Educational Rights of Refugee Children under International Law-Special Reference with India

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During the armed conflict large number of people becomes refugees. Almost half of the world’s forcibly displaced people are children, they may be called as refugees, internally displaced, asylum-seekers or stateless persons, and whatsoever children are the greater risk of abuse, neglect, violence and trafficking. Refugee children are the easiest target for the sexual harassment and forced labour in hosting State. Most of the victim children are uneducated. If we need to eliminate this kind of violence against child refugees the only way is education. Education is the key to open golden door of freedom. Yet livelihood of the refugees is in question in some countries, Now the debatable issue is, policy standards framed in the refugee convention and its protocol for refugee child education is, some extent strictly followed by the signatories of the same, but countries like India, who not signs but accept the refugees on the basis of humanitarian and human rights concern what extent can adopt and execute the educational right of refugee child. In this paper I am going to explore the educational rights of refugee children under the various conventions and treaties in international level and the status of non-signatory of refugee convention.

INTRODUCTION:

The word Refugee was introduced in English by Huguenots, who required asylum in the UK in late 17th century and derived from the French word se refugier which means “to seek shelter”. During the armed conflict huge numbers of people will become displace. They often have to leave their homes and sometimes never return also. Families are split up and children become separated from their parents and it is implied that education of them also spoil. Almost half of the world’s forcibly displaced people are children, the fact that, 80% of the 53 million people uprooted by wars are women and children, they may be called as refugee, internally displaced, asylum-seekers or stateless persons, generally children are at a greater risk of abuse, neglect, violence, exploitation, trafficking. Refugee children frequently facing discrimination by local residents including teachers in hosting state1, and sometimes occurrence discrimination within the camps from members of other ethnic groups. Gender-based violence aimed at girls, including harassment and rape2. The children in the refugee camp are vulnerable because they are separated from their parents and also due to lack of adult protection and insufficient economic resources are leads to forced marriages and other harassments3.

Some of the everyday jobs assigned to children in refugee camp, like collecting water and gathering firewood put them at higher risk in Camps and also where refugees share water and schools with local communities were pin pointed as particularly dangerous for children. Most of the girl refugee children felt of being powerless against the force of violence and discrimination they encounter on day today life4. If we ask ourselves how children can remain safe in refugee camp the typical response is “There’s no solution to that” and it is well founded that “There is no safe place for the girl refugee children.” The question that always challenge for researchers and policy makers is the

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numbers that are on the move, especially in developing countries, where sometimes millions are on the move. For example in India sex-segregation data is available only for some groups.

Most of the evils are the result of illiteracy of refugee children. If we need to eliminate this kind of violence against child refugees the only way is the education. because “Education is the key to open golden door of freedom”.

“Our goal for now and the future should be to keep abreast of other people of the world in all aspects of education progress and development. Therefore after coming to India as refugees, “our primary initiative has been the education of our children, the future seeds of Tibet who will carry out our national task be it political or spiritual”

Is an appropriate observation of the Dalai Lama. Yet livelihood of the refugees is in question in some of the hosting country, in this situation the subject of refugee child education is another mind twister question. Some of countries like Australia, Norway, Sweden and Canada are well aware of the importance of the refugee child education and doing justice as per the refugee convention and its protocol in addition to their own municipal law.

INTERNATIONAL INITIATIVES TO SAFEGUARD REFUGEE CHILDREN:

The definition of child is “Child means every human being below the age of eighteen years, and according to Article 22 of the Convention on the Rights of the Child (CRC), “every child who is seeking refugee status has a right to protection and humanitarian assistance in the enjoyment of the rights that are constrained in treaties and declarations belonging to refugees”. Article 22 of the 1951 Refugee Convention and the 1967 protocol are the foundation in international law for the education of refugee children, in which it is stated they should be accorded the same opportunities as nationals from the host country. After completion of primary school, refugee children are treated as other foreigners, allowing for the recognition of foreign school certificates and for the awarding of scholarships.

We can see that Article 28 of Convention on the Rights of the Child stated that “State Parties shall respect and ensure the rights set forward in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Schools must not discriminate against refugees and have a duty to promote good relationships between children from different backgrounds”

The 1924 Declaration of the rights of the child was the first international instrument to exclusively addresses the special needs of children, and the 1946 International Refugee Organization (IRO) Constitution included ‘War orphans’ as one of the refugee categories. During the drafting of the refugee Convention, the US delegation proposed a specific ‘unaccompanied children’ category that means the child who surrounding any unaccompanied person, sixteen years of age or under, who is a war orphan, or whose parents have disappeared, who is unable or unwilling to avail himself of the protection of the government of his country of nationality or former nationality, and who has not acquired another nationality. The director general IRO doubted the ‘long-term usefulness’ of its

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5 Dalai Lama, Asylum seeker and Refugee from Tibet.
6 Convention on the Rights of the Child (1989), Art 1. Unless, under the law applicable to the child, majority is attained earlier.
7 Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49
8 Art. 22 of Convention Relating to the Status of Refugees: 1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.
9 Geneva Declaration of the Rights of the Child (Adopted 26 September 1924)
10 International Refugee Organization Constitution, (Adopted 15 December 1946)
11 Article 1A(3)(b)
inclusion, however, in light of legal difficulties concerning guardianship that had been experienced in relation to the IRO war orphans provisions 12.

The CRC establishes a protection framework of nearly universally acceptance, having been ratified by every State except Somalia and USA. The CRC supplements the universal human rights treaties by reinforcing their general provision, but also includes additional rights crafted specifically for children 13 described as ‘a critical millstone in legal protection generally’, it is unique as the only binding human rights treaty protecting the full range of rights encompassed by the Universal Declaration of Human Rights 14. The CRC incorporated principles from a number of international instruments. 15. The most notable of these are the International Covenant on Civil and Political Rights (ICCPR) 16 and the International Convent on Social and Cultural Rights (ICESR) 17 recognizing that the family should receive ‘Protection by society and the State 18.

International Convention on the Elimination of all forms of Racial Discrimination (ICERD). Require all countries to punish and eliminate every form of racial discrimination as well as to follow policies to eliminate racial discrimination in all its forms and in Article 5 of the ICERD clearly guaranteed the “Right to education and training” for everyone and we can extent this to refugees too. The Geneva Conventions place particular humanitarian protections for people “including children” who are not being the component in aggression. State’s are responsible for ensuring the provision of education for orphaned or unaccompanied children in times of hostility. During military occupation, the occupying power must facilitate institutions “devoted to the care and education of children”.

UNHCR’S EDUCATION STRATEGY (2012-16)

UNHCR 20 is the agency mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refugee in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country. It also has a mandate to help stateless people. In more than six decades, the agency has helped tens of millions of people restart their lives 21. This notable agency put forth the planning and policies for the refugee welfare. Its came with the education strategy (2012-16) Reflects a renewed focus on refugee education as a core component of UNHCR’s protection and comprehensive solutions mandate. It promotes the importance of schools as safe learning environments, recognizing that marginalized groups may need special attention to access safe learning environments. It emphasizes improving access to quality education for refugee children and maximizing the protective benefits of participation in school. It emphasizes the role of education in a child’s development to build skills,

13 Art 22, for example, pertains specifically to refugee and asylum-seeking children, but in War not discussed here since it contains no guidance on the assessment of refugee claims involving children.
14 Universal Declaration of Human Rights (1948), Article 26: 1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. Parents have a prior right to choose the kind of education that shall be given to their children
16 International Covenant on Civil and Political Rights (Adopted 16 December 1976)
17 The International Covenant on Economic, Social and Cultural Rights (ICESCR) (Adopted on 16 December 1976)
18 International Convent on Civil and Political Rights Art. 23(I).
19 Fourth Geneva Convention, Articles 24 and 50, (1949)
20 The Office of the United Nations High Commissioner for Refugees established on December 14, 1950.
capacity and resilience from early childhood through to adolescence and adulthood. It advocates for the integration of refugee children into national education systems.

EDUCATIONAL RIGHTS TO REFUGEE CHILDREN IN SOME COUNTRIES:

The compulsory school age in Sweden is from 7 until 16 years. According to the Swedish Education Act (1985) refugee and asylum seeking children have the same right to education as native children. Approximately 6,200 children sought asylum in Sweden in 2008; 1,510 of them were unaccompanied minors. about 60 per cent were 16-17 years old and about 30 per cent were 13-15 years old. According to legislation, unaccompanied minors should receive education applications within three months. In Australia, child protection and education are governed primarily by State and Territory legislation which contains mandatory protection provisions. Education is compulsory up to an age specified by local legislation. This age varies from state to state, but is generally 15-16. Australia agreed to the international rules contained in the Convention on the Rights of the Child (CRC) on 17 December 1990. In the UK, all children of the compulsory school age (5-16) have the right of access to education. This thus includes asylum seekers and refugees. All students newly arriving in the UK have the same entitlements to free, government-funded education as settled residents. Local authorities, educational institutions and schools have a general duty under the Race Relations (Amendment) Act 2000 to “eliminate unlawful racial discrimination and promote equality of opportunity and good relations between persons of different racial groups”.

EDUCATIONAL RIGHTS TO REFUGEE CHILDREN IN INDIA:

India is not a party of the 1951 Convention on Refugees or the 1967 Protocol. The lack of particular refugee Act in India led the government to take up a specified approach to different refugee group. The status of refugees in India is governed utmost by political and administrative decisions than any codified law. In the refugees issue India is acting on charitable approach rather than right based. Since Indian judiciary played vital role in refugees status and implementation of international norms in India in enormous cases. It’s also notable that the eminent Judges like V.R.Krishna Iyer and Justice P.N Bhagwati expressed their view that the Constitution of India Art 14, 21, 22, 25, to all human beings, we cannot simply confine this rights only with Indian citizens.

In Gramophone Company of India Limited v. Birendra Panday- Justice Chennappa Reddy observed:

“There can be no question that, Nations must march with the international community and the municipal law must respect rules of international law just as Nations respect international conventions. The Comity of Nationals requires that rules of international law may be accommodated in the municipal law even without express legislative sanction provided they do not run into conflict with Acts of Parliament.”

Moreover, the Supreme Court has held in various decisions that “Courts in India should read the provision of international conventions and norms into municipal law”, even if the same have not been ratified by India. The only restriction is that such provisions have to be consistent with municipal laws. Although India is not a member of refugee convention and Protocol, the right to seek asylum or the principle of non-Refoulement could be incorporated into Art.21, since there is no existing national law on refugee. And Article 51(c) in part IV of the Constitution provides that the state

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shall Endeavour to promote respect for international law treaty obligations. In this way, a number of Indian Court decisions have tried to provide humanitarian solutions to the problems. These decisions have mainly dealt with issues relating to the right to life and incorporation of international norms in municipal law when there is no specific law relating.

CONCLUSION:

In the absence of formal legal framework governing the treatment of refugees, India manages the arrival of refugees through ad hoc administrative manor rather than through definite legislative enactments. For Government of India, the ad hoc approach to refuge issues is politically more convenient, since India has not signed the two major legal instruments on refugees they come under the normal laws of India. Even though the Tibetan refugees were granted asylum by the Government of India. Nevertheless, Tibetan refugees born In India are entitled to get Indian citizenship according to section 3 of the Indian Citizenship Act of 1955. And education is the top priority on the rehabilitation agenda. Result of that almost all of the Tibetan refugee children is getting education and the study proves that nearly 28,000 students in 71 schools spread over India.28 But this right is not extended to other refuges so far, our clime is that Indian government should use same yard stick for all the refugees, it may be the Iran, Bangladesh, Afghan, Sri Lanka, Burma, and Somalia or from Pakistan, but hey all treated as ‘otherwise’ only. Unaccompanied children for these groups are treated only on humanitarian based and not a right based. In India so far no allegation of ill treatment or violence against the refugee children but we couldn’t take this for our favor. The most important that Refugee child who living with family may get the education, but we also should think about the orphan or unaccompanied children. Even though we proved the primary education some extent to refugee child it is our duty to provide quality and continues education to all refugee children without any partiality. India is the emerging leader of South Asia29 and even though we not the signatories of the major conventions and protocol of the refugee we the member of United Nation by following of “Jus Cogens” principle we should respect the international customary practice including refugee rights. So we should be the role model for the others.