

ENDANGERED REFUGEE RIGHTS IN THE CATASTROPHE OF COVID-19



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ABSTRACT

Human rights are basic moral laws and fundamental principles which should be given to everyone and must be followed by everyone. Human Rights continue with the individual right from their coming to existence to their last breath. Human Rights are regardless of discrimination among people. The theory behind this is, we are human beings first and then comes our factors of differences, like religion, region, country, class, caste, race, sex, etc. Among these, there are refugees, who are considered the most vulnerable group of people all over the world. Refugees are people who fled from their origin country to avoid persecution and cruelty and cross international borders to other states to seek asylum and protection. Various international agencies and UN bodies like the UNHCR works diligently for the protection of the refugees so that they don't face any discrimination in asylum states. But their treatment is often terrifying in Refugee camps. This phenomenon has increased its frequency during this pandemic of the Novel Coronavirus. The ill-treatment caused to the Refugees has led to their violation of Basic Human Rights which ought to be respected by the asylum countries.

This paper revolves around the current situation of various underprivileged people over the world. It deals with the violations of Human Rights. The paper concentrates on the breach of the Basic Human rights of Refugees over the world during the pandemic of this Novel Corona Virus. This pandemic has

made the world stand still for quite some time. Various lockdowns, emergencies, curfews, had led the refugees to suffer a lot at such time. This paper describes the various basic Human Rights of the refugees which are granted to them through various International Conventions and Laws. The research has brought this to my knowledge that religion, political affiliation, racism, class discrimination are the main reasons for refugees. This paper also explains a fine line between the Migrants and Refugees. This paper aims at highlighting the problems faced by the Refugees in Refugee Camps and Refugees in transit swinging through borders for asylum and how the International agencies and various countries have neglected their Basic Human Rights and treated them recklessly. The paper has tried to infer that it is high time that measures for protecting the Human Rights for refugees must be taken. The private partners of UNHCR and private companies over the world need to stand as a pillar and play a vital role in the activities of the UNHCR and actively volunteer in such situations. Desperate times need desperate remedies; the government cannot be pressurized to provide the people with everything and neglecting their citizens. It is very important at this time that the resources in need should be judiciously used and channelized properly to gain the maximum out of whatever available.



LJR- ALLYING LAW WITH SOCIETY

INTRODUCTION

There are many western copious democracies that are parties to the United Nations Refugees conventions and they are devoted toward the acknowledgment of the basic rights, but these countries are also disbursing billions of funds to strengthen their borders.

Whether the conventions signed by these countries which ensure the rights of refugees are merely a myth or do they want to do regarding the rights of refugees. Now the question arises-

Who is a refugee?

Refugee is a person, who has fled his or her own country to avoid war, persecution, and cruelty, and is deliberately made to take asylum in other countries. These people are called asylum seekers until they are given the status of refugees by the UNHCR. The UNHCR (United Nations High Commissioner for Refugees) is an agency of the United Nations that dedicates its work to the refugees towards their resettlement to a third country. It was founded in the year 1950, and to regulate the rules for refugees internationally the 1951 Refugee Convention was introduced. According to this convention, refugees are defined as “someone unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”¹

Refugees are considered to be the most endangered and sensitive human species in the world. They are mostly prone to brutality, cruelty and misbehavior. The UNHCR declared that, by the end of 2019, there were 79.5 million refugees in count worldwide.² In 1921, the *League of Nations* came up with the status of International Refugee, after the World War II which led the fleeing of a large count of people from Eastern Europe. Since then, the term **refugee** was again termed and defined in the 1951 Convention.

What concern the most are the reasons behind their fear of persecution and cruelty. What have they done that they’ve to flee their own country, leaving behind their society, family, friends, possessions, jobs and to take asylum in other countries and being dependent on others? It has been found that in almost all the cases the reason behind their refugee status is their race, religion, nationality, political opinion or

¹. The Refugee Convention, 1951

². UNHCR, *Global Trends: Forced Displacement in 2019*, <https://www.unhcr.org/globaltrends2019/>

affiliation a social group in their origin country. The UNHCR has evidently raised the main reasons for rise in cases of refugees. They are mainly religious violence, wars and tribal violence.³

The 1951 Convention:

The 1951 Geneva Convention is the first international law for refugees. It deals with all the legal work for a refugee right from their definition to their protection and their social rights which should be given to them by those countries who have signed the document. The 1951 Convention gave the status of refugees to those victims of the Second World War, mainly the Eastern Europe. Later in 1967 Protocol, the scope of the convention was widened from not only protection but to the problems of displacement throughout the world. The 1951 Convention now deals with Migrants and the Stateless people as well.

Refugees and Migrants: The Difference

People are often confused by the two similar terms which are not at all similar but their applications may crash each other's position. So, it is very important to know the difference between the two.

Refugees are the people who have fled from their origin country in fear of persecution and cruelty because of their religion, nationality, race or political opinion or affiliation to them. These people generally elope from their origin country to neighboring countries and seek refuge in those countries. Once these people are given asylum by countries or recognized by the UNHCR they are termed as Refugees. The recognition is done by the UNHCR by following a Refugee Status Determination (RSD) procedure, which is not a full proof procedure and has its flaws. However, the UNHCR may interfere with the country which is not ready to give asylum to the seekers. Thus, it can be said that all refugees are asylum seekers, but all asylum seekers are not refugees.

On the other hand, the migrants are displaced people outside the country but not due to any fear. Their main reason for displacement is for seeking better lifestyle, better education or reuniting with their families. The migrants are governed by each country's immigration laws unlike refugees which are governed by the international conventions. Their safe return is a high possibility, unlike the refugees.

In 2019, just five countries contributed to more than two-thirds of all refugees⁴. These are:

³ USA for UNHCR, *What is a Refugee?* <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>

⁴. The UN Refugee Agency, UNHCR

Syria, about 5.6 million Syrians are refugees and over 6.2 million people are displaced within Syria. At least half of the refugees affected by the Syrian refugee crisis were children.⁵ Since 2014, Syria has been the root country of origin for refugees and by 2019 end; 6.6 million Syrian refugees were hosted by 126 countries worldwide.

Venezuela, as of 2019, has a refugee number crossing 3.9 million, and it is predicted that Venezuela will be the worst struck Refugee crisis state in 2020.

Afghanistan has the worst refugee population in Asia. As of 2018, there were 2.5 million refugees registered in Afghanistan. Afghanistan has the second largest refugee population in the world.

Amidst deteriorating living conditions and violence in the region, **South Sudan** becomes the worst struck refugee producing state in Africa. South Sudan is also with the third largest refugee population state. The refugees have now crossed 2 million marks, and around 63% of this population is below the age of 18.

Myanmar, after the violence of 2017, which broke out in Rakhine, the *Rohingyas* started leaving Myanmar and took shelter in Bangladesh. At the time, as many as of 7, 42,000 *Rohingyas* seek asylum in Bangladesh and among these 40% are under the age of 12. On an average, 14,300 *Rohingyas* travel to Bangladesh and seek asylum every day. *Kutupalong refugee camp* in Bangladesh is about to become one of its kind with living population of over 6, 00,000 within 13 km square.

BASIC HUMAN RIGHTS OF REFUGEES:

Right to protection against refoulement:

Refoulement is the forcible return of refugees or asylum seekers back to their origin country where there is immediate fear of being persecuted. When people leave their own community and flee to another country or community, their biggest threat from the asylum-seeking country is that they might be forced back to their origin country where there are chances of persecution. Hence their security, integrity and

⁵. 2020, “ Syrian Refugee Crisis”, World Vision

their lives are in danger. The international community has a principle for non-refoulement which has derived its existence from the keywords “common humanity” and “international community”.⁶

Thus, returning refugees to their homeland where their safety to life is endangered is against Human Rights and also has a legal position. Such protection of refugees has a legal status in the laws “relating to the prohibition of torture and cruel or inhuman treatment”⁷. It is the duty of the state parties not to expose the individuals who have returned by means of extradition, refoulement or expulsion to such conditions where their dignity of a human is degraded or ill-treated according to the ICCPR⁸, it is also prohibited by International Human Rights Law⁹. Also, in *Cruz Varas Case*¹⁰, it was quoted as “the act of handing the individuals back to their torturers, executioners is in itself constitutes a violation of the obligation of protection of individuals against torturers, hence the state’s refoulement towards the refugees is violating such same obligation and is to be held liable”.

Right to Asylum:

“Asylum is the protection which a State grants on its territory or in some other place under the control of certain of its organs, to a person who comes to seek it”¹¹. The countries following Non-refoulement principle needs to give asylum seekers a shelter for their survival along with their safety and health. The asylum should be provided to them not just for their integrity, security and right to life but for protecting other human rights as well. This privilege to shelter can be deliberated in scope of the U.N. Sanction as an overall guideline of universal law and a rudimentary thought of humankind.

Thus an individual has a right to move out of his country to another country is recognized as a human right and there also he has a right to shelter and protection from persecution through human rights

6. The Refugee Convention 1951, art. 33(1); UNHCR, *Basic Legal Documents on Refugees* (1999), 8-37; United Nations Declaration on Territorial Asylum, Art. 3; The Asian- African Legal Consultative Committee, Bangkok Principles, art. VIII; OAU Convention 1969, art II (3); American Convention on Human Rights Convention, 1969, Art 22(8).

7. The Universal Declaration of Human Rights, Art 5; UNHCR, *Basic Legal documents*, pp.43-47; *Convention Against Torture*, Art 2 and 6, Art 7 of the ICCPR (1966)

8. HRC General comment No. 20, para 9

9. HRC General paras 14.1 and 15.3

10. *Cruz Varas Case*, note 12. Series A no. 161. Para 91

11. Article 1 of the Resolution adopted by the Institute of International Law in Sept. 1950, *American Journal of International Law*, vol. 50, Supplement (1951), p 15.

Instrument.¹² It is important to note that the countries providing asylum to refugees eloping from other countries is not considered as an unfriendly act. Earlier, the right to asylum was a right assigned to the state and not to any individual, but over the years this right has been considered as a right of an individual because if a state denies asylum it would reflect the denial of the existence of any international organ granting it. Though the right to asylum is a right granted to the individual, the states have kept the frustration of denial to asylum high over the years. It may be noted that the underlying principle for the UNHCR is that “In cases of large-scale influx, persons seeking asylum should always receive at least temporary refuge”¹³. The UNHCR (in 1986) took stand as “Refugees and asylum seekers who are the concern of office and should not be the victims of measures taken by Governments against illegal immigration or threats to their national security, however justifiable these may be in themselves”¹⁴

It is rather sardonic, that the countries or players leading the world and intervening with humanitarian laws and introducing human rights are the ones who on the name of security and safety of their state put barriers to such refugees, deny asylum and exercise extradition and refoulement.

Right to equality and Non-Discrimination:

Article 2 of the ICCPR states that, “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”¹⁵. Thus, a displaced person is to be treated with no discrimination by their condition of refuge. The refugees could procure these moral imperatives in consideration of protection and respect of Fundamental Human Rights, General International law along with gaining elementary considerations of humanity from the international communities. It is a general rule that the refugees ought to have dignity and rights as that of a national¹⁶ in the asylum state as there may not be adequate laws in every state for the protection of the rights of the refugees and maintaining their duty as there may be bitterness among the nationals in asylum states

¹². The Universal Declaration of Human Rights 1948, art.14 (1), (G.A. Resolution 217 (III); Art. XXVII, American Declaration, Art. 22 (7), American Convention on Human Rights, *ILM*, vol. 9 (1970), p. 673, Vienna Declaration, part I (1993), para 23

¹³. Michell Moussalli, *Who is a Refugee? Refugee Magazine*, (September, 1982), p.42.

¹⁴. Opening statement by the High Commissioner for Refugees at the Thirty-Seventh Session of the Executive Committee of the High Commissioner's Program, 6 October 1986

¹⁵. ICCPR, 1976, Art. 2(1), Part 2,

¹⁶. ICCPR, Art. 2(1) *ILM*. vol. 6 (1967), p. 3687; ICESCR, Art. 2 (2), *ILM*., vol.9 (1970), p.360, U.N. Charter, Arts. 1 (3), 13 (1) (b), 55 (c) and 76 (c); Universal Declaration of Human Rights, Art. 2; European Convention, Art. 14 213 *UNTS* 221; American Convention, Art. 1 and 24; African Charter, Art. 2, 13, 18 (3)- *ILM*., vol. 21 (1982), p. 58.

regarding the refugees existence on the territory. In addition, common grounds related to situations of refugees such as “race, religion, national or social origin and lack of property will not be discriminated”.¹⁷

Right to life and personal security:

The privilege to life is a non-derogable widespread right and displaced people are shielded from subjective hardship of life. Refugees are a group of individuals who have no identity and lack social security and basic human rights in all stages of their life, once when they are being taken out, secondly when they remain in asylum for their life with no human dignity and thirdly, when they are being sent back to their native countries. Refugees are the most threatened species of human on this earth. They require identification, status, class, nationality, social security, human rights and health. They are easily prone to tortures, physical and sexual assault, genocide, extra-judicial executions, killings, forcible disappearances, landmines, hostility attacks, etc. Such criminal activities are very common in refugee shelters; therefore, there are human rights law guaranteeing right to life¹⁸ and states have the supreme duty to prevent such mass loss of lives in wars, genocides¹⁹.

Women have always been the worst victims in refugee camps and it has also been recognized by The Vienna Declaration and Program of Action (1993) that “there is an immediate connection between the gruesome infringement of human rights particularly as decimation, and precise assault of ladies (as rape) in war circumstances”²⁰. To back the worsening scenario of General physical attacks, Sexual attacks and callous rape of refugee women, states have been urged a plethora of times to acquire a few measures that could combat the violence against unsafe women. The failure to protect the refugee women from the violence devastated the right to liberty, integrity and security of persons. Even worse, at some point nullified the right to life too.²¹

For a fact, none of the refugees could be unprivileged of their right to liberty except on such grounds and in accordance with such procedures that are established by law. The 9th provision of the International Covenant on Civil and Political Rights clause 2 makes the refugees eligible to claim legal

¹⁷ UNHCR, *International Legal Standards*, note 12 at p. 18.

¹⁸. Universal Declaration of Human Rights, Article 3; ICCPR, Article 6(1), American Declaration, Art. 1; American Convention, Art. 4 (1); European Convention, Art. 2 (1); African Charter, Article 4; CRC., Articles 6 (1) and 19

¹⁹. H.R.C. General Comments, , No. 86, paras 2,3 and 5

²⁰. Vienna Declaration, 1993, para 28

²¹. See generally CRC, Art 28 (3), *ILM*. vol.28 (1989), p.1448; ICCPR, Art 8 (3) and Art 26.

safeguards, who can also challenge their detention. International Covenant on Civil and Political Rights in its clause 1 of the 9th article clearly states to refrain from the practice of holding refugees in closed camps as it will be treated as 'detention'. Though, the clause comes with an exception, that holding refugees in closed camps is only permissible when it is for their safety and in their best interests.

Right of return:

Refugees are guaranteed with this right so that they can return to their home country voluntarily as recognized by the human rights law. Human rights law recognizes the right of refugees to return to their origin country voluntarily from another foreign territory²². Resolution 194 passed by the General Assembly that resolves the issue for Palestine refugees in 1948. Those refugees who urged to head back to their states with the hope of peaceful living along with their neighbors were supposed to do the needful at the earliest practicable date. Also, the UN General Assembly, proposed a compensation for the property to those who chose not to return. It is the duty of the origin state, state of refuge and the international community to provide a safe and flawless environment for the individuals looking to execute their right. Since the state of refuge is a temporary status, it is the obligation of the asylum country to protect the human rights of a refugee who lost its community and identity and is very accessible to discriminations and cruelty and once the conditions are favorable back in their country for their survival where their human rights are not violated, the duty of the refuge state ends and starts for the origin country. This right is more of a problem-solving step rather than making it more difficult for the refugees and their origin states. Thus, the recent advancement in this field shows that the voluntary repatriation has been more affective having relations with the UNHCR and both the states of origin and asylum. Also, in Article 5 of the 1969 OAU Convention, the article has laid more stress on the voluntary repatriation along with strengthening relations between them.

LJR- ALLYING LAW WITH SOCIETY

Other rights:

Refugees are protected by various other rights through various laws, conventions and human rights treaties. Like, the refugees have a right to have a family and have equal protection as that of an

²². Universal Declaration, Art 13 (2)

individual. According to the ICCPR²³, “family is considered as the natural and fundamental group unit of society and it is the duty of the State and the Society to provide protection to the family and the dependents of the individual”. Though, the definition of dependents changes from state to state as a result of different interpretation of family in different cultures, it still remains a domestic law of protecting the individual’s dependents in every state. Other such rights like right to education, right to justice, access to fair employment and all other fundamental privileges and freedom are the outcome of various international and regional human rights treaties. Evidently, the 1951 convention, states more specifically about the status of refugees in asylum states through its various articles. One²⁴, “Refugees are to be managed indistinguishable rights to moveable and immoveable property as for far off nationals”. Two²⁵, “Refugees are to be conceded equivalent access to the courts”. Three²⁶, “Refugees are to be allowed the same access to wage-earning- blue collar employment as foreign nationals”. Regardless of these conventions, many countries fail to provide the same top the refugees due to their own national laws. The ready example for such discrepancy can be Lebanon and the Palestinians as refugees can't rehearse their callings because of absence of coop enrollment, for example, law, medication, and building, and from enlisting property. The labor bar and the property laws make it unable for the refugees to gain their status in Lebanon as prescribed by the 1951 Conventions²⁷.

Refugees in the pandemic: Violations of Rights

Refugees are one of the most vulnerable groups of people who are getting affected in the time of this pandemic. The journey is described by the name itself as migration can be seen as a life span process. The global pandemic COVID 19 adversely affects their lives and forces them to tackle with new challenges.

LJR- ALLYING LAW WITH SOCIETY

²³. international Covenant on Civil and Political Rights (ICCPR), 1966, art 23(1)

²⁴. *Ibid.* Art 13

²⁵. *Ibid.* Art 16

²⁶. *Ibid.* Art 17

²⁷. Human Rights Watch, World Report (Lebanon), (2014)

COVID -19 inflicts restrictions at three geographical stages:

First, the country from where they belong that means the country of origin, Refugees may experience a worst condition in which there are violations and persecution of their rights with intensified discrimination and 'emergency' pandemic measures which curbs the democracy. Another problem regarding pandemic i.e., restrictions on the freedom of movement, which may make impossible for refugees to leave in the search of asylum.

Secondly, borders are also being restricted during pandemic. There are total shutdown & travel restrictions, which creates hurdle for refugees to travel abroad to apply for refugee status, or to be resettled in any other country. Similarly, if refugees settled around the border, then fundamental principle of non-refoulement i.e. risk of persecution or any other serious issues, which can be violated by the resettlement of refugees near borders. Even states have right to enforce border regulator measures.

Thirdly, the country, where there are refugees' asylum, they may face many challenges comprising access to refugee status determination procedure; documents; amenities; livelihood and / stimulus packages, and the distress of forced returns.

Challenges regarding protection of Refugees in respect to pandemic:

COVID-19

The protection of refugees is a concerned matter for international community and it can be achieved by the combination of international cooperation as well as international actions. The authorities should ensure that the resources should be availed by the refugees, in the particular situation of this pandemic.

LJR- ALLYING LAW WITH SOCIETY

It is of utmost importance that international communities promote consciousness to include refugees in responses to the pandemic and to safeguard that actions are planned and executed in accordance with the most protective standard possible.²⁸

Violation of rights of Refugees under darkness of COVID-19

On April 23, Bangladesh's coast watches passed on a reasonable message expressing, "Not a single Rohingya will be permitted to enter [Bangladesh]." An explanation copying the administration's position featured in an ongoing meeting by Foreign Minister Abdul Momen. Vigorous words conveying a feeling of history repeating itself describing back to the 1970, when Vietnamese vessel individuals looked for asylum in neighboring countries, however were plentifully denied section.²⁹ Another occurrence occurred in Malaysia when, the country precluded the passage from claiming pontoon conveying 200 Rohingya outcasts.

An exact same thing occurred in that very month when Italy shut its ports in regard of its general wellbeing.

There are guidelines given by The General Convention of 1951 which clearly explains governments are taking the negative help of worldwide pandemic as a reason to disregard global law by efficiently ignoring the origination of non-refoulement- A Fundamental Principle of International Law, prohibits governments from sending refugees and asylum seekers back to their countries where they are or have fear of being persecuted.

LJR- ALLYING LAW WITH SOCIETY

²⁸.Liliana Iyrya Jubilut , *challenges to refugee protection in the time of COVID-19*, UNSW Law, (June 25, 2020) <https://www.kaldorcentre.unsw.edu.au/publication/challenges-refugee-protection-time-covid-19> , last retrieved 8th august 2020

²⁹. pierfilippo n.natta, Covid 19 is no excuse to abandon basic principles protecting refugees and asylum seekers , The Diplomat, 4th may ,2020 <https://thediplomat.com/2020/05/covid-19-is-no-excuse-to-abandon-basic-principles-protecting-refugees-and-asylum-seekers/> Last retrieved 9th august 2020.

CONCLUSION

Refugees are the most vulnerable group of people in the world. The current pandemic of the Novel Corona Virus, has led to their status more exploited. Irrespective of their place, whether in transit, or in refugee camps, their condition is devastating. Imagine, during such crisis, citizens of the countries are not able to meet the needs with all the resources available, a refugee, who has lost its state, identity, home and Fundamental Rights, how will they be provided with the resources they need. Health supplies, medical facilities, hospitals, nursing services, are in high demand. In this emergency, providing such services to the people who are not even citizens of their state is very difficult, as, for the cause of humanity, it is quite exorbitant. The condition of refugees is so pitiful and they are discriminated in this situation. They aren't able to move with freedom for the search of asylum, as borders are constrained. The condition is severely bad and they don't even have the resources to feed themselves. There was total lockdown in each and every state; they aren't able to enjoy their basic rights like food & water. They are restricted to borders and ports.

It is high time, that international communities and first world countries should give cognizance to the basic human rights of refugees through and after this pandemic. In situations like these, the role and importance of the work of the international communities play a vital role. The First World countries should come forward and aid the international communities and countries with resources in excess apart from the regular aid provided to them.

Currently, the Government, of each country has a lot on its plate, and it's time for the Private Partners of the UNHCR like the IKEA Foundation, SONY, Vodafone Foundation, Microsoft, Educate a Child and many more to come up with more and more donations as well as volunteers working on coordination between the international communities and governments.

LJR- ALLYING LAW WITH SOCIETY