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.
2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.

Sections 370 and 370A were introduced by the Criminal Law (Amendment) Act, 2013. The key changes introduced by these provisions are the specific criminalisation of recruitment, transfer, transport, harbouring a person for the purpose of prostitution, forced labour, organ removal by use of threats or inducement; conduct which had previously been covered by general provisions dealing with slavery and abduction. It also provides for enhanced punishment of 7 to 10 years imprisonment.

Transplantation of Human Organs Act, 1994

This Act deals with criminal responsibility in cases of harvesting of organs and trafficking of persons for this purpose includes traffickers, procurers, brokers, intermediaries, hospital/ nursing staff and medical laboratory technicians involved in the illegal transplant procedure. Section 11 declares prohibition of removal or transplantation of human organs for any purpose other than therapeutic purposes, and Section 19 clarifies that it punishes those who seek willing people or offer to supply organs; it should be punishable with imprisonment for a term which should not be less than two years but which may extend to seven years, and should be liable to fine which should not be less than ten thousand rupees but may extend to twenty thousand rupees.

The 2016 Anti-Trafficking Bill

The 2016 Anti-Trafficking Bill is only the latest (proposed) addition to the existing laws against trafficking in India. The bill in its current form will not achieve its objectives of preventing trafficking and providing protection and rehabilitation to trafficked victims. This is because there are at least three sets of laws applicable to the various manifestations of domestic trafficking: the generally enforceable Indian Penal Code, 1860, the specialist criminal law, that is, the Immoral Traffic Prevention Act, 1956 which is applicable to the sex sector, and several specialist labour legislations covering bonded labour, contract labour and interstate migrant work. They all arise from different legal sources and harbour varied ideas about what constitutes "trafficking" or extreme exploitation, emerging in turn from divergent political understandings of coercion and exploitation. Finally, they envisage radically different regulatory mechanisms to counter exploitation. The differences in these approaches are visible in many respects.

While the Indian Penal Code, 1860 and Immoral Traffic Prevention Act, 1956 are laws on bonded, contract and migrant labour envisage elaborate local-level administrative and labour law mechanisms. While criminal laws target "bad men" traffickers, labour laws presume that exploitation is endemic and use both penal and labour law doctrines to impose obligations for better working conditions on all intermediaries. While the older IPC provisions are rarely used, and it is too soon to assess Sections 370 and 370A, the huge enforcement gap of labour laws, despite activist judges, the NHRC and several dedicated IAS officers, is a painful reminder of the callous indifference on the part of sections of the executive and Indian society towards labour exploitation. The anti- trafficking Bill seeks to build an infrastructure around the hastily-passed Section 370 of IPC, 1860. However, India needs a comprehensive and effective anti-trafficking law that consolidates not only these varied streams of anti-trafficking laws, but also the very different political visions of extreme exploitation and the best regulatory means to address them. Unfortunately, the trafficking Bill is not that piece of legislation that consolidates.

Conclusion

As a result of the lack of existing partnerships and exchange of information, there is little awareness of the crime among criminal justice and law enforcement practitioners as well as policy makers. Consequently, trafficking in persons for organ removal does currently not seem to be on the 'enforcement agenda' of key stakeholders. This hampers an effective enforcement of legislation that criminalizes the phenomenon in line with the Trafficking in Persons Protocol, as well as non-legislative responses. Allowing organized crime networks to continue organ-related crimes with impunity, however, allows the threat of victimization of the world's poorest and most vulnerable populations to increase. A strengthened response should therefore, in a first step, focus on increasing evidence-based knowledge, raising awareness amongst target groups and improving and enforcing legislative and non-legislative measures against the crime of trafficking in persons for the purpose of organ removal.

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Immigration: Stateless Citizens and Faceless Identities

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Abstract

"The alien who resides with you shall be to you as the citizen among you; you shall love the alien as yourself" – Leviticus. Statelessness of any person or group of persons is a humanitarian crisis by which they are deprived of their basic human rights. This concept is not a contemporary one but ages old. The dichotomy of 'self and otherness' gives a status of alien to immigrants who are living in a State for many years without proper documentation. The sense of otherness prevents a State from conferring equal rights to citizens and immigrants. The recent uprisings against immigrants are restricting us from being an international community to local domestic communities. The anti-immigration move is spreading like a forest fire and people are protesting against the influx of immigrants in their State, asking for their deportation. But the question arises where to deport these immigrants? Many International Organisations and NGO's are working to settle them with a nationality and improve their status, but till then, they have no identity or recognition. Populism based anti-immigrant municipal policies hinders the mechanism of humanistic based International Law from its execution in true sense. The International legislations strive towards giving nationality to each child born irrespective of its parent's status. This article focuses on various issues faced by illegal immigrants and their social and political exploitation by the authorities at different level. As they are not accounted in national population, they remain out of focus for many important policies of a nation which could determine their future. This leads to statelessness, not only for them but for their generations also. At last, this article concludes with some recommendations to depreciate the vicious evil of statelessness and to confer their due rights which they deserve.

Keywords: *Immigration, Stateless Citizens Faceless Identities, Migration, Right to Nationality, Discrimination.*

Introduction

Homo Sapiens is a culture building migratory species[3]. Migration has been the characteristic of man since inception of human civilization. Human mobility has been extant since man took his first step from the cradle of humanity and expanded and explored the unchartered territories of the earth. In ancient period, causes of the migration of human were to kill beasts, to search for lands which could be cultivated or to conquer the new lands. In medieval period, they migrated in search of new resources, to establish colonies and to avoid persecution. While in the modern and contemporary period, causes behind migration are different, i.e.to improve his economic status or to get more favourable social or political atmosphere than before. But globalization and an urge to become more cosmopolitan, both have their opponents, while populism and nationalism are on the rise with worries among somepolitical observers that this is beginning to lead towards fascism in some arenas. Reaction and collective anxieties about political borders, and an "us and them" attitude that has arisen in

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[3]Husain, Majid, Human Geography,4th Edition, Page- 169.

some quarters during the last two decades are growing stronger as concerns about unfettered immigration get nudged higher up the agenda by those with their own political power agenda.

In all, the immigration debate is multifaceted, with nearly as many approaches to the problem, suggestions for reform, and arguments buttressing the status quo as there are participants in the debate. Bothadvocates of reform and those supporting the status quo make their cases in strikingly different ways.[4]Immigrants ambiguous legal status certainly places them in a precarious social position or to be more precise in the position of statelessness and unrecognised as well as unvalued identities. Although they are *de facto* citizens but vagueness and ambiguities exist as to their state which will impute nationality to them and will recognise and value their identities which has become faceless. In so called civilised society still human being are starving for their identity though we have International Humanitarian Law, this is called present dichotomy or paradox. Faceless Identity is temporary until you get prefix-suffix to your name. But "I remindyou Oh timid that I haven't got name, how would you add something when as per world I am unknown (no existence)". Rage for identity is not new, it is as old as when human being come into existence. History is evident that Jews were first who raised their voice for their identity. Simultaneously if we look at the nation theory then we assure that faceless identity is not in existence. As everyone is born with an identity, as attached to them by society, some consider it as badge of honour or some consider it as badge of humiliation. The politics of belonging is grounded in the idea that "we are who we are by virtue of who we are not"[5].Identities must be recognised in order to promote one's autonomy because then only in true sense an individual can claim and exercise their human rights.

Moreover, we are all the same within, there are good, bad, and ugly among us and our legal system recognize this and the humanity of us all whether "citizen" or "foreigner". In the contemporary period, a number of anti-immigrant policies have been introduced at different levels of politically organised community and such policies have created a hostile environment jeopardising the position of immigrants. There is always conflicting interest in the society as propounded by Rosco Pound and the application of this theory is not restricted to state level but fittingly characterise the scenario at international level as well but with minute modifications with respect to complexities involved as to the nature of interests and their balancing. In order to solve the conflicting interests, there is need to maintain balance between human rights of the immigrants and interest of the states[6]. Humanitarian society needs society based on social cohesion which aims to consolidate plurality of citizenship by

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[5]Zolberg, Artiside R., "Matters of State: Theorizing Immigration Policy, in C. Hirschman." In the Handbook of International Migration: The American Experience, edited by Charles Hirschman, Philip Kasinitz, and Joshua DeWind, 71–93. New York: Russell Sage Foundation. https://www.tandfonline.com/doi/full/10.1080/1369183X.2018.1561053

4Dr. Jamir, HeleneSlessarev,Immigrants' Rights as Human Rights,Sojourners, Jan 28,2011 https://sojo.net/articles/immigrant-rights-human-rights

reducing inequality and socioeconomic disparities and fracture in society[7].This article discusses the precarious position of immigrants as to statelessness, discriminatory policies of states and their impact on immigrants along with some suggestion to improve their political and social position.

Immigration as a Concept

International immigration has become one of the most controversial issues of modern time. Migration is the phenomenon that seems to be necessity of human in every age. Since man has a tendency to leave the areas in which life is difficult, he migrates to the areas where life may be easy and better. The process of immigration has been of great social, economic, and cultural benefit to states. In order to understand immigration, it is important to understand the concept of migration. Migration has been defined differently by different experts. In its general sense, migration is semi-permanent change of residence of an individual or group of people over a significant distance. According to Baker, "Migration is the act of moving from one spatial unit to another". Eisenstadt looks at migration as "the physical transition of an individual or a group from one society to another. This transition usually involves abandoning one social setting and entering another and permanent one".

The migration movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification.[8] Migration may be international, inter-regional, inter-urban, intra-urban or rural-urban. Migration may be classified as social, political, economic and religious on the basis of factor causing migration. International migration is an inherently political phenomenon in that it entails not merely physical relocation but a change of jurisdiction from one state to another and eventually also change in one political community to another. Both aspects of the process, emigration and immigration, therefore often elicit public concern and provoke political contention within and between countries.[9]Migration transcends political, social[10], economic, and legal boundaries. In 1908, the sociologist Georg Simmel wrote an essay about 'the stranger'.

According to Simmel's work, it is the ambivalence of proximity and distance that shapes the stranger's relation to society. The stranger is part of a society, but at the same time he/she is

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[7] Manca A.R. (2014) Social Cohesion. In: Michalos A.C. (eds) Encyclopedia of Quality of Life and Well-Being Research. Springer, Dordrecht https://link.springer.com/referenceworkentry/10.1007%2F978-94-007-0753-5_2739

[8]Dr. Edwards,Rich,DEFINITIONS OF TERMS ON THE IMMIGRATION TOPIC, Professor of Communication Studies Baylor University, National Policy Topic 2018-19https://www.nfhs.org/media/1019707/topicality-on-the-immigration-topic.pdf

[9]Zolberg, Artiside R., The politics of immigration policy - An extremist perspective, new school for social research https://journals.sagepub.com/doi/abs/10.1177/00027649921955056

[10]The Cambridge Handbook of Sociology Core Areas in Sociology and the Development of the Discipline, Edition: 1, Publisher: Cambridge University Press, Editors: Kathleen Odell Korgen, pp.455-464. (https://www.researchgate.net/publication/320383211_Sociology_of_migration)

perceived as being significantly different.[11]There is no definite theory that has been propounded regarding various factors leading to migration. Moreover, such a big phenomenon of migration is not influenced by any single factor but there will be numerous factors which are responsible for influencing it. People migrate for a variety of reasons, often in combination.

Decisions might be related to work, study, family reunion, lifestyle, escape from oppression and many other factors. But at base, for the majority of migrants, the underlying rationale is economic and, at one stage removed, demographic.[12]Migration is the phenomenon in which people migrate due to various causes which are generally related to betterment of them. Immigration is used relatively to the country towards which human migrates and the human immigrated in the country is called immigrant. Emigration is the act of leaving its own land or statee.g. a group of people migrated from Bangladesh to India due to worse socio-political conditions in Bangladesh. It is called Immigration in respect of India and they are called as immigrants in context to India and emigrants in context to Bangladesh whereas the process is emigration in respect of Bangladesh and the whole process is known as migration.

Immigration as a Matter of Right

Ban Ki-Moon, Former Secretary General of UN congregated the aspirations of the people in his words that – "Migration is an expression of the human aspiration for dignity, safety, and a better future. It is part of the social fabric, part of our very make-up as a human family. People have a human right to immigrate to other states". People have essential interests in being able to make important personal decisions and engage in politics without state restrictions on the options available to them. The human right to immigrate cannot be absolute, the human right to immigrate can be restricted in certain circumstances. Outside these circumstances, however, immigration restrictions are unjust. The idea of a human right to immigrate is not a demand for open borders.

Rather it is a demand that basic liberties be awarded the same level of protection when people seek to exercise them across borders and within borders. Article 13.1 of UDHR 1948, holds that "everyone has the right to freedom of movement and residence within the borders of each state". Freedom of movement within and beyond the borders is recognised in every democratic nation as well under international law. Miller concedes that people often have an interest in moving to other countries. But not all interests are sufficient to generate rights, which would in turn generate obligations on the part of other people to satisfy them (David Miller's well-known response to Caren's)[13].There cannot be a uniform economic, social or political situation everywhere on this earth, nor can there be stability in a situation forever in

[11] Simmel, G. (1996 [1908]). The stranger. In W. Sollors (Ed.), Theories of ethnicity: A classical reader (pp. 37-42) New York, NY: NYU Press. [Crossref], [Google Scholar] https://www.tandfonline.com/doi/full/10.1080/16138171.2017.1360553-main

[12]Prof Russell King and Dr Aija Lulle, Research on Migration: Facing Realities and Maximising Opportunities, A Policy Review. https://ec.europa.eu/research/conferences/2016/migration-challenge/pdf/migration_conf-r_king.pdf

[13]Adam Hosein, Immigration and freedom of movement, Ethics & Global Politics, 6:1, 25-37 https://www.tandfonline.com/doi/pdf/10.3402/egp.v6i1.18188

any place. Man has been moving according to his convenience. Right to move or migrate is one of the basic human rights. To resolve the problems of the immigrants, restricting migration is not a good option. Restricting migration is often the first measure of the totalitarian governments.

Who are immigrants?

While counting immigrants and analysing the consequences of immigration, who counts as an immigrant is of crucial importance. Yet there is no consensus on a single definition of a 'immigrant', but there are many ways to interpret the term 'immigrant. Different data sources define migrants in different ways. Immigrants may be defined as foreign-born, foreign nationals or people who have moved to the country for a year or more, among other possibilities. Immigrants might be defined by foreign birth, by foreign citizenship, or by their movement into a new country to stay temporarily (sometimes for as little as one month) or to settle for the long-term. In some instances, in UK children who are UK-born or UK nationals, but whose parents are foreign-born or foreign-nationals, are included in the migrant population.[14]Immigration is an umbrella term, not defined under international law, reflecting the common law understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons.

The term includes a number of well-defined legal categories of people, such as migrant workers; persons whose particular types of movements are legally-defined, such as smuggled migrants; as well as those whose status or means of movement are not specifically defined under international law, such as international students.[15]There are different ways in which one can understand who counts as a migrant and the implications of using different definitions.The use of the term 'immigrant' in the public discourse is extremely loose and often conflates issues of immigration status, race, ethnicity and asylum. Misuse of the terminology can produce inaccurate reporting and complicate policy debates. No two definitions of migrant are equivalent, and their effects on our understanding of migration and its impacts are significant.[16]

The real controversy arises when the illegality is imputed to the immigrants, therefore when their status changes from immigrants to illegal immigrants. People are recognised as illegal immigrants based on many reasons. There may be many situations which may force them to

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[14] Prof. Bridget Anderson and Dr. Scott Blinder, who counts as a Migrant? Definitions and their consequences, TheMigration Observatory at The University of Oxfordhttps://migrationobservatory.ox.ac.uk/resources/briefings/who-counts-as-a-migrant-definitions-and-their-consequences/

[15]International Organization for Migration, Glossary on migration, IML Series No. 34, 2019https://www.iom.int/who-is-a-migrant

[16]Prof. Bridget Anderson and Dr. Scott Blinder, who counts as a Migrant? Definitions and their consequences, The Migration Observatory at The University of Oxford.
https://migrationobservatory.ox.ac.uk/resources/briefings/who-counts-as-a-migrant-definitions-and-their-consequences/

be called as illegal immigrants. Those reasons can be war, epidemics, poor living standards, poverty, famine, natural disasters and many others, but there are also some other reasons which are not direct cause for it like abusive relationships, this gives a forced choice to choose between the relationship or being an illegal immigrant. Illegal immigrants mainly opt for any of the three ways to enter into a country:

a) Illegal Entry through Borders: The immigrants enter through the borders or difficult terrains or hire professional organisations who smuggle them without being intercepted by the authorities. The American Mexican border and Indian Bangladesh border is the most common access point for such activities. This activity accounts roughly 6.5 million illegal immigrants' entry in America.[17]
b) Overstaying the Visa: This is the process where a person enters a nation legally through visa for a limited time but as soon as the visa expires his stay becomes illegal and he becomes illegal immigrant. These visas can be of any category like student visa, employee visa or tourist visa. In this the entry is legal but with time it becomes unauthorised.

c) Border Crossing Card Violations: This is very common practice of illegal entry in US. When a person is provided authorisation for a limited period of time to cross the border and return accordingly and the person violates the authorisation and remains there beyond the time, such act is called border crossing card violations.

Stateless Citizens: Right to Nationality
The issues at national and international level that emanate from the immigration revolve around the changing policies of the potentially receiving states, therefore the status of the immigrants is subject to the whims and fancies of receiving state. In international law a stateless person is someone who is not considered as a national by any State under the operation of its law[18]Statelessness is a harmful condition because it exposes individuals to radical insecurity in terms of access to rights and resources, it leaves them highly vulnerable to arbitrary exercises of private and public power precisely because citizenship has both protective and enabling dimensions, possession of an effective nationality acts as gateway to a range of liberties, resources and powers, and the lack of an effective nationality obstructs access to these protective and enabling conditions of autonomy and well-being.

Today, this duality of statelessness as both wrong and harm is widely recognized.[19]There are two contrasting approaches and equally inadequate views of entitlement of citizenship, while the first view assigns discretionary power to state, the second view ascribes it to the

[17] Illegal Migration – Your Rights, Benefits, Status
https://www.google.com/url?sa=t&source=web&rct=j&url=https://immigration.laws.com/illegal-immigration&ved=2ahUKEwi3iN_Ph6nlAhXx7HMBHS1cBzIQFjAOegQICRAB&usg=AOvVaw35zZAgxAC7vIFVcQFXgHzv&cshid=1571513413800
[18]Article 1(1), Convention Relating to the Status of stateless persons,1954
[19] Owen, D., Netherland International Law Review (2018) 65 Issue 3: 299.
https://doi.org/10.1007/s40802-018-0116-7

individual but both views fail to take into account the reciprocal relationship between the state and the individual.[20]There can be many causes of statelessness, such as:

1. Conflicting nationality laws of different countries: There are basically two principles on which the nationality laws are derived of any State, which themselves are discriminatory and conflicting. These principles regarding granting of nationality to any person are:
    a) Jus Soli- It is also called birth right citizenship i.e. citizenship is granted to a child soon after birth in the State where he/she is born. Any parent who is a migrant, whether legal or illegal, gives birth to a child in such a state, then the child acquires the nationality of such state. States who are party to Convention on The Reduction of Statelessness, 1961 are obligated to grant nationality to the persons born in their territory. Many American nations provide nationality on this basis like US, Argentina, Brazil etc.
    b) Jus Sanguinis- It is also called citizenship by blood relation. According to this principal citizenship is acquired by nationality of any of the parent. A child when born, automatically acquires the nationality of a particular state if either or both of its parents have citizenship of that state. Now a days most of the European, Asian and African nations apply the principle of jus sanguinis in its citizenship laws. But this principle restricts the convenience in obtaining the nationality for the migrant's children.
2. Discriminatory Policies of the State: - Many nations have discriminatory policies regarding citizenship laws, some are on the basis of sex, ethnicity, race, descent etc. There is a total of 27 nations who do not grant equal rights to male and female citizens in passing on their citizenship rights, they don't allow their female citizens to confer their nationality to their children. Many nations define their citizens on the basis of ethnicity, thereby excluding large group of people belonging to other ethnicity. These policies violate international laws against discrimination.
3. State Succession: - When a State is conquered or taken over by any other State then the nationals of such State become stateless as a result of such succession. This happened after dis-integration of USSR, Yugoslavia and Ethiopia.
4. Hurdles due to Administration: -Administrative obstacles are a prominent reason for statelessness among people whose nationality is questioned in a State. They may be eligible for citizenship but the process and fees for it may make citizenship inaccessible for them. The documents required may be unavailable with them and proving nationality without documents will be a nightmare for them. Currently the situation in Indian state of Assam due to NRC is same as many people are facing difficulty in proving their nationality without proper documents.
5. Non-State Territories: - According to the definition of statelessness, only States can have nationals. There are many States who have not been recognised as States internationally or whose statehood has ceased to exist, as a result, the people belonging to such States are rendered stateless. The Palestinian territories are a perfect example for such case.
6. Change of Citizenship: - When people apply for nationality of a State by naturalisation, there are many States who do not approve multiple nationality, thereby asking them to

[20] Ibid.

renunciate their former nationality. During the intermediate period when former nationality is enunciated but latter nationality is not approved, the person remains stateless.

All the above-mentioned causes directly or indirectly affect the status of immigrants and the policy governing the citizenship of immigrants sometimes rendering them to irretrievable precarious position. The statelessness is one of the most debatable issues in international community because of its far-reaching impact on the rights and position of a person in global as well as domestic boundaries. Citizenship, nationality and state is a compact balanced political structure which collapses in respect to an individual to whom status of statelessness is imputed. One cannot enjoy rights unless and until he is a member of politically organised community, this concept of right to nationality is very well conveyed by Arendt's phrase "the right to have rights". Is it possible to talk about rights without reference to the authority that guarantee it? Prima facie the answer will be 'no'. In order to enforce one's right, one's right must be recognised, therefore, there must be the right to have rights to every individual. A total of 56,500 stateless people in 29 countries acquired nationality during 2017.[21]

However, in spite of presence of international law and convention relating to reduction of statelessness estimated 70,000 children are born into statelessness each year, meaning that the number of new cases of children born stateless was higher than the number of existing cases of statelessness that were resolved. Hence the picture is clear that safeguards and mechanism provided under international law are not enough to protect people from the scourge of statelessness and therefore, structural change to prevent intergenerational statelessness is needed for meaningful reduction to happen.[22]

Policies For Immigration and Politics of Discrimination

Perspectives governing immigration policies:

Immigration and citizenship policy continue to create hierarchies among migrants that mirror the intersection of non-meritocratic attributes of social group membership to quote Christian Joppke, "the state may consider the individual only for what she does, not for what she is, the individual is selected according to "achievement," not "ascription," that is, according to her agency rather than according to what she is immutably born with".[23]The immigration policies must be assessed in terms of their goals, modes, and priorities. There are three perspective that are the most common and pronounced in the immigration policies of industrialized countries today:

a) economic growth perspective: economic utilitarianism asserts that policy should be geared toward economic growth so as to provide the greatest good for the greatest number of

[21]Statelessness in numbers: 2018, An overview and analysis of global statistics June 2018.https://www.institutesi.org/ISI_statistics_analysis_2018.pdf.

[22] Statelessness in numbers: 2018 An overview and analysis of global statistics June 2018.

[23]Antje Ellerman (2019), Discrimination in migration and citizenship, Journal of Ethnic and Migration Studies https://www.tandfonline.com/doi/full/10.1080/1369183X.2018.1561053

people. This perspective is embodied by the sentiment, "Our immigration policy is not providing the workers our economy needs." Its key feature is a focus on the big economic picture, and it includes little explicit concern for anything else.

b) the rights liberalism perspective: The rights liberalism perspective emphasizes both migrants and citizens as rights-bearing individuals. Policies based on this mode of rights liberalism push for open borders in order to facilitate free movement and family reunification regardless of whether or not the economy benefits—as well as expanded welfare provisions and multiculturalism.

c) and the traditional community's perspective: Like the economic utilitarian perspective, the traditional community perspective focuses on the collective good but frames the concept of collective good very differently. In this case, working for the collective good means protecting the existing culture, social relations, social order, and rule of law from any changes that might be caused by immigration. The traditional community perspective pushes policy toward immigration restriction or exclusion as well as policies that encourage the cultural assimilation of immigrants.[24]These three perspective shape immigration policies of any state and may sometimes become deciding factor to determine who should be granted citizenship rights.

Global immigration policies trend

In the contemporary period, a number of anti-immigrant policies have been introduced at different levels of politically organised community and such policies have created a hostile environment jeopardising the position of immigrants. Historically, policies that either support or stigmatize immigrants have constituted an important facet of the social context of reception.[25]Recent trends in world political scenario demonstrate that the most of policies affecting immigration are based on political principles rather than on human rights and international obligations. Due to rise of right-wing populism in Europe in recent years, a new thinking has been developed in the common people related to immigration and demand for stringent anti- immigration policies is at peak among natives. According to the spring 2018 Eurobarometer poll, Europeans list immigration and terrorism as two most important issues faced by the European Union.

These issues have become increasingly intertwined in the mind of ordinary citizens, given the threat of Islamist terrorism and the Islamic faith of the majority of the migrants. A new atmosphere has been created in which most of the European people are against the immigration of Islamic people. In Brexit referendum, around 7% people considered immigration as a problem in the year 2000, after 16 years the percentage of such people increased to 49%. In U.S.A. common consciousness of the people embedded in the manifesto of the election before President Election 2016 was in favour of stringent immigration policy.

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[24]John D. Skrentny,How to Understand Immigration Policy, Professor University of California San Diego, Fall/Winter 2013, volume xx, issue 1, page-139-141.
https://ccis.ucsd.edu/_files/journals/37skrentny.pdf

[25]Hacker, K., Kasper, J., & Morris, J. (2011). S-Comm immigration initiative is bad for our health. Access denied: A conversation on un/authorized immigration and health, http://accessdeniedblog.wordpress.com/2011/07/21/s-comm-immigration-initiative-is-bad-for-our-health-karen-hacker-jennifer-kasper-and-juliana-morris/

After the election, Trump led Republican party started legislating strict anti-immigration laws. In 2017, Trump passed two executive orders aimed at curtailing travel and immigration from six Islamic countries (chad, Iran, Libya, Syria, Yemen, Somalia). Then, in 2019 Trump passed the new asylum rules for Mexican people which made thousands of immigrants houseless. Current Indian government proposed to amend Section 2 of the Citizenship Act, 1955 to exempt from treatment as 'illegal migrants' persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities from Afghanistan, Pakistan and Bangladesh, thereby excluding the Muslims. India was one of the first nations to vote in favour of the UDHR in 1948.[26] Article 2 of the UDHR, which prohibits racial and ethnic discrimination and also reflects a rule of customary international law.

Hence, any deprivation of nationality on the grounds of national origin or religion should be considered arbitrary. The 'politics of belonging' remains shaped by the intersection of multiple axes of inclusion and exclusion that are produced by immigration and citizenship policy.[27] This populist and anti-immigration approach has caused panic and alarm among the people world- wide and this apprehension of deprivation of rights and nationality is well-founded on reasonable ground and can be analysed in the light of recent Indian case, Sanaullah incident where a former soldier was declared a foreigner by an Assam Tribunal exposed the gaping hole in the armour of the NRC.

Despite statements from the Central Government that the final NRC draft was published with the sole motive of identifying and subsequently deporting illegal migrants, the exclusion of more than 4 million people ordinarily resident in Assam reflects a conflict with international principles of nationality and human rights.[28] In a dissenting judgment written over a century ago in Fong Yue Ting vs. United States[29],U.S. Supreme Court allowed three long-time resident Chinese laundry workers to be deported by the US Government from the US under the Chinese Exclusion Act of 1882 on the grounds that they did not carry residency certificates with them then US Chief Justice Melville Fuller wrote about expulsion of foreigners: "No euphemism can disguise the character of the act itinflicts punishment without a judicial trial. It is, in effect, a legislative sentence of banishment, and, as such, absolutely void. Moreover, it contains within it the germs of the assertion of an unlimited and arbitrary power, in general, incompatible with the immutable principles of justice, inconsistent with the nature of our government, and in conflict with the written constitution by which that government was created, and those principles secured".[30]This obiter dicta describe the

[26] Ibid.
[27]Raunak Sood, An Analysis of the NRC controversy in Assam: Migration and Citizenship in India, Oxford Human Rights Hub, December 14,2018 https://ohrh.law.ox.ac.uk/an-analysis-of-the-nrc-controversy-in-assam-migration-and-citizenship-in-india/
[28] Ibid.
[29]Fong Yue Ting v. United States, 149 U.S. 698 (1893), decided by the United States Supreme Court on May 15, 1893
[30] Prof G Mohan Gopal, NRC unconstitutional and violates international law: Amnesty must for the excluded, National Herald, 7 September 2019.

uncertain and miserable position of the immigrants and the approach which should be adopted to deal with it.

Policies of exclusiveness

The principle of inclusiveness should be recognised in all democratic societies and must be fundamental in shaping the immigration policies of any State. If such policies which are coloured with exclusiveness and discrimination are codified and backed by State, the effects of such policies will likely to be far-reaching and will put immigrants into precarious position. Immigrants who have been residing in a country since their childhood continue to develop in adaptation to the language, culture or social environment, so it is perfectly just to be given the status of nationality there. Healthcare usage and social service access have been shown to be compromised in communities fearing deportation.[31]Increased rates of deportation and detention result in crippling fear of enforcement agencies.

The policy of exclusiveness has long standing in international community and can be very well illustrated by 1974 US Supreme Court case *United States v. Brignoni-Ponce*[32], California officers arrested and charged Humberto Brignoni-Ponce with knowingly transporting immigrants; however it was found that the officers had targeted him solely because he appeared to be of Mexican descent—a violation of the Fourth Amendment right of protection from unreasonable search and seizure. In practice these policies are likely to construct hostile environment for entire social group. Additionally, anti-immigrant policies may function as an "othering" mechanism; that is, these policies may marginalize, stigmatize and exclude those being "othered".[33]When anti-immigrant policies are proposed and passed, the full weight of the law signals that immigrant and their co-ethnics are less valuable members of the community, providing a measure of justification for unequal treatment that may then translate into perceived discrimination. Immigration policies have moved beyond punishing those guilty of violating immigration law.

Immigration Policies and Democratic Self Determination

States have right to exercise considerable discretionary control over immigration but it should be in line with democratic principles and must take into consideration legitimate expectations of the immigrants from the State. Immigration is not just a legal or political question but it is moral and social question as well. Respect for State sovereignty and democratic self-determination preclude any moral assessments of a state's immigration and citizenship

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https://www.nationalheraldindia.com/opinion/nrc-unconstitutional-and-violates-international-law-amnesty-must-for-the-excluded

[31] Sebestian Werner, Deportation and Deprivation: How Discriminatory U.S. Immigration Policy Restricts the Right to Healthcare Access for Latinx Citizen-Children, Harvard Medical Student Review https://www.hmsreview.org/issue/4/deportation-and-deprivation

[32]United States v. Brignoni-Ponce, 422 U.S. 873 (1975).

[33]Joanna Almeida, Katie B. Biello, and Edna Viruell-Fuentes, Francisco Pedraza, Suzanne Wintner, The association between anti-immigrant policies and perceived discrimination among Latinos in the US: A multilevel analysis, SSM Popul Health, 2016, 897-903https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5757908/

policies.[34]To criticize such policies as morally wrong does not entail a rejection of State sovereignty or democratic self-determination. We should distinguish the question of who ought to have the authority to determine a policy from the question of whether a given policy is morally acceptable.[35]

We are embodied creatures. Most of our activities take place within some physical space. In the modern world, the physical spaces in which people live are organized politically primarily as territories governed by States.[36] While States may deny a person entry to their territory or expel or remove migrants in an irregular situation, everyone living within a State's territory, irrespective of his or her immigration status, is entitled to general human rights guaranteed. A State must ensure that all migrants on its territory are able to exercise their economic, social and cultural rights.[37]Although the deprivation of liberty should be a last resort under International Human Rights Law, migrants are often detained as a routine procedure and without proper judicial safeguards.It is crystal clear who suffers when the immigration policies of countries change against the interest of the immigrants but who gets benefited by it and to what extent and whether the sufferings of the immigrants balance the benefits received by the others is the question that needs introspection, discussion and detailed analysis.

Problems Of Immigrants

Language barriers- Language barriers cause huge difficulties and make simple interactions seem like daunting feats. Employment, transportation, legal responsibilities and receiving assistance in each of these areas are more difficult without a firm grasp of local language.

Cultural differences -Surface-level cultural differences cause some difficulty, experiencing fundamental differences between cultural norms and values can cause deeper problems .In "The Art of Crossing Cultures," intercultural communications expert Craig Storti writes, "Because of cultural differences – different, deeply held beliefs and instincts about what is natural, normal, right, and good – cross-cultural interactions are subject to all manner of confusion, misunderstanding and misinterpretation." Psychologically, the effects of sudden change and culture shock can wreak havoc on the mental well-being of immigrants. During the resettlement process, even physical health can be affected.[38]

Employment-Undocumented workers often face injustices on the job. If they attempt to stand up for themselves, they may risk deportation. Many of them work in low-paying or dangerous occupations, such as domestic work, construction, agriculture and food service. These jobs

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[34] Joseph H. Carens, Immigration and Citizenship, Article from the Book- Values and the Ethics for the 21st Century https://www.bbvaopenmind.com/en/articles/immigration-and-citizenship/

[35] *Ibid.*

[36] Joseph H. Carens, Immigration and Citizenship, Article from the Book- Values and the Ethics for the 21st Century https://www.bbvaopenmind.com/en/articles/immigration-and-citizenship/

[37] Vulnerable People, Let's Fight Racism, United Nations https://www.un.org/en/letsfightracism/migrants.shtml

[38]Lauren Schwaar, Difficulties Faced by Immigrants and Refugees, Light and Life Magazine https://lightandlifemagazine.com/difficulties-faced-by-immigrants-and-refugees/

often complement white-collar positions, but employers may take advantage of their undocumented status in the following ways:

a) Forcing workers to labour long hours without paying overtime
b) Not paying minimum wage or failing to compensate for work that is done under the table
c) c)Not offering job training or protective equipment for dangerous jobs
d) d)Failing to let workers know of their legal rights
e) Not allowing workers to form union
f) Engaging in racial discrimination or sexual harassment
g) If workers complain about their job conditions, demand fair wages or ask for the right to join a union, unscrupulous employers may retaliate by cutting wages further or threatening to call immigration authorities.[39]

Housing- While the housing problems require national and local responses in land use, finance, and development policies, immigration measures also must be considered. Stepped-up border and employer sanction enforcement and better coordination between immigration and urban development policies could help ease pressures on housing in immigration-impacted cities.[40]

Education: Relocation causes discontinuity in education, which causes migrant students to progress slowly through school and drop out at high rates. Additionally, relocation has negative social consequences on students: isolation from peers due to cultural differences and language barriers.[41]

Health: Around 68.5 million people worldwide are currently displaced, with 25.4 million of these crossing international boundaries in search of protection. Migrants and refugees are likely to have good general health, but they can be at risk of falling sick in transition or whilst staying in receiving countries due to poor living conditions or adjustments in their lifestyle.[42] Needs, employment, health facilities, services, communities and sometimes even basic rights such as lack of adequate legal representation and due judicial process is what these people cope up with each passing day in a hope that it will be available to them someday. Dissatisfaction at home and disillusionment with globalisation is a driving political force behind the recent rejectionist movement in countries that have swung towards closed-border

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[39] How serious are employment challenges for immigrants? The Quinn Law Firm
https://www.thequinnlawfirm.com/Articles/How-serious-are-employment-challenges-for-immigrants.shtml

[40]John T. Nielsen, Immigration and the low-cost housing crisis: The Los Angeles area's experience, Population and Environment, December 1989, Volume 11, Issue 2, pp 123–139
https://link.springer.com/article/10.1007/BF01255728

[41]Branz-Spall, Angela Maria L., Roger Rosenthal and Al Wright (2003). "Children of the Road: Migrant Students, Our Nation's Most Mobile Population". Journal of Negro Education. Vol.72, No.1, pp. 55. doi:10.2307/3211290. JSTOR 3211290
https://www.jstor.org/stable/3211290?seq=1#page_scan_tab_contents

[42] 10 things to know about the health of refugees and migrants, Published by World Health Organization
https://www.who.int/news-room/feature-stories/detail/10-things-to-know-about-the-health-of-refugees-and-migrants

nationalism. Inequality that builds a "marginalized majority" of native citizens boosts the power of anti-immigration narratives.[43]

International Law, Convention and Stand

There is growing pressure from international NGOs, refugee organisations, and human rights monitoring bodies to provide protection to those who do not fall under either the Refugee Convention of 1951 or the Conventions on statelessness of 1954 and 1961.Article 15 of the Universal Declaration of Human Rights,1948 declares that "everyone has the right to a nationality" and specifically prohibits the arbitrary removal of this right. Arbitrariness tends to describe practices that do not follow fair procedure or due process. Related criteria that are used to measure the behaviour of states, and which complement this description of arbitrariness, include the standards of necessity, proportionality and reasonableness.[44]Recognizing immigration as a human right means acknowledging that people should have the freedom to cross national borders in search of a livelihood, or to escape physical danger.

Art 13 of UDHR says: -

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

2) Everyone has the right to leave any country, including his own, and to return to his country.

In addition to Article 15 and 13 the Universal Declaration establishes several principles that reaffirm the centrality of universal protection. Further, the International Covenant on Civil and Political Rights (ICCPR), 1966 restates the principle of universal coverage in the form of a legally binding international treaty which prohibits discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The ICCPR also binds states to guarantee rights to all persons subjected to their jurisdiction, irrespective of national origin or citizenship status. The ICCPR includes protections against arbitrary expulsion under Article 13 and equality before law Article 26 and further sets out obligations to prevent the denial of citizenship by insisting on birth registration and the reaffirmation of a child's right to nationality under Articles 24 (2) and (3). The humanitarian organisations are presumed to be driven by moral obligations to help the people in need indiscriminately. Ideally, the socio-political impediments they face in accessing the target population have been addressed by international instruments such as the Geneva Conventions, 1949. These statutes have made it mandatory, on legal and ethical grounds, for host nations to allow humanitarian assistance to reach the vulnerable populations.[45]

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[43] Ratna Omidwar, The biggest issues facing migrants today – and what we can do to solve them , World Economic Forum.https://www.weforum.org/agenda/2016/11/the-biggest-issues-facing-migrants-today/

[44] Professor Bradd K. Blitz, 'Statelessness, Protection and Equality', Refugee Studies Centre, Oxford Department of International Development, University of Oxford
https://www.refworld.org/pdfid/4e5f3d572.pdf

[45] Abigail R. Benhura and Maheshvari Naidu,2019."Humanitarianism in Praxis? Probing Power Dynamics around Key Actors in Zimbabwe's Forced Migration", Journal of International Migration and Integration, Volume 20, issue3, pp 735-749

Article 4 of Protocol No. 4 to the European Convention on Human Rights provides that "*Collective expulsion of aliens is prohibited"*. The European Court of Human Rights defines collective expulsion as "any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group".

The 1954 Convention relating to the Status of Stateless Persons lies at the heart of the international regime for protection of stateless persons. It establishes the universal definition of a "stateless person" and provides a core set of principles for their treatment. The Convention, therefore, is of critical importance in ensuring the protection of this vulnerable group. Whilst the 1954 Convention establishes the international legal definition of "stateless person" and the standards of treatment to which such individuals are entitled, it does not prescribe any mechanism to identify stateless persons as such. Yet, it is implicit in the 1954 Convention that States must identify stateless persons within their jurisdictions so as to provide them appropriate treatment in order to comply with their Convention commitments.By setting out rules to limit the occurrence of statelessness, the Convention gives effect to Article 15 of the Universal Declaration of Human Rights which recognizes that "every-one has the right to a nationality".The 1961 Convention on reduction of statelessness, seeks to balance the rights of individuals with the interests of States by setting out general rules for the prevention of statelessness, and simultaneously allowing some exceptions to those rules. A central focus of the Convention is the prevention of statelessness at birth by requiring States to grant citizenship to children born on their territory, or born to their nationals abroad, who would otherwise be stateless. To prevent statelessness in such cases, States may either grant nationality to children automatically at birth or subsequently upon application. According to the principle of non-refoulement, States must not deport a migrant to a country where he or she is likely to face torture or serious human rights violations.

Article 22 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,1990 provides that migrant workers and members of their families, regardless of the legality of their presence, "shall not be subject to measures of collective expulsion" and that "each case of expulsion shall be examined and decided individually."

UN High Commissioner for Refugees, Filippo Grandi, issued a statement on September 1, 2019 expressing alarm over the "publication of a National Register of Citizens (NRC) that may put large numbers of people in India's north-eastern state of Assam at risk of becoming stateless".In particular, the implementation of NRC is infected with the vice of flawed procedures, including the burden of proof being placed on the individual, the lack of adequate legal representation, the lack of appropriate judicial processes, as well as the ability of others to file objections, as falling foul of the ICCPR.The ICJ, along with 124 other international and domestic civil society groups from around the world have condemned the actions of Indian

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https://ideas.repec.org/a/spr/joimai/v20y2019i3d10.1007_s12134-018-0629-2.html

government in publishing an incomplete and discriminatory Assam National Register of Citizens (NRC) on 31 August, 2019.[46]Human rights of immigrants are codified precisely under international law but safeguards and mechanisms provided against infringement of such rights are more like a spineless system. Each step taken under international law creates new horizon but there is still a long road ahead which needs to be travelled to improve the position of statelessness in international community.

International Action Plan to Avoid Statelessness

Statelessness is not an issue limited to a state but it is an international issue with rising concern throughout the world. Global community tries to safeguard basic human rights through international instruments when the position of people is disturbed in political community has got the responsibility to deal with this and come up with solution. The convention on the reduction of statelessness, 1961 was a major step towards this issue. Till 2018, there are 73 states who have ratified and acceded to it. As there is no separate organ of UN dedicated towards statelessness, so UNHCR (United Nations High Commissioner forRefugees) is given the responsibility to deal with the issue. Through a series of resolutions beginning in 1995, the UN General Assembly gave UNHCR the formal mandate to identify stateless people, prevent and reduce statelessness, around the world, as well as to protect the rights of stateless people.[47] UNHCR has divided its working into four categories.

They are: -

1. Identification- this requires to identify the people who are victims of statelessness. This is not an easy task and requires a lot of field work to acquire statistics on stateless population. Their identification becomes more difficult as they are undocumented people and not in touch with the authorities.
2. Prevention- after identification, next step is of prevention. This includes legally advising the state governmentsto make their national policies easy for citizenship and in compliance with international laws so that statelessness can be prevented at root level.
3. Reduction- it means to find a solution for the problems of stateless people so that they can claim nationality and acquire it easily of the state, to which they are closely linked.This reduces the number of stateless people.

But this protection are not sufficient for people who are still stateless even after above initiatives and further initiatives are required, this includes protecting their human rights and making it easily accessible to them, until they acquire a nationality, and also improving their contact with the authorities so that they can approach these authorities in case of need.

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[46]India: ICJ and others call on authorities to safeguard the right of nationality of 1.9 million people in Assam, International Commission of Jurists, September 6,2019
https://www.icj.org/india-icj-and-others-call-on-authorities-to-safeguard-the-right-of-nationality-of-1-9-million-people-in-assam/

[47] How UNHCR helps Stateless People, UNHCR-The UN Refugee Agency
https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.unhcr.org/how-unhcr-helps-statelesspeople.html&ved=2ahUKEwiB3t7jk63lAhXz7HMBHcgkD_kQFjAJegQIBRAC&usg=AOvVaw3C6fkZ2NfNd-GmJDUJ84Gz&cshid=1571658516832

UNHCR estimates there to be at least 10 million stateless people around the world. This is a figure which remains unchanged from previous years' statistical reporting. Of this number, at the end of 2017, only 3.9 million stateless people were "captured" in the data published by UNHCR. Measuring the true scale of statelessness remains a challenge, both methodologically and politically – a fact which this most recent Global Trends report once again acknowledges, recalling that improving quantitative and qualitative data on stateless populations is one of the actions of UNHCR's.

Global Action Plan to End Statelessness (GAP)[48] reducing statelessness not only mean to provide nationality to stateless people but also to give them due recognition by their countrymen and protection to their rights earnestly. The contribution of international law in covering the distance of stateless people to citizen of states is remarkable and must be supported by global community all across the territories then only, balanced permanent solution can be achieved.Human rights are a matter of universal importance, which concerns every human being. Therefore, in the context of human rights, all nations should adopt the theory of Monism in their approach to human rights and policies affecting people all across the globe.

Conclusion

Given the worldwide norm that individuals belong to and should in most cases reside in their "own" states, and developed countries' various efforts to limit resettlement, statelessness is likely to remain an intractable problem for millions of vulnerable people. Even the more modest goal of just making sure stateless people aren't also "rightless" is a daunting task indeed.[49] The problem is not the migration, it is a result of a problem in the place, where the people come from. Hardly anyone leaves their home or country even if everything is right. Somewhere deep in our hearts and mind we need to accept that we all are born equal and with equal rights, then why only some are allowed to enjoy it? Humans were not born to be selfish, but to be caring. we need to understand that sharing is a basic tenet of humanity and the resources provided by mother earth are for all. Just because of a favourable environment and a stable government we are not the master of all those but just a trustee of it. Humanity teaches us brotherhood which we need to adopt, and accept everyone as our brothers and sisters.

All these stateless people are victim of situations, so we need not make them victim of racism also. It is our duty to accept them in their difficult times and stop treating them as alien. State governments should understand that, strict nationality laws for preserving native population can sometimes hamper their country's future and they can become the culprit of innocent and helpless people. Human security is not a concern with weapons—it is a concern with human life and dignity. People should have voice in determining their own status. Thakur contends that 'no country is an island unto itself anymore'. Therefore, there is need for key actors in

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[48] Ibid.

[49] Kelly Staples, how to eliminate statelessness, World Economic Forum, 13 Nov 2014.https://www.weforum.org/agenda/2014/11/how-to-eliminate-statelessness/

internal displacement to act on their given mandate so as to ensure that displaced people can access their rights. Humanitarian principles are embedded in 'humanity, impartiality, neutrality and independence'. Global justice will always remain out of reach as long as migration governance remains anchored in unilateral border controls. World peace is fragile and can easily be shattered if the problem of statelessness is not resolved before it leads to chaos in international sphere.

To address social injustice the creation of a cooperative regime of global migration governance that corrects global inequalities in political power among states, and that provides fair access to migration opportunities by requiring statesto adopt migration policies that prioritise access for those who are most disadvantaged is required. Immigration was never illegal, until States were confined to boundaries and borders were drawn to define them. At last, we are all humans and we need to co- exist peacefully. Immigrants need human security so they cannot just exist but also live. In the final analysis, human security is a child who did not die, a disease that did not spread, a job that was not cut, an ethnic tension that did not explode in violence, a dissident who was not silenced.[50]

Suggestions

1. Humanistic Approach of Legislature: Today the maximum of mainstream population of US has its roots from migration, therefore the country represents a mix culture from all around the globe. This is the best example of co-existence of diverse cultures. But the so called 'preservative people' of US consider it as a threat to their culture and demand for strict immigration laws, in-order to protect and preserve their own culture and population. Some of the statistics also favour their demands. According to the US Census Bureau, the current total population of the native Americans in the US is 6.79 million, which is about 2.09% of the entire population[51]. This leads to politics of vote bank where politicians advocate strict immigration laws for appeasing such population. While framing such laws, the legislature shows their interest towards populist approach. Such kind of approach should be replaced with humanistic approach so that the immigrants may also be included in mainstream population.
2. Legitimate Expectations: Many times, the laws of a State are modified due to its changing political atmosphere and diplomatic relations with other states. Immigrants are often minority in every State and they are not considered during the legislation process, even when those laws are related to them. This makes them more prone to alienation from the State functionality. The laws change from favourable to non-favourable for them, while their legitimate expectations are not considered. Therefore, such expectations should be kept in mind while framing the policies of immigration.

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[50]United Nations Development Programme's (UNDP) 1994 Human Development Report https://www.e-ir.info/2014/07/05/a-critical-evaluation-of-the-concept-of-human-security/

[51]Native American Population 2019, World Population Review https://www.google.com/url?sa=t&source=web&rct=j&url=http://worldpopulationreview.com/states/native-american population/&ved=2ahUKEwiD5ODcprTlAhWMKY8KHa6QCWQQFjABegQIDRAG&usg=AOvVaw3dDpxo82p98-pC3jbdG5Aj&cshid=1571899894950

3. Proper Mechanism for Data Collection: There is no proper mechanism for collecting data and recognizing illegal immigrants and bifurcating them against refugees, asylum seekers and stateless people. Many NGOs collect data on them but they are not properly dealt. They should be identified properly so that proper and specific steps can be taken for their development.
4. Social Integration: Although stateless citizens get the right to claim certain rights after getting citizenship of a country. It remains only an identity until they are taken into the mainstream by social integration. Their inclusion is very crucial for their development.
5. Resettlement: Planning for new patterns of resettlement should be a high priority. It is becoming clear that resettlement models in traditional destination countries like Canada, Australia and parts of Europe are in need of a refresh. They were built for cities not yet transformed by the defining socio-economic trends of the past decades: the growth of informal jobs, and the passage of poverty from inner cities to suburbs. Urban planning for integration means changing the physical centres of gravity in settlement.[52]
6. Comprehensive durable solutions: Problems arising from illegal immigrations have legal, economic, cultural, political, and civil dimensions that need to be addressed so that a refugee, internally displaced person, or stateless person is able to enjoy the same rights as a national.[53]UNHCR aims to improve the enjoyment of rights throughout displacement, progressively moving toward comprehensive and durable solutions. Comprehensive solutions take time and involve many partners, however, and UNHCR has developed multi-year, multi-partner strategies to achieve long-term and sustainable solutions. These comprehensive solutions require collective commitment to addressing root causes of displacement and consideration of a wide range of options and opportunities. Without safe environments, administrative and legal pathways to formal solutions, access to economic opportunities, and inclusion of displaced people in all aspects of social and cultural life, solutions cannot be achieved. There are a number of pathways to achieving comprehensive solutions, including through voluntary repatriation, resettlement, and different forms of local integration. A combination of pathways can be pursued simultaneously in order to attain the best outcome for displaced populations.[54]
7. Principle of Non-Refoulement: Article 3 of the 1933 Convention relating to the International Status of Refugees contained the first mention of non-refoulement in international law and prevented party states from expelling legally-residing refugees or turning away refugees at the borders of their home countries. This treaty was ratified by only a few states and gained little traction in international law.

The principle of "non-refoulement" was officially enshrined in Article 33 of the 1951 Convention Relating to the Status of Refugees. Article 33 contains the following two paragraphs that define the prohibition of the expulsion or return of a refugee:

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[52] Ratna Omidyar, The biggest issues facing migrants today- and what we can do to solve them, World Economic Forum , 2016 https://www.weforum.org/agenda/2016/11/the-biggest-issues-facing-migrants-today/
[53]UNHCR Global Trends Report 2015, Page 23.
[54] *Ibid.*

1. "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."
2. "The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."
3. The 1967 Protocol Relating to the Status of Refugees modified Article 33 and created a more inclusive legal standard for defining refugees as: "owing to well-founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or 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".[55] This principle must be recognised by every nation state and must be adhered to while framing anti-immigration policies and any action of any state in contravention with this principle must be condemned by international community.

There should be a wholistic and a balanced approach while dealing with illegal immigrants, by the States keeping in mind the social and economic interest of the nation. Equal representation of State's interest and immigrant's interest should be reflected in national policies.

[55]Trevisanut, Dr. Seline (September 1, 2014). "International Law and Practice: The Principle of Non-Refoulement And the De-Territorialization of Border Control at Sea". *Leiden Journal of International Law*. **27** (3): 661. doi:10.1017/S0922156514000259 https://en.m.wikipedia.org/wiki/Non-refoulement.

Rise of Social Media in Promoting Human Relations in Society and Legal Framework Against its Abuse

Dr. Ahtshamuddin Ansari[1]

Abstract

Since the dawn of time, humans have attempted to devise ways and instruments for communicating their thoughts and ideas, as well as receiving those of others. At an early moment in its existence, mankind devised crude modes of communication and, through time, routinely and continually altered them to make it easier to contact its fellow humans. Though social media, social network sites, and computerization of human existence are relatively new approaches for the development of human interactions equilibrium equations, we are aware that the concept of social communication was widely known to previous individuals of various ages. The usage of social media has risen tremendously, bringing billions of people into its fold and making them a vital requirement. The earliest legal foundation is the Indian Panel Code. It included legal procedures for dealing with those who incite venomous hate and incite violent acts in response to their antisocial conduct.

Keywords: *social media, social network, Human Relation, Abuse, Legal Framework.*

Introduction

Since its inception human beings have tried to create means and instrumentalities to convey their feelings and ideas and receive of others. At the early stage of its evolution mankind created rude means of communication and with the passage of time, regularly and continuously transformed them for easy approach towards its fellow beings. Creative and innovative persons among them used their talent to search and develop devices for better communication to build and maintain social relations which developed a sense of belongingness among them. The creation of social media is the culmination of their assiduous endeavours. The constant and consistent efforts of human beings resulted in the present regime of mass communication and modalities of social media are a wonderful achievement.

The social media is a valuable search which transformed the process of interaction and communication among individuals at global level. Now a days, the social media is influencing many aspects of socio-cultural system including social, ethical, moral, political and business components of human life. In this write up we will try to describe the significance of the social media to evolve a society based on scientific temper and rational outlook. We shall keep focus on the evolution and development of major social networking sites that came inexistence in the twenty first century. In this article we have to examine the historical development of various features of social media. The discussion on concept, patterns and extent of the social media in past decades shall be within the ambit this study. In this paper we will examine for process of emergence of many social networking sites which played fruitful

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role to ease communication and interaction with people who think on the same wave length and with persons having dissents in different fields like education, music, sports, movies and many others. The social media also affected the trading and business milieu by conducting business transaction and commercial advertisements. Therefore, we shall have a look at the pace of acceptability of products through the modalities of social media. It will be within the purview of this article to explore the impact of social media on the socialization of children and adolescent with particular reference to social control, social mobility and social change. Is social media proliferating social cohesiveness or is a source of strife and conflict? We shall try to find out the answer of this query. To what extent moral fabric of the human society is changing or declining due to the prevalence of social media? This is the question is perturbing the mind of the traditionalists and as such needs an assessment of the role of social media in the enhancement and paramount development of human personality.

Historical Perspective of the social media

Social Media and Social network sites are new researches and innovations. The social media devices seem to be absent in the past history of mankind. We may trace its development during past decades as it has been increasingly gathering the interests and attention of the people who are otherwise busy. Though social media, social network sites and computerization of human life are comparatively new techniques for the growth of human relations equilibrium equations, yet we are aware that the notion of social communication was well known to earlier people belonging to different age. At early stages of its development the social media did not start with computer. We thought that telegraphic system was old mechanism to send and receive messages over a long distance. It was the year 1792 when telegraph was discovered. The historical development of social media made it clear they during 1800 radio and telephone were significant tools used for social interaction. Though telephone was a source of transmission and reception, radio was only source for transmission of information. As against old generation, the youngsters, entrepreneurs, professionals and others have been attracted by the social network sites and many of them have made it essential feature of their daily working. “Many Social networking sites were created during 1990”. It is on record that some sites that have been developed including Six Degrees, Black Planet, Asian Avenue and Move On.[2]

Through these social sites interested persons can interact for public policy advocacy. In addition, blogging services such as Blogger and Epinions were emerged. We found that probably the first discernible social network site has been launched in 1997, “Six Degrees.com allowed users to create profiles, list their friends, and beginning in 1998, surf the Friends lists”.[3] It is correct to say that “each of these features existed in some form before Six Degrees”, but it was the first to combine these features”. Yet it was failed because, as it is held, “it was simply ahead of its time”. A that time general and ordinary people who were interested to use social network sites were not in favour in meeting strangers. The class of

[2] Simeon Edosomwan, Sitalaskshmi Kalangot Prakasan, et.al, “The History Social Media and its impact on Business”, The Journal of Applied Management and Enterpreneneurship, 2011.

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traders, business, industrialist and organization adopted as a sustainable device to maintain commercial and official communication. The era of 2000 witnessed emergence of many social networking sites. "From 1997 to 2001, a number of community tools began supporting various combinations of profiles and publicly articulated Friends. Asian Avenues, Black Planet and Mi Gente allowed users to create personal, profession, and dating profiles".[4] Live Journal's was launched in 1999. It managed "private settings", Korean Social network site Cyworld entered field in 1999. The year 2001 saw the emergence of Ryze.com which was started to facilitate the business workers and technological community", which included "entrepreneurs and investors".[5] Facebook came into existence in 2004 by Mark Zuckerbarg whose mission was to bring people together with different back grounds and encourage interaction".[6]

When we look at the historical development of social network site we confronted with the working of public social media and private systems of social networking sites, Primarily due to security concerns, a more common approach to implementing social media in the enterprise is through in house implementation of applications that are not open to external audiences".[7] This could be done by open source or proprietory system implemented on a company's servers, or implemented on a private basis, namely Software as a service" (Saas).[8] This could have been done by the many wikis established on company internets".[9] In 2005 you tube was created which was Video sharing website facilitating the individuals to make contacts with beyond the national boundaries by viewing and sharing user generated video contents[10]. Twitter is another form of social media which was created in 2006 to give information to the user through micro blogging. The iphone is of recent mechanism created in 2007.

Its working is to combine "the function of a mobile phone, MP3 player, and instant messenger"[11]. Whatsapp is another social network site came to surface in 2009, introduced by Jan Coum and Brian Acton. It is a fast messenger which communicates instant messages to the users of the device. The above narration reveals that though socials media is a recently developed process yet it has travelled fast and covered a long distance of advancement in a short time as a modern-day communicating device using digital media.

Concept of social media

The notion of social media conveys the sense of a vehicle used as a medium to link one another and several persons with each other to share the information, knowledge, ideas, moral

[4] *Supra* Note 3.
[5] *Ibid.*
[6] Rebecca Sawyers, 'Impact of New Social Media on Intercultural Adaptation'
[7] Paul M. Leornardi, et al, "Enterprise social media: Definition, History and Prospects for the study of social technologies in organizations".
[8] *Ibid.*
[9] Davis and Singer, 'A Wiki instance in the enterprise: opportunities, concerns and reality, as quoted by Paul M. Leornardi.
[10] *Supra* Note 6.
[11] *Supra* Note 7.

and ritualistic set up of the society. Along with the connotation of social media's we propose to acquaint ourselves with the meaning of social network sites and social networking. Besides it we will view the structural and functional aspects of the social media. Modern social media as used in today's scene is different and distinct from traditional communication technologies. Social media consists "forms of electronic communication". These are existed in the form of websites for "social networking and interactions. These electronic machines, having pathway, are used to "create on line communities to share information, ideas, personal messages and other contents".

On the function of the social media is, also, "the cultivation of productive relationships" in every walk of life, be it children, adolescents, students, academician's, statesmen, Governing class, elders etc. It is a matter of fact "that people [living abroad] tend to use new social media to become more integrated into the host culture during their adaptation and to maintain connections to their home countries".[12] social media may be defined as a two-way road which gives users ability to communicate. It means a social media is an instrument of communication. "Social media can be called a strategy and a outlet for broad casting". The concept of social media becomes clearer when it is compared social network site and social networking. This comparative study has been done by Simeon Edosomwan, Sitalaskshmi Parkasan et al. in their article titled "The History of Social Media and its Impact on Business".

Their finding is that "it is difficult to study social media without encountering the phrase social networking". Social media is still a media which is primarily used to transmit or share information with a broad audience, while social networking is a tool and a utility for connecting with other. It is an act of engagement as people with common interest associate together and build relationships through community. Cohen was quoted by the authors of the above-mentioned article to make their statement authentic. In fact, social media is simply a system of communication channel.

It is one way communication on the other hand, "social networking is two-way communications, where conversation is at the core, and through which relationships are developed". After having view of numerous luminaries; these authors opine that "the timely responses and the 'asking and telling' fact are dissimilarity between social network and social media. Social media is hard work, and it takes time in which you can't automate individual conversations; whereas social networking is direct communication between the user and people that he chooses to connect with. Despite the fact that in social networking people can write blogs or discuss anything; social media does not allow users to manipulate comments, correct errors or other data for personal or business benefit".

Patterns and Forms of Social Media

The use of social media has grown dramatically bringing into its fold billions of people becoming an indispensable need of them. They reach to each other through various sites. "These social network sites have become important tools for managing relationship with a

[12] *Supra* Note 6.

large and often heterogeneous network of people who provide social support".[13] In this portion of this article different types of social media like social networking, social network sites, Enterprise social media, etc. have been discussed. We will also present picturesque narration of numerous tools and technique for better understanding of the process of social media.

Having passed through the age of telegraph, radio, telephone and Television, the social media has further developed and created startled devices for the people to grow interactions and mutual understanding. MUD, is abbreviation of Multi-User Dimension or Multi User Downy giving rise to "role playing games, interactive fiction, and online chat".[14] This 'requires users to type commands using a natural language. During 1978, BBS came to fore to be known as Bulletin Board System." Users log in to the system to upload and download software read news or exchange messages with others".[15] These bulletin boards were used via exchange through telephone line.

At the time of launching, one had to use it at a time. The bulletin Board System (BBS) was forerunner of World Wide Web (www). After some time, Usenet was created. On the Usenet the users were able to post articles or news. This system did not have "a central server or devoted administrator, 'unlike BBS. Through it "messages are forwarded to various servers via news feeds.[16] The WELL is another device founded during 1980s. Its full form is "Whole Earth Electronic Link" and is one which is continuous and operating since its conception and establishment. Next development in this arena was of General Electric Network for Information and Exchange. It is better known as GENI, being the acronym of it. It provides an online service. It has been "considered completion for computer service. Electronic emailing was introduced by the establishment of list serve launched in 1986.

The software allows the sender to communicate one email addressed to more than one, single communication gave way to group communications. It was deemed through Relay Chat, Known as IRC. Its dimension is real time chat. It is used as internet text messaging but private messages can also be sent. The decade of 1990 witnessed the creation of many social networking, sites like Six Degrees, Black Planet, Asian Avenue and Move On. Through these devices people can interact even for public policy advocacy. Simultaneously blogging services, namely, blogger and Opinions came to the surface these sites, inter alia, offer consumers to read or do reviews of products. In 2000 social media has been armed with many social networking sites launched in this year including Lunar Storm, six degrees, byword, ryze and Wikimedia. Footslog, Sky log and Fraudster had been launched in 2001. Other significant sites like My space, Linked to last FM, tribe, net, Hi5 etc were established in 2003. Some of the popular sites like. Facebook, YouTube, Whatsapp Farther and big name such as Yayou1360 were conceived, evolved and established in later years. The focal point reveals

[13] Charles Stenfield et.al., "On line social network sites and the concept of Social Capital'.
[14] Simeon Endosomwan, et. al. 'The History of Social Media and its Impact on Business".
[15] *Ibid* p. 14.
[16] *Ibid.*

through the development of these features, of social media is that it is hard to define social media. This description of various patterns of social media shows that social media is a strategy and outlet and social networking is a mechanism to gather the people together.

Role of social media in an Active Society

In this age of individualistic social set up many and different roles have been played by social media. Sometime nature of the society determines the functions, act and visible impact of social media on the society. Sociologically speaking there are different types of societies prevailing in different parts of the world. In a closed society where tradition and rituals are the tools of social control, role of social media is to introduce modernity in social life, habits and moves. In an open society social media plays the role of rationalist agency working against the superstitions and irrational devotion based on religious doctrines. In a mass society social media defeats the forces of social disintegration & obscurantist and strengthening the liberalism and humanism. In an industrial social fabric and active society, social media is to promote the common interest of a class based on mode of production and property relations. In modern democratic society social media provides protective umbrella to human rights enshrined in the constitutions of liberal societies.

Here we propose to examine the role of social media relating to life of infants, adolescents, adults and elders including men and women, meaning thereby impact of social media on family's social media is attracting infants and adolescents making engagement of them without a routine activity, It has become a tool of enhancing technical skill and sociability in paramount development of children's personality. Receptive mind and Imitative behavior of the child show limited capacity for self-regulation and susceptibility to peer pressure. In such a situation social media may put them on some risk of deviance. It is reported in the print media and electronic media children are learning undesirable things which mould them towards delinquency, demeanor, felony and crime. Sometimes there are frequent online expressions of offline behavior which make the child to move toward criminal prone areas. Ever changing internet landscape creates problems relating to children that merit awareness including internet addiction and concurrent sleep deprivation. Apart from it, social media is playing significant role in the development of academic skills. Middle and high school students are using social media to connect with one another on homework and group discussion. Social media programmes allow students to gather outside of class to collaborate and exchange ideas about assignments. Now-a-days, schools successfully use blogs as a teaching tool - reinforcing skills in written expression and creativity paving the way for innovative mind.

Social media is one of the basic ways of socialization through imitation and disseminating knowledge and information relating to social changes occurring in different social systems of the world. People belonging to different segments of the social life are interacting through social media and inspired to leave their wrong full social rites and rituals and adopting novel social practices and new ideas. Social media is promoting "cultural adaptation". Social Traditions and modernity are striving to influence each other and evolve a synthetic approach towards socio-cultural adjustment in a world of strangers. Through interconnectedness and

interdependence social media is playing key role in developing understanding among alien cultures, it is also giving impetus & mutuality reducing social tensions.

Social media is also used by the miscreants and religious bigots. Such elements use social networking to promote intolerance spreading strife and hatred. They upload disrespectful comments about the cultural values and normative structure of other communities. These elements upload hurting material which investigates violent opposition diminishing and destroying the chances of adaptation, cohesiveness, solidarity and sense of belongingness. Divisive elements in the society use social network site to divide society by uploading undesirable material and sending email messages to arouse communal feelings. This has been done in the name of freedom of speech and expression a fundamental right bestowed by Article 19(1) (f) of the constitution. Some elements shrouded their nefarious anti-national and anti-social writing containing venomous attacks and caricaturing the cartoon of religious prophets showing disrespect to such religious prophets. Social media is also used by cheaters to promote their trading prospects. Misleading advertisement, misstatements in the prospectus of the business organizations and commission of fraud played with potential customers, all such and other duping emails and messages have been uploaded on the social networking sites.

Legal Mechanism Against Abuse of social media

It has been noticed that communal, pseudo nationalists' chauvinist and jingoistic elements in the society abused the constitutional safeguards to provide to the person. The Indian Panel Code is the oldest legal framework. It contained legal provisions to deal with the people who spread venomous hatred and inspire violent acts in opposition to their antisocial activities. Section 124 A of the Indian Penal Code contains law to curb seditious statements or writing to instigating to raising violent voice and arms against the state and properly constituted government. In most of the cases slapped against person for posting offensive views on social network sites, the police have invariably invoked section 153 of the Indian Penal Code. Section 153 and 153 A provides for registration of a case against a person who gives statement either in writing or orally that incites commercial riots or provoke communal tension between communities. Section 294 A provides punishment for those people who hurt the religious feelings of the people through their speech or acts. Section 500 empowers the state to action against the persons who used social media for the purpose of defamation of certain people.

If any person uploads such information on or send message through social network site which instill a feeling scaring and terror in the society or abet anyone to commit violent act against somebody, such acts are recognized as punishable criminal acts under section 505 of the Indian Penal Code. Criminal intimidation is also a punishable offence under section 506 of the Indian Penal Code. These legal provisions have sharp teeth to curb the criminal tendencies and behavior of communal and divisive forces who utilize the facilities provided by social media.

Apart from existing legal framework to prevent abuse the of social media, Government of India enacted another statute namely, the information and technology Act, 2000, which has been amended in 2008 and notified in February 2009. This statute contains numerous provisions to regulate the use of social media in India. But there were two most debated sections in the amended enactment. Section 66-A of the amended IT Act, 2000 have allowed government to book anyone sending "grossly offensive" or "menacing" message through a computer or any other communication device and may be sent to jail for a period which may extend up to 3 years, if convicted. Again section 69-A of the I.T. Act empowers central government that it can issue directions to block an internet site. These provisions of the I.T. Act provide weapons to the police which had used them indiscriminately to arrest persons for posting criticism of government and political leaders. These provisions of law had been challenged in the Supreme Court. It was said that Section 66-A of I.T. Act is in violations to Article 19 (i) (a) of the constitution guaranteeing freedom of speech and expression. It has been again submitted before in court that liberty of thought and expression is cardinal and public's right to know is directly affected by section 66-A.

The apex court struck down section 66-A of the I.T. Act as unconstitutional. In this landmark judgment upholding freedom of speech and expression the Supreme Court struck down a provision in the cyber law which provides power to police to arrest a person for posting allegedly "offensive" content on website. The Supreme Court also significantly declares unlawful 'the Intermediary Guidelines Rules". But section 69-A of the Information and Technology Act is held constitutionally valid by the Supreme Court under which the Centre Government can issue directions to block an internet site if their contents have potential to create communal disturbances, social disorder or affect India's relationship with other countries. Here, we have to point out that "citizens still need to be careful while posting comments on websites and social network sites as provisions similar to section 66-A exists in Indian Penal Code's sections."[17]

Conclusion

At the end, it can be said that social media has become an indispensable need of the individual, group, business organizations and work places. It is a device of socialization and "Cultural adaptation". E-commerce is providing boost to trading activities. Some rowdy trouble shooter misuse social media to sustain their nefarious activities which causes social disruptions. Even terrorist is abusing social networking to attain their mean ends. Some dishonest traders utilize social media to defraud potential customers to seek acceptability to their products and saleable goods. Here we draw conclusion that social media has no demerit. It depends upon users to make it useful or detrimental to their interest and interests of the society.

[17] Amit Chaudhary and Dhananjay Mahapatra, *Times of India*, March 25, 2015 (Delhi edition).

Status of Refugees in India as Per International Norms: An Analytical Study

Ms. Gargi Singh[1]

Abstract

India is one of the few countries in the world which has experienced refugee situation, time and again, and that too on a gigantic scale in the last less than half-a-century.[2] *History of India is marked by large scale migrations of people from other countries and continents. These migrations had principally taken place across the two gateways - Hindukush Mountains in the West and the Patoka range in the East. India had to shoulder the responsibility of 20 million refugees in the first twenty-five years following independence. The international conventions which protect the status of the refugees in international arena are:*

(i) United Nations High Commissioner for Refugees, 1950
(ii) Convention relating to Status of Refugees, 1961
(iii) Protocol relating to Status of Refugees, 1967

The above statute, convention and protocol are not binding on the countries due to non-enforceability of international law. Though, India is not a member country of these protocols, the maximum movement of refugees have taken place in India, India without being a member country abiding by the customary international law has complied with these conventions to the best of its ability.

Keywords: *UNHCR, Refugee, Asylum, Non-refoulement, persecution.*

Introduction

Despite the existence of international agencies dedicated to refugee protection, the protection of refugees ultimately rests with individual sovereign governments, who must adhere to their own national laws. States have a legal obligation to protect refugees as a result of their membership in international organizations, their own legislation, their political and moral convictions, or customary international law. The United Nations General Assembly stated in its ninth session in 1954 that "the ultimate responsibility for the refugees under the High Commissioner's authority falls in fact upon the countries of residence."

Despite the fact that 146 nations have signed the 1951 Refugee Convention or its 1967 Protocol, several countries that harbor large numbers of refugees and are deeply concerned about refugee issues are not parties to the agreements. The Asian states fall far behind their counterparts in other regions of the world. Only China, Iran, Japan, and the Philippines (together with Iran, Israel, and Yemen) have signed the treaty so far in Asia. States in other parts of the world, on the other hand, have adopted binding regional instruments for refugee protection. There is no such instrument in place to protect Asian refugees.

South Asia has seen significant intraregional movement and dislocation of regional communities fleeing ethnic or religious persecution as well as political instability throughout

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[2] Prof. J.N. Sabena, "Legal Status of Refugees: Indian Position", Indian Journal of Int. Law, Vol. 26, No. 3 & 4, 1986, P.501.

its history. India's multiethnic, multilingual, and relatively stable society has made it a natural sanctuary for those fleeing persecution and turmoil in their home countries. This problem continues to this day, and India remains a land for refugees. The continual migration of refugees from several of India's sub-continental neighbors, as well as from overseas, confirms India's standing as a chosen refugee heaven. Despite having a population of over a billion people, India continues to accept them, with at least 600 million people living in poverty and having inadequate access to basic utilities.[3]

The international conventions which protect the status of the refugees in international arena are:

(i) United Nations High Commissioner for Refugees, 1950
(ii) Convention relating to Status of Refugees, 1961
(iii) Protocol relating to Status of Refugees, 1967

India is neither a signatory to the 1951 Convention on the Status of Refugees or the 1967 Protocol on the Status of Refugees. India has never ratified the 1951 International Refugee Convention or its 1967 Protocol, and despite being a member of the UN High Commissioner for Refugees (UNHCR) Executive Committee since 1996, it does not acknowledge the UN body's work on its territory.[4]

Legal Status of Refugees in India

There is no national legislation in India regarding refugees, their legal status, or their rights. They're treated as though they're aliens. In the absence of specific instructions, refugees are subject to the same legal framework that applies to all foreigners in India. In addition, various administrative restrictions affect India's refugee policy. In India, there are three sets of laws that govern foreigners. They are: The Registration of Foreigners Act, 1939, dealing with all the foreigners, the Foreigners Act, 1946, empowering CHAPTER - IV the state of regulates the entry, the presence and departure of aliens in India and the foreigner's order 1948. Under Section 2 of the Registration of Foreigners Act, the term foreigner is defined as *"a person who is not a citizen of India", which can refer to aliens of any kind including immigrants, refugees and tourists*. The Foreigners Act of 1946 and the foreigners' order of 1948 also uses this definition of a *foreigner*.[5]

The Indian government has the authority to restrict mobility inside India, limit employment possibilities, control the freedom to associate and return refugees to the nation from which they fled. Furthermore, if a person does not have a valid passport, the government has the authority to grant or deny entrance. At the border, countries have the power to refouled refugees.[6]

There is no direct reference to refugees in any contemporary Indian law. The current situation is that they are dealt with under existing Indian laws, both general and specific, that apply to

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[3] Arjun Nair, "National Refugee Law for India: Benefits and Road Blocks", 2007 p. 1
[4] *Ibid.*
[5]Tapan K. Bose, "India: Policies and Law's towards Refugees'", Asian Human Rights Commission - Human Rights Solidarity, Vol. No. 10 Oct. 2000 http. /. www.hrsolidarity.net Visited on 20.08.2009
[6] Arjun Nair, "National Refugee Law for India: Benefits and Road Blocks", 2007 p. 1

all foreigners. In the absence of a legal process, India's treatment of asylum seekers has always been a political decision, resulting directly from the country's relationship with the refugee's country of origin. As a result, the Indian government handles refugee matters administratively, based on internal domestic and bilateral political and humanist considerations.

India's reluctance to sign the Convention arises from its belief that it is Eurocentric, intended to meet post-World War II refugee movements has not adequately addressed mass migration. Another rationale for not signing the UN Refugee Convention is that it obligates signatories to accept enormous influxes of refugees from politically insecure regions. As previously stated, India has a population of over a billion people, with at least 600 million people living in poverty. As a result, our own citizens are forced to live as refugees, with limited access to essential necessities. Signing the convention entails accepting responsibility for providing refugees with job, food, housing, medical care, and education, among other things.[7] Despite not signing up, our record in giving shelter has been very good.

India's International Commitments

A unique and separate law to handle refugees does not exist in India's statute book. Due to lack of a special statute, all existing Indian laws, such as the Criminal Procedure Code, Indian Penal Code, and Evidence Act, apply to refugees. India is a signatory to a number of United Nations and World Conventions on Human Rights, Refugee Issues, and Related Matters, while not being a signatory to the 1951 Refugee Convention or the 1967 Protocol. India's responsibilities to refugee's stem from the latter.[8]In 1995, India was elected to the Executive Committee of the High Commissioner's Program (EXCOM). Membership in the EXCOM demonstrates a keen interest in and commitment to refugee issues. India voted in favor of adopting the United Nations Declaration of Human Rights, which asserts rights for all people, both citizens and non-citizens.[9]India voted affirmatively to adopt the UN Declaration of Territorial Asylum in 1967and also ratified the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976. India ratified the UN Convention on the Rights of the Child in 1989. India ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1974. Further India accepted the principle of non-refoulment as envisaged in the Bangkok-Principles, 1966, which were formulated for the guidance of member states in respect of matters concerning the status and treatment of refugees. These principles also include provisions on repatriation, compensation, granting asylum, and the basic standard of care in the asylum state.[10]

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[7]Palok Basu, Law Relating to Protection of Human Rights under the Indian Constitution and Allied Laws, 2002, p. 527.

[8] T. Ananthachari, "Refugees in India: Legal Framework, Law Enforcement and Security", ISIL Year Book of International Humanitarian and Refugee Law, http: /w\vw.worldii.org/int/journals IS1LYB1HRL7 2001.

[9] *Ibid.*

[10] *Supra* note 7.

A review of India's laws and policies reveals that the country has implemented the majority of the provisions of the International Convention on Refugees. Taking this into account, it is evident that India abides by international treaties governing the treatment of refugees on its soil, but it prefers to keep its own administrative system for dealing with temporary and permanent refugee settlements.

Indian Practice Regarding Refugee Problem

The practice of the Indian Government has been to deal with refugees in three main ways;[11]

(a) In the event of a huge migration, refugees are housed in camps and given temporary protection by the Indian government, which include socioeconomic measures.[12]
(b) Asylum seekers from South Asian countries, or any other country with which the government has a delicate relationship, apply to the government for political asylum, which is normally granted without a comprehensive refugee status determination, subject to political exigencies.[13]
(c) Citizens of other countries apply to the United Nations High Commissioner for Refugees (UNHCR) for the determination of individual refugee status in accordance with the UNHCR statute and the Refugee Convention.[14]

Indian Government has established fairly well experienced bureaucratic machinery conversant with the problems of refugee administration.

India has a three-pronged strategy to deal with refugee problem:[15]

(a) The Home Ministry is responsible for developing policies for refugee rehabilitation and settlement.
(b) The Ministry of External Affairs is made accountable for bilateral negotiations and handling international issues.
(c) At the local level, the State Governments are responsible for the safety and maintenance of the refugee camps.

National Human Rights Commissions, Minority Commissions, and State Human Rights Commissions, for example, are tasked with ensuring that all people have equal access to human rights, fundamental freedoms, and opportunities at the national level in their respective domains.

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[11]Isha Bothra, "The Law Policy and Practice of Refugee Protection in India", p. 1

[12] India has received and accommodated mass influx refugees from Tibet and Sri Lanka in special camps with varying facilities for health, education and employment, as cited in Isha Bothra, "'The Law, Policy and Practice of Refugee Protection in India", 2007, p. 2,

[13]Asylum seekers who enter India individually after a mass influx has taken place are granted asylum after a preliminary screening mechanism. This process continues in the case of Tibetan's and Sri Lankans who enter India in small number and must fulfill certain criteria before they are registered by the Indian Government as cited in Isha Bothra, "The Law, Policy and Practice of Refugee Protection in India",2007, p. 2

[14] In 2003, the UNHCR handled, inter alia, 10283 refugees from Afghanistan and 940 refugees from Myanmar. The UNHCR also handles refugees from Iran, Sudan, Somalia and other countries etc. as cited in Isha Bothra, "The Law, Policy and Practice of Refugee Protection in India'",2007, p. 2,

[15] Manoj Kumar, "International Human Rights Law for Refugees-An Indian Perspective", the Third Concept, an International Journal of Ideas, May 2001, p. 21.

Refugees and the Indian Legal Framework

India is home to one of the world's largest refugee populations. Despite the fact that the Indian government claims that its policies are in line with international standards, no Indian statute specifically mentions refugees. As a result, refugees are subject to the same laws that apply to aliens. The Indian legal system confronts refugees on two levels. There are laws that govern their immigration into India and their stay there. They are then subject to the provisions of the Indian penal laws for various acts and omissions under a range of circumstances after they enter Indian Territory. Refugees are affected by a variety of constitutional and legal requirements.

Constitutional Provisions

India is a country where the rule of law is supreme. The Indian Constitution is a living document that places a high value on human rights. Every human being has certain rights, and citizens have certain other rights, according to the Constitution. Every person has the right to equal protection under the law and equality before the law. Similarly, no one can be deprived of his or her life or personal liberty unless it is done in accordance with legal procedures. As a result, every human being, whether a citizen or not, is obligated to safeguard his or her life and liberty.[16]The common law percept is specifically incorporated into the Indian Constitution, and the courts have elevated it to the status of one of the basic features of the Constitution that cannot be altered. The Indian Constitution reflects international norms enshrined in the Universal Declaration of Human Rights, which, among other things, affirms the principle of non-discrimination and declares that all human beings are born free and equal in dignity and rights, and that everyone is entitled to all of the document's rights and freedoms without distinction.[17]The common law principle is specifically incorporated into the Indian Constitution, and the courts have elevated it to the level of one of the Constitution's basic features that cannot be amended. The Indian Constitution reflects the international norms enshrined in the Universal Declaration of Human Rights, which, among other things, affirms the principle of non-discrimination and declares that all human beings are born free and equal in dignity and rights, and that everyone is entitled to all of the document's rights and freedoms without distinction.[18]

The constitution of India provides following fundamental human rights and fundamental freedoms to refugees, legally admitted to India and so long as he is permitted by the government to remain in this country:

Equality before the Law or Equal Protection of the Law[19]

The notion of 'equality before the law' is universally acknowledged, and it is enshrined in almost all written constitutions that protect fundamental rights. Article 14's basic premise is that all persons and things in similar circumstances should be treated equally in terms of

[16] *Supra* no. 13
[17] V.D. Mahajan, Constitutional Law of India, 1984, p. Ill
[18] *Supra* no. 11
[19] Article 14 of the Indian Constitution

privileges granted and obligations imposed. The law should be equal among equals, and it should be equally applied. Similar people should be handled in the same way. Discrimination between people who are in substantially similar situations or situations is banned. Article 14 is not limited to citizens and applies to "any individual." The benefit of Article 14 is available to both individuals and juristic persons.

Article 14 provides: "The state shall not deny to any person equality before the law or equal protection of laws within the territory of India". The obligation imposed on the state by Article 14 is for the benefit of all persons, within the territory of India. The benefit of Article 14 is, therefore, not limited to citizens. Every person whether natural or artificial, whether he is a citizen or an alien,[20] is entitled to the protection of this Article.[21]

As a result of this provision, even a foreigner will be able to cite Article 14 and file a complaint against discrimination if he is denied equal protection of the law while in India's territory. The state would not discriminate amongst refugees of the same class in terms of any benefits or privileges they get as a result of their refugee status. It should be noted, however, that an alien (a foreign national) cannot claim equal rights under Article 14 as Indian nationals when it comes to the grant of Indian citizenship.

In *Louis De Raedt v. Union of India,*[22] the Supreme Court had ruled that the fundamental rights of the foreigner was confined to Article 21 and did not extend to a foreigner, the right to reside and settle in India, as states in Article 19 (1) (e) Relying on the judgments and distinguishing the decision of the Supreme Court in *National Human Rights Commission Vs. State of Arunachal Pradesh* the Madras High Court in *David John Hopkins Vs. Union of India"*, held that foreign nationals did not have any fundamental right guaranteed for the grant of citizenship of India, in which matters, the Government of India had got unrestricted power under the citizenship Act, 1955, to refuse citizenship, without assigning any reason whatsoever and that a foreign national could not claim equal rights under Article 14 with that of the Indian national.[23]

Right to Life and Personal Liberty etc.[24]

The Indian Constitution guarantees the right to life and personal liberty to all persons. The protection of Article 21 of the constitution is available to citizens as well as non-citizens,[25] and they also have right to live, as long as they are here, with human dignity.

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[20] NHRC Vs. State of Arunachal Pradesh, 1996, ISCC 295

[21] Narender Kumar, Constitutional Law of India, 2007, p. 105-106.

[22] AIR 1991 SC 1886.

[23] *Supra* no.11

[24] Article 21 of the Indian Constitution

[25] The foreigners enjoy the protection of Article 21 in two ways:

(a) They are equally entitled to the right against deprivation of life or bodily integrity and dignity (Louis De Raedt (1991) 3 SCC 554 at P. 13; Chandrima Das 2000, 2 SCC 465 at P. 28, 32 and 34; Anwar (1971) 3 SCC 104 at p. 4; and NHRC 1996, 1 SCC 742 at p. 20.

(b) To a certain extent, the right against executive action sans procedural due process accrues to them. P. Mohammed Khan 1978, 1 1 APWR 208.

Article 21 provides *"No person shall be deprived of his life or personal liberty except according to procedure established by law"*. This right has been held to be the heart of the constitution.[26]

Article 21 secures two rights:

(i) Right to life; and

(ii) Right to personal liberty

Article 21 prohibits the deprivation of the above rights except according to procedure established by laws. Article 21 can be claimed only when a person is deprived of his *"life"* or personal liberty by the *"states"* as defined by Article 12. It not only refers to the necessity to comply with procedural requirements, but also, substantive rights of citizen.'[27] Violation of the right by a private individual is not within the purview of Article 21." *The right secured by Article 21 is available to every person, citizen or non-citizens. Thus, even a foreigner"[28] can claim this right.* However, Article 21 applies only to natural person. It has no application to corporate bodies. It is well settled that an alien can claim the protection of Article 21. It, however, does not include the right to reside and settle in India, as mentioned in Article 19 (1) (e) which is applicable to the citizens of the country.[29]

In *Cherchi Domenico Ferdinando v. Union of India*[30], the petitioner a foreigner who had come to India on tourist visa, granted extension to stay in India on the ground of his purported marriage with an Indian, which way, in fact, to facilitate and carry out widespread trafficking in drugs by foreign tourists. Holding that an alien had no right to reside or settle in India, the Delhi High Court upheld his deportation from India by an order of the Government.

Article 21 is of the widest amplitude after the judgment of Maneka Gandhi case[31] and it covers a variety of rights which are provided to refugees' aliens and non-citizens in India:

1) **Right to live with human dignity**[32]- "It is the fundamental right of everyone in this country to live with hum.an dignity free from, exploitation."
2) **Right to livelihood**[33]- "The right to life includes the right to livelihood." Deprive a person of his right to livelihood means person is derived from his life.
3) **Right to Shelter**[34]- The right to shelter has been held to be a fundamental right which springs from the right to residence secured in Article 19 (1) (e) and the right to life

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[26] *L.R. Coelho v. State of T.N.* AIR 2007, SC 89 1.

[27] Bombay Dyeing & Mfg. Co. Vs. By. E.A. Group 2006, 3 SCC 433.

[28] *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27; *NHRC v. State of Arunachal Pradesh*, AIR 1996 SC 1234; *Louis De Raedt v. Union of India* AIR 1991 SC 1886.

[29] *Cherchi De Raedt v. Union of India* AIR 1991 SC 1886; *Hans Muller of Nuremburg v. Supdt. Presidency Jail*, Calcutta AIR 1955 SC 367.

[30] AIR 2004 Del. 147.

[31] *Menaka Gandhi v. Union of India*, AIR 1978 SC 597.

[32] *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC 746; also see, *Bandhua Mukti Morcha v. Union of India*, 1984 SC 802.

[33] *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180; also see, *Narendra Kumar Chandla v. State of Haryana*, AIR 1987, Bom. 406.

guaranteed by Article 21. Right to shelter, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads, etc. So as to have easy access to his daily avocation.

4) **Right to Education**[35] - " Right to education is fundamental right under Article 21 and "it directly flows from the right to life". The right is, however, not an absolute right and that its content and parameters have to determine in the light of Article 41 and 45. The Constitution (86thAmmendment) Act, 2002 inserting a new Article 21-A declaring right to education an independent fundamental right.
5) **Right to Social Security and Protection of the Family**[36] Right to life guaranteed under Article 21 includes within its ambit "the right to social security and protection of the family". Interpreting Article 39 (e) of the Constitution of India vies-a-vis Article 25 (2) of the Universal Declaration of the Human Right and Article 7 of the International Convention on Economic, Social and Cultural rights, 1965.
6) **Right to Health and Medical Assistances**[37] - The right to life guaranteed under Article 21 includes within its ambit the right to health and medical care. It includes the right to lead a healthy life so as to enjoy all faculties of the human body.[38] It is not merely a right enshrined under Article 21 but an obligation cast on the state to provide this both under Article 21 and under Article 47.[39]
7) **Right to Privacy**[40] - The Right to personal liberty and the right to move freely and speech could be described as contributing to the right to privacy. However, the right was not absolute and would always be subjected to reasonable restrictions.
8) **Right to Free Legal Aid and Right to Speedy Trial** - The "right to free legal aid" at the cost of the state to an accused, who could not afford legal services for reasons of poverty, indigence or incommunicado situation, was part of fair, just and reasonable procedure implicit in Article 21.[41]The "right to speedy trial", has been interpreted to be a part of the fundamental right to life and personal liberty.[42] Article 21 requires that a person can be deprived of his liberty only in accordance with procedure established by law which should be a just, fair and reasonable procedure.
9) **Right against Inhuman Treatment** -The Supreme Court in several cases, has taken a serious note of the inhuman treatment meted to the prisoners and has issued appropriate

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[34] *Chameli Singh v. Union of India,* AIR 1996 SC 1051, also see, *Prabhakaran Nair v. State of T.N.,* AIR 1987 SC 21 17.
[35] *Uni Krishan v. State of A.P.,* AIR 1993 SC 2178, also see, *Mohini Jain v. State of Karnataka,* AIR 1992 SC 1858
[36]*Calcutta Electricity Supply Corporation (India) Limited (CESC Limited) v. Subhas Chandra Bose,* AIR 1992 SC 573.
[37]*State of Punjab v. M.S. Chawla,* AIR 1997 SC 1225; *Paschim Banga Khet Mazdoor Samity v. State of W.B.,* AIR 1996 SC 2426.
[38] *Mr. 'X' v. Hospital 'Z',* AIR 1999 SC 495
[39] *State of Punjab v. Ram Lubhaya Bagga,* AIR 1998 SC 1703; *Surjit Singh v. State of Punjab,* AIR 1996 SC 1388.
[40] *R. Rajagopal v. State of Tamil Nadu,* AIR 1995 SC 264; Mr. "*X" v. Hospital 'Z*\ AIR 1999 SC 495.
[41] *M.H. Hoskot v. State of Maharashtra,* AIR 1978 SC 1548.
[42] *Pratap Singh v. State of Jharkhand,* 2005 (3) SCC 551, *Hussainara Khatoon (No. 1) v. Home Secretary, Bihar,* AIR 1979 (1360); *Meneka Gandhi v. Union of India* AIR 1978 SC 597

directions to prison and police authorities for safe guarding the right of the prisoners and person in police lock-up, particularly of women and children.[43]

Protection against Arrest and Detention[44]

In certain circumstances, the Indian Constitution ensured that people were protected against arrest and detention. It includes procedural safeguards against arrest or detention in the following two situations:

(A) When an arrest is made and a detention is imposed under ordinary criminal law.

(B) If the detention is carried out in accordance with a statute that allows for preventative detention.

Every person, whether a citizen or a non-citizen, can claim the protection provided by Article 22. These protections are available to everybody, including non-U.S. citizens. An enemy alien (i.e., a national of a country with which India is at war) does not have access to these protections. 'Article 22 establishes the four rights/protections against arrest or custody related to the commission of crimes under ordinary law:'[45]

a) Right to be informed, as soon as may be, of the grounds for arrest or detention.
b) Right to consult and to be defended by a legal practitioner of his choice.
c) Right to be produced before the nearest Magistrate within 24 hours of arrest.
d) Right not to be detained in custody beyond 24 hours without the authority of the Magistrate.

Article 22 (1) and 22 (2) of the Indian Constitution reflect that the rules of natural justice in common law system are equally applicable in India, even to refugees.

Protection in Respect of Conviction for Offences[46]

The Constitution protects people who have been convicted of offences. Article 20 provides protection to all individuals, whether citizens or non-citizens. In Article 20, the term "person" refers to a corporation that has been charged, prosecuted, convicted, or punished for committing a crime. As a result, foreigners or aliens are also entitled to legal protection of the rights:'[47]

(a) The right against prosecution under retrospective penal law;
(b) The right against double jeopardy; and
(c) The right against self-incrimination.

Right against Exploitation[48]

The Indian Constitution protects people from exploitation. This right is guaranteed to everyone, whether they are citizens, non-citizens, or aliens. It provides protection not only against the government but also against private individuals.[49]

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[43] *Rama Murthy v. State of Karnataka*, AIR 1997 SC 1739; *Khedat Mazdoor Chetna Sangath v. State of M.P.*, AIR 1995 SC 31.
[44] Article 22 of the Indian Constitution
[45] See, Article 22 (1) & (2) of the Constitution of India.
[46] Article 20 of the Indian Constitution
[47]See, Article 20 (1), 20 (2) & 20 (3) of the Constitution of India.
[48] Article 23 and 24 of the Indian Constitution.
[49] *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.

Prohibition of Traffic in Human Beings and Forced Labour

Human trafficking, beggars, and other forms of forced labour are prohibited under Article 23 of the Constitution, and any violation of this article is a crime punishable by law.'[50]It does not, however, bar the state from imposing compulsory services for public reasons, provided that it does so without discriminating solely on the basis of religion, race, caste, or class, or any combination of these factors.'[51] So this right is available to citizens and refugees, and non-citizens without any discrimination. The practice of traffic in human being is condemned in almost every international instrument dealing with human rights.

Prohibition of employment of Children[52]

Article 24 provides: *"No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment"*. This provision read with the Directive Principles of State Policy Contained in Article 39 (e) and 39 (g), provides for the protection of the health and strength of children below the age of fourteen years.[53] The prohibition contained in Article 24 could be plainly and indubitably enforced against everyone, whether state or private individual.

Right to Religious Freedom[54]

Secularism is the basic feature of the Constitution"[55] In the matter of religion, the state is neutral and treats every religion equally. Constitution of India provides *'freedom, of religion'*, the right is available to every person, citizens or non-citizens or aliens. Article 25 of the constitution of India provides: "Subject to public order, morality and health and to the other provision of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion".

Article 25, secures to every person:

- Freedom of conscience; and
- The right to
  - ✓ profess religion;
  - ✓ practice religion; and
  - ✓ propagate religion

The state has an obligation to guarantee this right to all.

Right to Constitutional Remedies[56]

Fundamental Human Rights are meaningless unless they are backed up by strong enforcement mechanisms. The state's violation of fundamental rights can be challenged. The Constitution's Articles 32 and 226 established an efficient recourse for the enforcement of these rights. As a result, anyone who has been harmed by an infringement of the fundamental rights entrenched

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[50] Article 23(1) of the Constitution of India.
[51] Article 23(2) of the Indian Constitution
[52] Article 24 of The Indian Constitution.
[53] *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473
[54] Article 25 of the Indian Constitution.
[55] *S.R. Bommai v. Union of India*, AIR 1994 SC 1918.
[56] Article 32 of The Constitution of India.

in Part III of the constitution, whether a citizen or a non-citizen, an alien or a refugee, can seek justice directly from the Supreme Court or the High Courts.

Directive Principles of State Policy[57]

The Directive Principles of State Policy are addressed in Part IV of the Constitution. It lays out the values and goals that the government must attain in order to establish a Social Welfare State in India. The basic goal of the Welfare State is to achieve a significant degree of social, economic, and political equality, as well as the assumption by the community, acting through the State, of the responsibility to provide the means by which all of its members can achieve a minimum standard of economic security, humane living, social status, and culture to maintain good health.

Article 51(a) requires that *"The State shall endeavor to promote international peace and security"* which stipulated that government had a fundamental duty to show compassion which is important for the recognition of refugees as human beings. Further Article 51 (C) stipulates that *"the State shall endeavor to foster respect for international law and treaty obligations in the dealings of organized people with another"*.

Statistics in India[58]

INDIA

Refugees and Asylum Seekers	411,000
Sri Lanka	120,000
China	110,000
Myanmar	100,000
Afghanistan	30,000
Bhutan	25,000
Nepal	25,000
New Asylum Seekers	3,300

1951 Convention: No
1967 Protocol: No
UNHCR Executive Committee: Yes

Population: 1.2 billion
GDP: $1.2 trillion
GDP per capita: $1,050

Conclusion & Suggestions

India has dealt with mass influxes in the past without enacting a refugee law, but with an ever-growing population of refugees and asylum seekers, many of whom are unlikely to be repatriated in the near future, a uniform law would allow the government to maintain greater accountability and order while also providing them with uniform rights and privileges.

[57] Part IV of Constitution of India.
[58] World Refugee Survey – India 2009; https://www.refworld.org/publisher,USCRI,,IND,4a40d2a75d,0.html

Without a doubt, India has made significant progress in regards to refugees, but much more need to be done in terms of realizing and enforcing refugees' human rights. Although the Indian legal system has accepted the international legal framework in order to deliver better human rights laws to the people.

India has dealt with mass influxes in the past without enacting a refugee law, but with an ever-growing population of refugees and asylum seekers, many of whom are unlikely to be repatriated in the near future, a uniform law would allow the government to maintain greater accountability and order while also providing them with uniform rights and privileges. Without a doubt, India has made significant progress in regards to refugees, but much more need to be done in terms of realizing and enforcing refugees' human rights. Although the Indian legal system has accepted the international legal framework in order to deliver better human rights laws to the people. The National Human Rights Commission, India's current watchdog on refugee policy, has made numerous recommendations urging the formulation of such a law, in accordance with the convention's articles but with an Indo-centric nature and content, so that a national legislation on refugees, combining the humanitarian needs of refugees with the state's security interests, can be enacted.

International Norms for The Human Rights of Refugees: Analytical Study

Ms. Sakshi Solanki[1]

Abstract

A person feels Safe and sheltered at home likewise he/she does feel sheltered and guarded in his own country yet there are times when an individual because of negative conditions needs to take choice to leave his own nation and take cover in another country. It is the duty of government to provide overall protection to its citizens and also to ensure complete protection of rights, if government fails to do so, then the people may face some serious repercussion and are forced to leave their country and seek shelter and safety in another country. If such situations emerge then other countries intercede to help and to make certain that basic refugee's rights are secured and, in this scenario, it is the duty of the countries who are accepting refugees that all their rights are secured and protected. This is known as International Help. While national governments are responsible for the protection of their citizens' basic human rights, "refugees" find themselves without such protection. As a result, there is a higher need for international protection and aid for these individuals than for people residing in their home countries[2]. It was rightly said in the 50th session of UN commission of Human Rights that *"Human rights violations are a major factor in causing the flight of refugees as well as an obstacle to their safe and voluntary return home. Safeguarding human rights in countries of origin is therefore critical both for the prevention and for the solution of refugee problems. Respect for human rights is also essential for the protection of refugees in countries of asylum "*[3].The United Nations has worked to protect refugees all over the world since its inception. One of the first issues on the UN's agenda was the fate of refugees, displaced individuals, stateless people, and "returnees," all of whom had been uprooted by conflict and need assistance. The issue was plainly international as well as humanitarian[4].The following discussion covers the summary as well as what the said international conventions have done to preserve the status of refugees around the world.

Keywords: Refugees, Human Rights, International protection, UNHCR

Introduction

Refugees are those who have left war, violence, conflict, or persecution and crossed an international border in pursuit of safety in another country. They've had to run with nothing but the clothing on their backs, abandoning their homes, belongings, jobs, and loved ones. Refugees are defined and protected by international law. A refugee is defined as "someone who is unable or unwilling to return to their place of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a specific social group, or political opinion," according to the 1951 Refugee Convention."[5]There are numerous aspects to refugee protection. These include protection from being returned to danger, access to fair and efficient asylum procedures, and safeguards to ensure that their basic human rights are upheld while they seek a longer-term solution. UNHCR works around the clock to achieve all of this, but we can't do it on our own.[6]

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[2]Adopted from worldlii.org on 05/1/2022

[3]Statements made at 50th Session of UN Commission of Human Rights "ISS4' quoted in UNHRC, Human Rights and Refugee Protection, October 1995, p.4

[4]Adopted from ohchr.org on 05/01/2022

[5]Adopted from refugees. org

[6]Adopted from UNHCR

Many developing countries deny refugees basic rights, often due to a "complete lack of resources. “Despite the fact that the vast majority of States have ratified the 1951 Convention/1967 Protocol, its application varies enormously depending on national, cultural, economic, and social circumstances. Clearly, the treatment of non-nationals is a persistent, serious, and systematic violation of human rights on a global scale. 'Some governments justify their policies solely on the basis of the 1951 Convention's provisions, without referring to other relevant human rights and humanitarian instruments. Keeping international refugee law ('IRL') separate from international human rights law ('IHRL') has aided governments that choose to disregard minimum standards. Although the UNHCR now considers refugee law to be an integral part of the broader international human rights framework, as evidenced by its first memorandum on human rights in 1997, it does not always emphasize its obligatory nature, preferring to suggest that it provides useful guidance to States in setting their own domestic standards.[7]

United Nations High Commissioner for Refugees, 1950

The general assembly on December 3, 1949 adopted Resolution 39 (IV) wherein it decided to establish UNHCR and on December 1, 1950 adopted the Statute of the office of the United Nations High Commissioner for refugees (UNHCR). It came into existence on January 1, 1951.[8] It was initially set up for a period of three years. Later, General Assembly decided to prolong the mandate for a further period of five years and made it renewable beginning from January 1, 1954. In the year 2000, the General assembly resolved to continue UNHCR for a period of five years from January 1, 2004. Antonio Guterres of Portugal was appointed the High Commissioner on June 15, 2005 for a five-year term. In April 2010, the General Assembly re-elected Guterres to a second five-year term. UNHCR is a subsidiary organ of Assembly and it acts under the authority of the general assembly, through the ECOSOC and it report is considered an s separate item. Its headquarters are in Geneva, which coordinates the activities of 274 subordinate offices located in as many as 68 states. The office also develops appropriate policy to curb the refugee problems.

According to UNHCR's law, the High Commissioner must seek the advice of a refugee advisory council if one is constituted. The ECOSOC formed the Advisory Committee on Refugees in 1951, at the request of the High Commissioner, to assist him in the performance of his duties. The committee was made up of 15 states, 12 of which were UN members and three of which were not. They were chosen for their unwavering commitment to the solution to the refugee crisis. In 1955, the General Assembly and ECOSOC reorganized the Advisory Committee as an executive committee known as the UN Refugee Fund Executive Committee (UNREF Committee), which kept the Advisory Committee's advisory powers. The membership of the committee had the original 15 member states of the Advisory Committee with an additional 5 members which became 6 in 1957. In 1958, the UNREF Committee was replaced by the Executive Committee of the High Commissioner’s Programmed (EXCOM)

[7]International Journal of Refugee Law, Volume 17, Issue 2, 2005, Pages 293–330

[8] The Soviet Union did not permit UNRRA to operate in the Soviet Zone

which not only tender advices to the High Commissioner, at his request, but it also reviews the use of Emergency Fund.

The High Commissioners programmed is administered by a 30-member executive committee, which generally meets twice a year at Geneva. It consists of member representatives of the United Nations and of the specialized agencies, why are elected by the ECOSOC on the widest geographical basis from among those states with a demonstrated interest in and devotion to the solution of the refugee problem.

Mandated refuges, as defined in the UNHCR Statute are persons who, owing to well-founded fear of persecution of race, religion, nationality or political opinion, are outside their country or origin and cannot or, owing to such fear, do not wish to avail themselves of the protection of that country. UNHCR is not, of course, concerned with all refugees across the globe. For instance, refugees considered as nationals by the countries who have granted them asylum are not a UNHCR responsibility. Nor the UNHCR concerned with refugees for whom another UN body has assumed full responsibility, such as the Arab refugees from Palestine under the mandate of UNRWA.[9]

The work of UNHCR is humanitarian, social and non-political. Its basics tasks are to provide international protection to the refugees within the High Commissioner's mandate and to seek permanent solutions to their problem by facilitating their voluntary repatriation or their assimilation within new national communities. The above may mean that UNHCR tries to ensure that refugees are not refouled (deported) to their countries of origin or to a place where their lives are in danger and they are assured safety in the country of asylum. UNHCR also promotes standards of treatments for the refugees that accrued with the basic human right standards.

After World War II, the UNHCR primarily focused its efforts on assisting refugees and displaced individuals in Europe, but in the following decades, its attention switched to resettling refugees who were victims of war, political unrest, or natural catastrophes in Africa, Asia, and Latin America. It has facilitated the return of 25000 Algerian refugees in 1962, repatriated 10 million Bangladeshis and 15000 Sudanese in 1972 & organized one of history's largest airlift population exchanges – a two-way movement of large numbers of people between Bangladesh and Pakistan in 1973. The United Nations High Commissioner for Refugees (UNHCR) received the Nobel Peace Prize twice, in 1954 and 1981, for its outstanding work. By 1997, the United Nations High Commissioner for Refugees (UNHCR) had provided worldwide protection and support to more than 12 million refugees fleeing war or persecution. The United Nations High Commissioner for Refugees (UNHCR) has been a tireless advocate for refugees. Many states throughout the world are under intense pressure

[9] United Nations Relief and Works Agency for Palestine Refugees in the North East (UNRWA) was established by the General Assembly on December 8, 1949. Under the founding resolution, UNRWA's functions were primarily to carry out relief and works programmed in collaboration with local governments and to also consult with the interested Near eastern governments concerning the measures they should take against the time when international aid for such programmers would cease to be available.

from public and private organizations to treat refugees in conformity with international human rights standards.

The UNHCR's mandate was originally to defend refugees, but in recent years it has also been active in IDP programmers. At the request of the Secretary-General of the United Nations or a competent principal organ of the United Nations, and with the approval of the government of the nation involved, the agency can intervene to assist these persons. Bosnia and Herzegovina, Croatia, El Salvador, Ethiopia, Georgia, and Iraq have all participated in operations of varying magnitude at different periods. The United Nations High Commissioner for Refugees (UNHCR) is a humanitarian organization that is funded by member states and is held to a set of minimum criteria in its treatment of refugees.

Convention on the Status of Refugees, 1951

The most important international instrument drawn up relating to the problems of the refugees is the Convention Relating to the Status of Refugees of 1951 which was formally adopted on 28th July, 1951 after considering that the Charter of the United Nations and the Universal Declaration of the Human Rights have affirmed the notion that all people should have equal access to fundamental rights and freedoms. On April 22, 1954, the convention went into effect. The convention has 136 state parties as of June 15, 2000.

The convention applied according to Para 2 of Article 1 only to those persons who had become refugees before 1st January, 1951. In order to widen the scope of the Convention, a Protocol Relating to the Status of Refugees[10] was concluded in 1967 which under Para 2 of Article 1 omitted the expression “as a result of events occurring before 1st January, 1951” and added the words “as a result of such events”. The aforementioned two international conventions outline the legal status of refugees. They also outlined refugees' rights and responsibilities, as well as provisions for different areas of their daily existence, such as the right to travel documents, as they are unable to use their own national passports.
Main provisions of the Convention of 1951 are as follows:

Personal Status of Refugees

The law of the nation of refugee's domicile or, if he has no domicile, the law of the country of refugee's residence governs the personal status of refugees.[11]Contracting Parties must respect the rights obtained by a refugee and his dependent on personal status, including more individually rights attached to marriage. It is, nevertheless, subject to conformity, if necessary, with the formalities imposed by state law, provided that the right in question is one that would have been recognized by state law had he not become a refugee.

Movable and Immovable Property

The contracting state shall accord to the refugee treatment as favorable as possible and, in any event, not favorable than the accord to aliens generally in the same circumstances, as regards

[10] The said protocol came into force on 4th October 1967. As on 15th June 2000, the Protocol had 135 State Parties.
[11] Article 12 of Convention of 1951

the acquisition of movable or immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.[12]

Civil Rights

According to the Convention, Contracting States must offer minimal rights to refugees, including the right to work, education, and social security, as well as religious freedom and access to courts.

Treatment of Refugees

Chapter IV of the Convention comprising from Articles 20 to 33 laid down regarding the 'welfare' of the refugees. Refugees are to be treated by the state parties as their own nationals on many aspects. For example, where a rationing system is in place for the distribution of things in short supply, refugees must be treated equally to natives. The contracting state shall accord to the refugees the same treatment as is accorded to nationals with respect to elementary education, public relief, assistance and social security. Each Contracting state shall accord to the refugees the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to the aliens generally in the same circumstances. The Contracting State shall not impose upon the refugees' duties, charges or taxes of any description whatsoever, other or higher than those which are or may be levied on their nationals in the similar condition.

Illegal Entry of Refugees

Refugees who have illegally entered their territories without authorization from a country where their life is threatened are not subject to sanctions if they report themselves to the authorities promptly and prove reasonable reasons for their illegal entry or presence. The contracting state shall not apply to the movements of such refugees any restrictions other than those that are necessary, and such restrictions shall only be applied until their status in the country is regularized or they obtain admission in another country, according to paragraph 2 of Article 31. The Contracting States must provide a reasonable period of time and all necessary facilities for such a refugee to gain permission in another nation

Expulsion of Refugees

Article 32 of the convention says that contracting nations may not remove a refugee who is legitimately present in their territory unless it is for reasons of national security. According to paragraph 2 of the aforesaid article, such a refugee may only be deported after a decision made in line with due process of law. The parties must give a refugee a fair amount of time to seek legal entry into another nation. The Contracting States reserve the right to impose any internal measures that they deem necessary at such time.

Travel Documents

Unless compelling considerations of national security or public order necessitate otherwise, the contracting state shall give to refugees lawfully living in their territory travel documents

[12] Article 13 of the Convention of 1951.

for the purpose of travelling outside their territory, according to Article 28 of the Convention. The contracting states may issue such a travel document to any other refugee in their territory who is unable to obtain one from their country of lawful residence; they shall give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain one from their country of lawful residence.

General Obligations

The convention under Article 2 lays down that every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well to measures taken for the maintenance of the public order.

Prohibition of Expulsion or Return (refoulment)

According to Article 33 of the Convention, no Contracting state shall expel or return a refugee to the frontiers of territories where his life or freedom would be threatened because of his race, religion, nationality, membership in a specific social group, or political opinion. Thus, the principle of non-refoulment prohibits rejection of a refugee at the frontier and expulsion of entry. The principle of refoulment is required to be followed by the states in order to prevent human rights violations.

Access to Courts

The Convention under Article 16 Para 1 lays down that a refugee shall have free access to the courts of law on the territory of all contracting states. He shall enjoy in the contracting states in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *caution judicator solve.* The convention recognized that a person's refugee status ends under specific circumstances. Once a person is determined to be a refugee, that person's status as a refugee is maintained unless it is terminated by the refugee's actions, such as re-establishment in his or her country of origin (i.e., the country of nationality or former habitual residence in the case of statelessness), or fundamental changes in the objective circumstances in the country of origin on which refugee status was based. The latter is known as the ceased circumstances clauses or general cessation provisions.

Conclusion

It is to be noted that the Convention does not provide a safe haven to terrorists, nor it protects them from criminal prosecution. On the contrary, the Convention is carefully framed to exclude persons who commit particularly serious crimes. The Security Council Resolution[13] adopted on September 12, 2001, after the terrorists acts that took place in New York and Washington on September 11, 2001, prohibited the states to deny safe heaven to those who fiancé, plan, support or commit terrorists acts or provide safe heavens. It implies that any person who participates in the financing, planning, preparing or perpetrating of terrorists acts

[13] Security Council resolution 1368/2001 dated SEPTEMBER 12, 2001. Resolution 1373 adopted by the Security Council on September 28, 2001 also stated that all other states shall deny safe heaven to those who finance, plan, facilitate or commit terrorists' acts.

or who supports terrorists' acts shall not be given terrorists status. All states therefore should take appropriate measures to ensure that the asylum seekers have not planned, facilitated or participated in terrorist acts.

Further, states should ensure that a person granted refugee status is not involved in terrorist acts. In the face of deteriorating treatment standards for refugees and asylum seekers, IHRL serves to reinforce refugee protection as well as to define and give meaning to the 'right to enjoy asylum' component of Article 14 of the UDHR. In the event of a conflict between the two bodies of law, the higher standard must prevail, not only because treaty interpretation requires it, but also because the underlying rationale of both IRL and IHRL is to recognize "the inherent dignity and... the equal and inalienable rights of all members of the human family as the foundation of freedom, justice, and peace in the world."[14]

[14]*Supra* note 7.

New Dimension of Affirmative Actions with Special Reference to Economically Weaker Section

Mr. Mohan Mishra[1]

Abstract

After Indian independence, the Indian government was committed to including the country's huge, historically oppressed population in political institutions. Political leaders preferred those communities that faced economic and social discrimination as a result of the caste system before to independence. The 1st Amendment of the Indian Constitution provided for the representation of S.C. & S.T. by providing them quotas in educational institutions. Over the time being, constitutional changes have added and revised the reservation system for providing social justice. Then, in 2019, it made changes to provide reservations for economically disadvantaged people and made amendments in the constitution for this section of the society, which is seen as an act of Economic Justice. This research looks into all facets of EWS, particularly the 103rd Amendment Act of 2019, which gives a 10% reservation for economically disadvantaged people or Weaker Sections of the general category.

Key words: *Reservation, Government, EWS, Constitution, Justice.*

Introduction

"If we were to select the most intelligent, imaginative, energetic, and emotionally stable third of mankind, all races would be present." --------Franz Boas".

Humans are not all created equal. They were born into distinct communities with diverse economic prospects, social standing, and other factors. In this situation, people of all kinds of life lack the resources to meet their basic needs. In India, there are disparities between castes, tribes, and the rich and poor. S.C.s, STs, and OBCs are the names given to these groups. All communities cannot be equally capable of addressing their demands due to inequalities among them. The State must provide particular assistance to the less privileged sections in society in order for everyone to enjoy equal advantages. The one-of-a-kind service is a compensation measure taken by the government to compensate disadvantaged groups for past or current inequality. Reservation is offered to several classes in the Indian constitution, including SC, ST and OBC economically disadvantaged classes, as well as women in some situations, to ensure wellbeing of all people living in the country.

In India, some castes are economically poor but not considered socially backward, despite their social and educational status. Reservation does not allow them to receive caste-based affirmative action. They are referred to as "general category" persons since they are not eligible

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for reservation advantages reserved for S.C.s, STs, and OBCs. They are classified as EWS by the Indian government (Economically Weaker Sections). People from the EWS group received a 10% reservation in posts in central government organisations in January 2019. A person' family which earns total less than Rs. 8 lakh per year for his or her family qualifies for the EWS group. The Union Government recommended the reservation to the EWS in the Constitution (One Hundred and Twenty-fourth Amendment) Bill is scheduled to be introduced in 2019. Recruitment to positions within central government has begun in numerous central government agencies in India under the laws for reservation to people from the EWS. This paper talks about evolution of concepts relating to economic backwardness.

Affirmative Actions with Special Reference to EWS

The Constitution (103rd Amendment) Act, 2019, which altered Articles 15 and 16 of the Indian Constitution and inserted new clauses, went into effect on January 14, 2019.[2] This new amendment allowed the state to provide ten per cent reservations for various classes of the society. Thus, it brough up the scale of reservations to overall 59.5%, namely, 15% for Scheduled Castes, 7.5% for scheduled tribes, and for Other backward Classes of Non-Creamy Layer, which are otherwise referred to as (OBC-NCL), to 27%.[3]

EWS shall be as determined by the State from time to time based on family income and other indicators of economic disadvantage, according to an 'Explanation'. Indeed, S.C. was adamant that economic deprivation should not be the sole condition for reservation, and that reservation is merely a means of granting access to society's under-represented groups, not an anti-poverty programme. It has regularly decided that overall reservations should not exceed 50% in order for the reserve to be fair and not negate the single right to equality. The Court has stated that this is a binding law, not just a prudence rule. However, the most recent Constitutional change has removed the '50 percent ceiling.' Legal history shows that whenever the Supreme Court made an unfavorable judgement on reserves, Parliament responded by modifying the Constitution to overturn or overturn the unfavorable rulings. The Constitution (103rd Amendment) Act of 2019 is the latest move in the fight to overturn the Supreme Court's ban on economic grounds for backwardness and the 50 percent reservation cap.[4]

Mandal commission report

In India, the Mandal Commission was founded in 1979 by the Janata Party, then led by Prime Minister Morarji Desai, to "identify the socially or educationally backward." It was chaired by B.P. Mandal and examined the subject of seat reservations and quotas for people to address caste disparity, assessing eleven social, economic, and educational parameters to determine backwardness. The commission's 1980 report affirmed Indian law's affirmative action system, under which people from lower castes (Scheduled Tribes (S.T.), Scheduled Castes (S.C.), and

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[2] Shetty, Ashok Vardhan. "Can the Ten per Cent Quota for Economically Weaker Sections Survive Judicial Scrutiny?" *The Hindu Centre*, 6 Nov. 2019, www.thehinducentre.com/publications/policy-watch/article26436396.ece.

[3]. Wikipedia contributors. "Reservation in India." *Wikipedia*, 6 Jan. 2020, en.wikipedia.org/wiki/Reservation_in_India.

Other Backward Classes (OBC) were given exclusive access to a small number of government posts and college seats. These limits would be increased by 27%, bringing them to 49.5 percent.[5]

The commission's report was submitted in December 1980. They offered other recommendations in that report, including expanding the policy of reservation in benefit of OBCs if any differences relating to poverty, etc. occur in the future, which will widen the gap between the castes. Not only that, but it also allowed for the abolition of the reserve policy under specific conditions.[6]

Indra Sawhney Case

Indra Sawhney S.C. looked into the constitutionality of the OBC's 27 percent quota, as well as the 10% reservation for economically deprived sections of society other than Other Backward Classes, Schedule Castes, and Schedule Tribes, and a variety of other reservations concerns. The '50 percent ceiling' guideline was reaffirmed, striking a compromise between official equality and substantive equality. Surprisingly, the Supreme Court left a minor loophole in its decision by stating: "While 50% shall be the rule, it is vital not to take into consideration some specific circumstances deriving from the country's and people's tremendous diversity." It should be noted that, The Gujarat government issued an Ordinance in 2016 in response to the Patidar agitation, providing 10% reservation in higher education and public employment for "economically weaker sections of unreserved categories with annual income below Rs.6 lakhs," which was quashed by the Gujarat High Court in 2016 based on the Indra Sawhney precedent. The Gujarat High Court rejected the State Government's argument that the "extraordinary situation" in the Indra Sawhney case justified violating the "50 per ceiling" rule for reservations, stating that no such "extraordinary situation" existed in the case of economically disadvantaged groups' reservations.[7]

But in the present situation, there arose the need for this reservation. The term "extraordinary" case demonstrates our contemporary world, i.e., if there is a poverty-stricken individual of general Caste, then he should be given exclusive access to fight fair with others, to maintain the proper balance of equality among the castes on an economic basis.

In India, there are also many welfare laws and policies conducive to promoting the development of the backward classes by providing them jobs at the minimum eligibility criteria without specific conditions. And these are not caste-based or category-based benefits. Welfare plans to protect the poor and disadvantaged, as well as to better prepare the labour force on the lowest rungs of the skill/economic wellbeing ladder, to participate more completely in the process of

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[4].“Wikipedia contributors. “Mandal Commission.” *Wikipedia*, 2 Jan. 2020, en.wikipedia.org/wiki/Mandal Commission.

[5]. “Mandal Commission Report | Encyclopedia.Com.” *Encyclopedia.Com*, www.encyclopedia.com/international/encyclopedias-almanacs-transcripts-and-maps/mandal-commission-report. Accessed 7 Jan. 2020.

[6].Shetty, Ashok Vardhan. “Can the Ten per Cent Quota for Economically Weaker Sections Survive Judicial Scrutiny?” *The Hindu Centre*, 6 Nov. 2019, www.thehinducentre.com/publications/policy-watch/article26436396.ece.

economic growth acceleration. There are some national schemes issued for economic advancement to the weaker section of the society.

Deen Dayal Upadhyay Grameen Kaushal Yojana

On September 25, 2014, the Ministry of Rural Development (MORD) announced the Deen Dayal Upadhyaya Grameen Kaushalya Yojana. DDU-GKY is a part of the National Rural Livelihood Mission (NRLM), which aims to increase the variety of income sources available to low-income rural families, but also take care of the future of the rural young people.[8]

Mahatma Gandhi National Rural Employment Guarantee Scheme

On February 2, 2006, the National Rural Employment Guarantee Act of 2005 was signed into law. (MGNREGA) This concept is an Indian labour law and social security strategy that intends to give persons living below the poverty line the "right to work" (BPL). Unskilled labourers in rural areas are granted 100 days of work each year under this programme. Women should make up half of the workforce. The central government is responsible for 90% of the funds, with the states paying for the remaining 10%.

National Rural Livelihood Mission

The National Rural Livelihoods Mission (Aajeevika) aims to support and strengthen women's self- help groups across India. In this scheme, the government provides a loan of up to 3 lakh rupees at a rate of 7%, which can be reduced to 4% if the loan is repaid on time. The learning era thought many things; thus, provisions and policies change according to time, but the motive remains the same.[9]

Deendayal Antyodaya Yojana-National Urban Livelihoods Mission (Day-Nulm)

The mission's goal is to offer underprivileged household members with competent self-employment opportunities, allowing them to improve their living conditions. The mission's goal would be to gradually provide shelters and assistance to the cities homeless. Moreover, it is also imperative to help the vendors of urban streets by giving them certain facilities, namely, institutional credit, social security, suitable spaces, among many things.[10]

Review of Literature

In order to investigate the many features of the political thinkers, an attempt is made in this study to explore the available material on the reservation system and the Indian Constitution. No such work in the form of literature has been done in this field. It came into the spotlight after following the Government's decision to implement the 103rd Constitutional Amendment Act, 2019 which amended the constitution for providing reservations for the Economically Weaker Sections (EWS) to make them uplift. Though the Reservation system has received enormous support from the Indian caste groups and Policymakers and political system, there is a dire need

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7. *http://ddugky.gov.in/*. 9https://www.nrega.nic.in/netnrega/mgnrega_new/Nrega_home.aspx.
8. "National Rural Livelihood Mission." *RBI*, 9 Jan. 2020, www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11967&Mode=0.
9. "DAY-NULM." *Nulm.Gov*, nulm.gov.in. Accessed 7 Jan. 2020.

of credible academic literature to analyze the outcomes and shortcomings of the existing Reservation system of the India.

Social Structure and Reservation Policies

According to a study[11] the increased political representation positively decreases the poverty for the Scheduled Tribes, especially in rural areas. Dr. B. R. Ambedkar was a progressive thinker, a man of love, affection, energy, and enthusiasm for life. He was always trying to find peaceful solutions to difficulties; therefore, he went to great lengths to make reservations for the lower classes. In 2008, Prabhakar Joshi began writing a Sanskrit biography of Ambedkar. Because Babasaheb's life is rich with facts that examine the struggle against the system, and is against humanity, this summary was prepared about the entire reservation system.

In a study[12] about the liberation movement of Dalits minority. As the name mentions, the Dalits were always under considered in every area, whether it is related to work or personal field, which always halted their progress, and thus, there were need of reservation. Since its incorporation, the reservation policy has always been a subject of debate. It has become a source of both criticism and praise. The reservation strategy is said to boost the reputation of the person bestowing the status by allowing them to work for the government. Merit isn't guaranteed because various levels and professions are determined by reasons other than performance, such as birth.

Conclusion

Reservations based solely on economic grounds are not a perfect solution, but the urgent requirement is to set a time limit for the reservation system to be phased out rather than extending it indefinitely. The concept of reservation on being upgraded and expanded, even though it has a positive impact on the students belonging to the EWS category, still negatively impacts the deserving students on their fair opportunities. Reservation benefits should also be regulated maybe like restricting the benefits only to the first two children of the family without considering the number of children they have or perhaps restricting the reservations only till the undergraduate program, and further educations should be based on the merits and not based on the reservations, or at least there must be a way to identify the first-generation learners and extending up to two generations.

The reservations should be regulated to ensure that opportunities are being somewhat given to all the deserving students despite their social/economic conditions. In this way, the quality of the students will be increasing. The intention in which reservation was brought was commendable, but how the reservation is progressing tied with the politics has made political parties, civil societies, scholars, and non-specialists ask a fundamental question of revision of reservation with the progress of time. Since all political parties, one or the other way tried to appease one

[10].Chin, A. (2010, October 28). *The Redistributive Effects of Political Reservation for Minorities: Evidence from India*. NBER. Retrieved January 13, 2020, from https://www.nber.org/papers/w16509.

[11].Jangir, Dr. Sunil. Kumar (2013). Reservation Policy and Indian Constitution in India. *Reservation Policy and Indian Constitution in India*, 1–3. http://iasir.net/AIJRHASSpapers/AIJRHASS13-225.pdf.

section of the community at any point of their political career has made all political parties have double standards on the reservation. When Dr. Ambedkar proposed reservation for certain constituencies at that time, our forefathers didn't think to give reservations based on caste lines for educational institutes, later with the progress and dissents from different caste groups aiming for political consolidation and political power has over a while pushed a political system to work in favor of reservation immaterial of the ideology. Still, the bigger purpose and the larger question of reservation uplifting the poor, needy and oppressed is lost in politics.

So, its time, with the available data, the study emphasizes that reservation over a while should move towards allotting based on the economic front than merely on caste identity; with this progressive notion, reservation can be more inclusive, dynamic, and accommodative of all caste groups also, evolving technologies in identifying the needy through Aadhar or Bank accounts makes a reservation to work exactly where it is intended to. And also, the idea of social justice lies not just at the societal and political level. It also lies at the economic level. Only through the fulfillment of financial needs of the country's citizens immaterial of the Caste, creed, and religion can economic justice be provided, which makes a reservation based on an economically weaker section a reality sooner. The reservation should support affirmative action more than the appeasement politics for the vote bank. To aid all the facts mentioned above, cleaner politics, corrupt-free governance, and visionary leadership are essential.