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Right to Education for Refugees: Indian Scenario

KEYWORDS

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REFUGEES RIGHT TO EDUCATION IN INDIA

Nevertheless, Indian is not having any specific legislation providing right to education to refugees but yet, India, along with other South Asian states, is party to the United Nations Convention Relating to the Status of Refugees 1951 and the Protocol Relating to the Status of Refugees 1967. However, India is hesitant to accept the financial responsibility that ensues from undertaking the obligations of the 1951 Convention. Further, the scope and ambit of Articles 14 and 21 of the Indian Constitution, through progressive judicial interpretation, extends to non-citizens including refugees. Though India is not signatories to the 1951 Refugee Convention, it offers asylum to a considerable number of refugees. For its part, UNHCR cooperates with the Governments of India, as well as with NGOs and other stakeholders, to protect and assist refugees. It also helps to seek comprehensive solutions for internally displaced people (IDPs) and protracted refugee situations.

INDIA'S REFUGEE POLICY: ANALYSIS

India is always ahead for treating refugees on humanitarian grounds irrespective of their colour, origin, and nationality, not only to accommodate but also Endeavour to make their living better.

India grants asylum and provides direct assistance to some 200,000 refugees from neighboring countries. As India lacks a national legal framework for asylum, UNHCR conducts registration and refugee status determination (RSD), mostly for arrivals from Afghanistan and Myanmar. More than 24,000 refugees and asylum-seekers of diverse origins are protected and assisted by the Government in India.

While a large majority of refugee registered by UNHCR in India live in Delhi, an increasing number are settling outside the capital. The Government of India allows UNHCR mandate refugees to apply for long term visas and work permits. Refugees and asylum-seekers have access to basic government services such as health care and education. In addition, they have access to the law-enforcement and justice systems. UNHCR and its partners work to facilitate these refugees by providing information and interpretation services.[1]

India, with its history, culture, traditions, is today an example of generosity in the way it has opened its borders to all people who have come looking for safety and sanctuary. There are Tibetans, Afghans, Myanmar's in India and it has maintained an open-door policy for all. India has a generous approach in relationship to all refugees and proof of that is the granting of long-term visas and work The juridical basis of the international obligations to protect refugees, namely, non-refoulement including non-rejection at the frontier, non-return, non-expulsion or non-extradition and the minimum standard of treatment are traced in international conventions and customary law. The only treaty regime having near universal effect pertaining to refugees is the 1951 Refugee Convention and its 1967 Protocol on the Status of Refugees which is the Magna Carta of refugee law. Since India has not yet ratified or acceded to this regime, its legal obligation to protect refugee, is traced mainly in customary international law.

The Constitution of Indian contains just a few provisions on the status of international law in India. Leading among them is Article 51 (c), which states that

"The State shall endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples with one another."

The provision also differentiates between international law and treaty obligations. It is, however, interpreted and understood that "international law" represents international customary law and "treaty obligations" represent international conventional law.[2] Otherwise the Article is lucid and directs India to foster respect for its international obligations arising under international law for its economic and social progress. Article 51 (c) is placed under the Directive Principles of State Policy in Part IV of the Indian Constitution, which means it is not an enforceable provision. Since the principle laid down in Article 51 is not enforceable and India has merely to endeavor to foster respect for international law, this Article would mean prima facie that international law is not incorporated into the Indian municipal law which is binding and enforceable. However, when Article 51(c) is read in the light of other Articles and judicial opinion and foreign policy statements, it suggests otherwise.

Before India became independent, the Indian courts under British rule administered the English Common law. They accepted the basic principles governing the relationship between international law and municipal law under the common law doctrine. Under the English common law doctrine, rules of international law in general were not accepted as part of municipal law. If, however, there was no conflict between these rules and the rules of municipal law, international law was accepted in municipal law without any incorporation. Indeed, the doctrine of common law is specific about certain international treaties affecting private rights of individuals. To implement such treaties, the doctrine requires modification of statutory law and the adotion of the enabling legislation in the form of an Act of Parliament.

These English common law principles are still applicable to

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India even after its independence, by virtue of Article 372 of the Constitution, which says that:

"All the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority."[3]

This common law practice has been followed by the Indian executive, legislature and judiciary even after the independence of India. For instance, until the specific legislations were adopted India observed the international customary rules regarding immunity from domestic jurisdiction and law of the sea particularly with regard to the high seas, maritime belt, and innocent passage.

Confirming the common law principle relating to the specific incorporation of certain treaties, Article 253 provides that:

"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."

This Article implies that whenever there is a necessity to incorporate international obligations undertaken at international level or under international instruments into municipal law, the Parliament is empowered to do so. This is also acknowledged by the Indian judiciary as early as 1951.

While delivering the judgement in the, ***Birma v. The State of Rajasthan***, the Rajasthan High Court, quoting the English common law principle, observed that certain treaties such as those affecting private rights must be legislated by Parliament to become enforceable.4

The judicial opinion is that rules of international law and municipal law should be construed harmoniously, and only when there is an inevitable conflict between these two laws the municipal law should prevail over international law.

The binding force of international refugee law on India and its relationship with the municipal law, can be concluded, as long as the international refugee law does not come in conflict with Indian legislation or policies on protection of refugee, international law is part of municipal law

India never had a clear policy as to whom to grant refugee status. When the question of adoption of a Convention and establishment of an agency for the international protection of refugees came for discussion in the Third Committee of the UN General Assembly, in 1949, the Indian delegation expressed its views on these issues.5 Mr Mujeeb, a member of the delegation, told the Third Committee that instead of establishing a new organization for the protection of refugees, the International Organization for Refugees should be maintained and then the Third Committee should address itself to the drafting of the Convention on the legal protection of refugees. Again in the same Committee another member of the Indiantion, Mrs Kripaln said that the Indian Government did not want to shrink from any of its international responsibilities, and it wished to take part in any humanitarian work undertaken by the UN. She further said that in spite of its difficulties, India would have voted for the establishment of a High Commissioner's Office if it had been convinced that there was a great need to set up an elaborate international organization whose sole responsibility would be to give refugees legal protection. It was believed that at a time when its own refugees were dying of starvation, India felt obliged to vote against all the resolutions submitted, and hoped that its stand would not be misinterpreted.6 After the Convention was adopted India did not ratify or accede, and the reasons for not doing so are never disclosed except that it was stated in the Parliament by the former External Affairs Minister, Mr B R Bhagat that since the Government had come up with certain basic difficulties, the implications, if India ratifies these Conventions, were under study. In other words, India's initial stand on the treaty regime of the refugee law was declared to be a subject of review.

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On the point of admission and non-refoulement, however, the Indian attitude is rather bleak. Even though India accepted the principle of non-refoulement as including non-rejection at the frontier under the "Bangkok Principles 1966", it did not observe that principle in its practice. Ignoring the fact that refugees leave their homes suddenly due to threats to their life and liberty, and by the nature of their flight they are unable to get the necessary travel documents from their home States, India deals with the point of admission of refugees and their stay until they are officially accorded refugee status, under legislations which deal with foreigners who voluntarily leave their homes in normal circumstances

As early as 1953 the then Prime Minister of India, Mr Jawaharlal Nehru informed Parliament that India would abide by international standards governing asylum by adopting similar, non-binding domestic policies.[8] Since then, the Indian Government has consistently affirmed the right of the state to grant asylum on humanitarian grounds. Based on this policy, India has granted asylum and refugee status to Tibetans and Tamils from Sri Lanka. The 1971 refugees from Bangladesh were officially called "evacuees", but were treated as refugees requiring temporary asylum. No other community or group has been officially recognized as `refugees'. India claims to observe the principles of non-refoulement and thus never to return or expel any refugee whose life and liberty were under threat in his/he country of origin or residence.[9]

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CONCLUSION

The Government of India's approach to refugee issues results in different standards of protection and assistance among refugee groups. Although India has a large population of stateless people, no accurate estimates of the number are available. UNHCR is working to identify and map stateless group. India is considered to be a more reliable partner in the world to guarantee that people who need help will find a place. And more importantly, at a time when there are so many closed borders in the world, and many people have been refused protection, India has been generous. As for the minimum standard of treatment of refugees, India has undertaken an obligation by ratifying the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to accord an equal treatment to all non-citizens with its citizens wherever possible. India is presently a member of the Executive Committee of the UNHCR and it entails the responsibility to abide by international standards on the treatment of refugees.

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