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## UNDERVALUED RIGHTS OF CHILD REFUGEES IN INDIA

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### Abstract

*Children are vulnerable because of their tender age and energy, resulting into possibility of their exploitation and abuse. Primarily the responsibility of protecting children from any kind of abuse is upon parents. However, where the parents are unable to provide such protection the responsibility vests upon the state. The paper reviews the laws dealing with refugee children. This research is important because parents of refugee children are displaced because of fear of persecution from their country of residence. The concern is serious and severe because children are involved. Therefore, this research is analyzing and reviewing the laws made in Indian state to protect the rights of these children. Whether the laws are implemented well or are undervalued. The consequential treatment meted by the refugee children in India in presence or absence of such a law.*

**Key Words:** *Refugee Children, Laws, Rights.*

### Introduction

The international commitments in the form of Convention on Rights of Child, 1989 (CRC) and United Nation Convention of Refugee (1951) are analyzed to find out whether they are fulfilled. The paper also examines the Indian laws reports and data prepared by UNICEF, Save the Children foundation, World Vision and Plan International to reflect and analyze the condition of refugee children in India. The paper also evaluates the role of United Nation High Commissioner for Refugees (UNHCR) to support refugees and their children. The most recent Rohingya refugee crisis and divergent governmental approach to handle the situations is also deliberated upon in this work. The research finds that although there are international instruments dealing with laws addressing children's wellbeing the situation of

refugee children is unique in itself. The Government of their home country do not owe any responsibility and the country where they have taken refuge is under no obligation to mandatorily grant rights to refugee children. However International bodies like UNHCR is playing crucial role to protect the rights of refugee children. The research concludes that international intention and cooperation is the need of the hour to protect the rights of children of refugee parents.

### Child Refugees Rights

Theodor Seuss Geisel, an American children's author referring to children said: "A person's a person no matter how small". Nonetheless, the facts reflect a position contradictory to that taken by the author. The United Nations children's agency (Unicef) reports that there are 380,000 children living in peril in the refugee camps in Bangladesh and

could become a “lost generation”. The report further warns that the children were subjected to violence of all types. However, this is not the situation only in Bangladesh refugee camps, the condition of refugee children is the same throughout the world.

For instance, A Report prepared by World vision on the crisis of Syrian refugees replicates that the children refugee from Syria to Turkey, Lebanon, Iraq, Jordan and Egypt are suffering from diseases, malnutrition, child labour and other physical and psychological trauma. By definition, a refugee is a person who is outside the country of his former habitual residence because of fear of persecution and is unwilling to avail protection of that country or return to it. If a person has fear of persecution and is unwilling to stay in the country of his former habitual residence, presumably that person expects an environment free from such fear of persecution.

Sadly, the reports cited above reflects negation of all such expectations of safety and Security. On the contrary, inhumane condition of the refugees in the place of refuge does not in any manner alleviate this fear of persecution. Among these refugees, there are children who have rights guaranteed under The Convention on the Rights of the Child, 1989. Also, Article 22 of The 1951 Refugee Convention and The 1967 Protocol (Relating to the Status of Refugees) specifically speak about refugees entitlement to "same treatment" as nationals in primary education, and a similar treatment for secondary education as is given to other aliens. The UNHCR Policy on Refugee Children states, "as a United Nations convention, (the CRC) constitutes a normative frame of reference for UNHCR's action" (para. 17).

One of the guiding principles in the said Policy states, "In all actions taken concerning refugee children, the human rights of the child, in particular, his or her best interests, are to be given primary consideration" (para. 26 (a)). International instruments have made many promises for children. This article is analyzing India's stand on refugee children and implementation of the above mentioned legal provisions in India.

#### **Position of India regarding Refugee**

India is not a signatory country to the 1951 UN Convention on Refugees (1951 Convention) and the Protocol Relating to the Status of Refugees, 1967 (1967 Protocol).

However, as per international customary law, countries have to give shelter to refugees to the country. Following such international customary law, India is bound by the principle of non-refoulement.

Keeping in terms with this principle, India has always left its doors open for refugees. For instance, in 2015 the Government of India effectively protected and assisted over 174,000 Tibetans and Sri Lankans. Of the 27,000 refugees and 6,500 asylum-seekers registered in 2015, the vast majority were from Myanmar and Afghanistan, with smaller numbers from the Middle East and Africa.

There have been voluntary repatriation of these refugees to their respective countries with time. UNHCR has pointed out that although India has been generous in hosting refugees, the number of refugees is reducing. In 2018, India deported seven Rohingya Muslims who were held in Silchar central jail (Assam) since 2012 on charges of violation of Foreigners Act. Prashant Bhusan, a Supreme Court advocate, filed Public Interest Litigation (PIL) against such deportation. The Supreme Court dismissed the plea and held deportation valid. Amongst these concerns UNHCR has mandated that in 2019, India will be hosting around 41,000 refugees, constituting Rohingya and Afghan refugees.

#### **Position of India regarding Refugee Children**

India is a party to the Convention on Rights of Child, 1989. Therefore, while dealing with children all the actions undertaken by the private and Public institutions and Government bodies are expected to take the best interest of the child as a primary consideration. Such a mandate to the state parties is for all the children, irrespective of their parent's or legal guardian's background. Therefore, Children of Refugee are entitled to all the rights that are entrusted to be followed on the state parties by CRC. More specific protection of rights for children seeking refuge, whether accompanied or unaccompanied by their parents, is given under Article 22 of CRC. According to the article, a child refugee must receive protection and humanitarian assistance guaranteed by the CRC.

The State Party is expected to provide cooperation in any efforts by the United Nations and other competent organizations or non-governmental organizations cooperating

with the United Nations in tracing and reuniting the child with the family if any. The CRC under Article 20 states that a child who is deprived of the family environment must be given alternative care and protection either by placing them in suitable institutions or provide them with a family-like environment by the way of adoption or foster care.

However, there is no law specific for refugees in India. Hence, the refugees are dealt in accordance with the political and administrative decisions. Since, the refugee children do not have any proof of residence, it becomes very difficult for the administration to provide them with the relief guaranteed under the CRC. For instance, the UNHCR gives to the refugees' education allowance for the children but that is not sufficient. The children face practical problems of the strict requirement of a birth certificate as identity proof and adequate residential proof.

#### **Recent Refugee Crisis in India**

The most recent refugee crisis in India has been Rohingya refugees. Rohingya's Muslim have fled to neighbouring countries because of atrocities and discrimination against them by the Myanmar Government and their military forces. India's reaction to the Rohingya's crisis has been identified to have evolved swiftly in three phases.

**K. Yhome** in his article **Examining India's stance on the Rohingya crisis**, recognizes Rohingya refugee crisis in the year 2012 as the first phase when the Government of India extended monetary assistance and allowed Rohingya refugees to enter the country. India's stance was appreciated by the then UN High Commissioner for Refugees Antonio Guterres.

The author of the above mentioned article K. Yhome, regards the second phase as mid-2017 in which growing security concerns and need for diplomatic balancing between Bangladesh and Myanmar cropped up as major apprehensions in dealing with Rohingya's crisis. These apprehensions were in addition to geopolitical, humanitarian issues and non-interference in internal affairs. Further, K. Yhome characterizes Indian Government's position to create a place as a leader to resolve Rohingya crisis and overcome the quiet diplomacy as the third phase.

Whatever has been the political will and diplomatical responses, whether there was

some compulsion or fear on the individuals to leave the country of their origin/ residence and take refuge in another country, the ultimate sufferers are children who are innocent and don't deserve the status of refugees.

**Chandan Mitra** (a journalist and editor of Pioneer Newspaper and politician from Trinamool Congress) in his article **"Myanmar's unwanted children cannot become India's moral burden no matter how tragic their fate"** writes,

*"India cannot deny shelter to persecuted Hindus from Pakistan or Bangladesh for they have no other country to turn to, that is not the case with Rohingya Muslims. It is a measure of the abject failure of the Myanmar regime that after 70 years of Independence it has still not integrated many of the tribes living in that country, particularly the Rohingya. Why should India pay the price for this failure? Further, Pakistan (including Bangladesh or erstwhile East Pakistan) was carved out of India with the avowed purpose of creating a Muslim homeland. Considering Myanmar was part of British India and ruled from Delhi till 1948, it can be argued that Myanmar's Muslim refugees too should be accommodated in that "homeland" if necessary. Home is home. But the home of the Rohingya is Myanmar and they have a right to live there. Myanmar's unwanted children cannot become India's moral burden no matter how tragic their fate has become under a ruthless military which has run amok."*

Such a political statement whether right or wrong causes a state of uncertainty for the children.

These refugee children are suffering because of the place and family they are born in. An individual has to meet with the fate of the family in which one is born. Unfortunately, refugee children have to live in situations and conditions their families opt as opposed to one of the basic principles of CRC, which is non-discrimination on the basis of background of the parent or place of birth. Refugee children are treated as refugees and denied the rights that they are entitled under CRC.

The Convention on the Rights of the Child is important to refugee children as it covers health and education to specific social and political rights of children, for example, the right to health (Art. 24), education (Art. 28), and to an adequate standard of living (Art. 27)

inclusive of ensuring a family-like environment in the form of adoption (art. 21) and family rights (arts. 5, 9 and 14.2). The Rohingya children are not ensured or guaranteed these rights under The Convention because the governments treat them as burden and responsibility of the country from where they have been persecuted. This is a vicious cycle and countries shed off the responsibility for their compliance on the other country. Denial of rights ensured under CRC is a sheer violation of the basic human rights of these children who are nothing more than ill-fated to have been born in a refugee family.

In a report on Rohingya crisis prepared by Save the Children foundation, World Vision and Plan International in the month of February 2018 **Mark Pierce, Country Director for Save the Children, in Bangladesh** titled “**Childhood uninterrupted**” the Rohingya children undergo the traumatic experiences after fleeing from violence and terror in their country, Myanmar. The Bangladesh Country Director of **Plan International, Orla Murphy** showed a concern that “*Children told us their worlds have been torn apart. They have gone from living in a community where they know the neighbourhood, have close friends, a routine, a good variety of food and safe places to play, to a chaotic, overcrowded and frightening place. Many are orphaned and lost, living in a perpetual state of anxiety. Addressing the safety concerns of these children must be our number one priority.*”

Similarly, Bangladesh Country Director of **World Vision, Fred Witteveen** was saddened by the state of affairs of children in refugee camps in Cox’s Bazar in Bangladesh. He says, “*I am shocked and heart-broken by what the children living in the refugee camps in Cox’s Bazar are facing*”. Conditions are not very conducive in India as well because India is treating Rohingya’s as illegal migrant rather than refugees.

Legal status and Citizenship of the children of Rohingya refugee is uncertain as the only identity proof that they have is the refugee card issued by UNHCR. The children born to the refugees who do not have refugee card are not the responsibility of India as those born in the country after 3<sup>rd</sup> December 2004 were considered citizen only if one of the parents was an Indian citizen and the other was not illegally present. Citizenship by naturalization is derived

only after residing in the country for 12 years. The form of abuse which children are prone to becomes more prevalent in Refugee children as they are more vulnerable, subject to their extremely poor status. UNHCR India data shows that almost all Rohingya (94 per cent) in Delhi were extremely poor or poor. **Country Reports on Human Rights Practices-India of 2014** conducted by the **United States Department of State**, reports that the problem of domestic violence, sexual abuse, and early marriage against the refugees are prevalent. These children have to live in poor living condition, as their parents stay in such inhuman circumstances. Many factors contribute to such vulnerability, their living condition is one of the factors. Given the financial crunch of refugees, they are forced to live small, overcrowded apartments with no basic facilities like sanitation, electricity and water.

The similar inference was derived from research conducted by **Anubhav Dutt Tiwari, Jessica Field and Yamini Mookherjee** in their paper **Urban Refugees In Delhi-Refugee Networks, Faith And Well-Being**. While exploring the faith, context of displacement and settlement for the Sikh and Christian Afghan refugees and Muslim Rohingya refugees in Delhi, the abovementioned researchers examined livelihood condition of their sample. They wrote, “*The refugee groups we engaged with were not able to find or keep jobs after taking part in these livelihoods-focused aid interventions, and were generally dissatisfied with what ‘the market’ – namely, the informal economy – had to offer subjected to extortion, non-payment and exploitation.*”

However, UNHCR India has developed a livelihood program. The objective of the livelihood program is to improve refugee households’ socio-economic self-reliance and integration by reinforcing and developing their capacities and assets and to enhance access to employment and self-employment opportunities.

The refugees do not get secured livelihood because of poor education and experience in work in a new country. Such situations lead to a vicious cycle where parents are incapacitated, unskilled and unemployed because of circumstances that result in a deprived and vulnerable status of children. This vulnerability is owing to unemployed refugee parents in a country, will not have enough



resources to provide their children with the basics needs as enumerated in CRC.

### **Conclusion**

There is an International instrument dealing with the rights and duty of refugees since 1951. However, India is not a party to the Convention and therefore not bound by it. There is no domestic law dealing with Refugees. Nonetheless, India has sheltered and has been home to all those who sought refuge in India. UNHCR has an office at New Delhi through which Refugees in India are benefitted. However, the Indian Government has changed its approach since 2017 when Rohingya Refugees fled their country Myanmar to seek protection in India. Indian Government deported seven Rohingya refugees which have led to diplomatic concerns and controversies leading to multiple discussions throughout the world.

The social, economic, psychological condition of refugees is not appreciable in India. The children of these refugees automatically fall prey to a pathetic situation owing to which they have to live in the kind of life their parents provide them with. These refugee children do not have a legal status and they are deprived of a safe and protected environment. They do not get proper food, clothing and shelter let alone the education and psycho-social safeguards.

Therefore, it can be concluded that refugee children are not meeting with the parameters set by the Convention on Rights of children and are discriminated on the basis of the background of their parents. Domestic laws are there in the form of Juvenile Justice Act, 2016 and the previous JJAAct, 1986, 2000, 2006 which were repealed by 2016 because of ineffective implementation. The 2016 Act does not talk specifically about refugee children. There is a lack of clear guidance for implementation international as well as domestic instrument.

Not only laws made by the legislature but policies and other governmental benefits are also inadequately or conflictingly implemented. International bodies like UNCHR and UNICEF are doing appreciable work but the treatment of refugee children is not in tandem with the standards set by Convention on Rights of Child, 1989. Someone has to be answerable for those who are not equipped enough to speak for themselves. We, globally, cannot and must not pass on the baton to relieve ourselves of moral accountability.